



Ontario

Office of the Conflict of
Interest Commissioner

Annual Report

2010-2011



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Interest Commissioner**

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June 30, 2011

The Honourable Harinder Takhar
Minister of Government Services
4th Floor, Suite 4320
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Dear Minister:

Re: Office of the Conflict of Interest Commissioner Annual Report

I am pleased to present to you the annual report of the Office of the Conflict of Interest Commissioner for the fiscal year 2010-2011.

Yours sincerely,

The Honourable Sidney B. Linden
Commissioner

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COMMISSIONER'S MESSAGE

In 2007, the *Public Service of Ontario Act, 2006 (PSOA)* replaced the *Public Service Act* and led to the establishment of this office. In my first annual report, I noted that Ontario public servants had a well-deserved reputation for excellence. I also noted that the need to avoid real or perceived conflicts of interest within the public service was not new, but there could always be improvement in preventing and managing them. With the experience of almost four years, I am confident that there is much value in having a dedicated office like ours. As may be expected, we respond to public servants' requests for advice or determinations on specific matters. However, we also respond to requests for assistance from ministries and public bodies. As they develop or refine their internal policies and procedures, they seek assistance in ensuring that any changes are consistent with both the letter and spirit of the *PSOA*. In these and other ways, I believe our office continues to make a significant contribution to preventing conflicts of interest from arising in the first place.

As a society, we are looking at issues regarding ethical conduct much more closely than we did in the past. Governments, too, have focussed considerable attention on ethical questions. The recent Oliphant and Mississauga public inquiries were primarily concerned with issues of ethics and conflicts in the public sector. As our public and private institutions become more complex, ethical conduct is vital to preserving our trust in these institutions.

The reality is that in a complicated society such as ours, people who are honourable and ethical will sometimes find themselves in a conflict of interest situation. Having a conflict of interest is not necessarily a reflection of a person's character; rather, it may be simply that a situation needs to be recognized and addressed, possibly by means of a mitigation strategy. In addition to making determinations as to whether or not a public servant has a conflict of interest, we devote considerable effort to developing mitigation strategies for public servants who sense a possible conflict and want to do the right thing.

Inevitably, conflicts of interest will occur. When they do, effective and transparent processes must be in place for dealing with them. Having clear and consistent rules is important, and in my view, the *PSOA* provides that necessary framework for Ontario public servants. Often, however, doing the right thing does not depend only on having appropriate rules and regulations. It also requires an attitude and culture that promotes discussion about possible conflicts that can arise and encourages people to deal with them. Our ultimate objectives should be to raise consciousness so that we all become sensitive enough to recognize potential conflicts and to ensure that we have the necessary policies and procedures to manage them.

The Ontario government recently launched a campaign reminding public servants to "Do the Right Thing." The campaign presents sample situations involving conflict and ethical

issues that can come up in the daily work life of public servants, along with suggested steps. Our office was pleased to contribute to that initiative, as well as to other government-wide efforts to maintain public confidence in the integrity of the public service. Those contributions complemented our own continuing efforts to better communicate Ontario's ethical framework. Throughout the year, we endeavour to raise awareness through outreach, orientation meetings, and presentations. This year, we also focused on redesigning our website to provide more information about what we do and how we can better assist members of the public and public servants. We talk about these initiatives, and the other ways in which we continue to fulfill our mandate, in this year's report. Our ongoing objective in everything we do is captured in the banner for our new website: *Promoting an ethical, non-partisan public service.*

The Honourable Sidney B. Linden
Commissioner

ESTABLISHMENT AND GOVERNANCE

To provide context for the activities described in this report, this section briefly describes the establishment and governance of the Office of the Conflict of Interest Commissioner.

LEGISLATIVE BACKGROUND

The *Public Service of Ontario Act, 2006 (PSOA)* was proclaimed in August 2007. In enacting this legislation, the government intended to strengthen the ethics and accountability framework governing the Ontario public service.

The intent of the *PSOA* is to achieve greater consistency in the application of conflict of interest and political activity rules throughout the public service. Another objective of the legislation is to clarify lines of accountability in applying these rules, thereby contributing to transparency and understanding, within and outside government, with regard to conflict of interest and political activity and related best practices.

Among other things, the *PSOA* provides for the appointment of a Conflict of Interest Commissioner.

ROLE OF THE COMMISSIONER

Under the *PSOA* and accompanying regulations, the commissioner has a leadership role in contributing to public servants' understanding of the conflict of interest and political activity rules and to the interpretation of those rules. The *PSOA* also explicitly assigns to the commissioner responsibility for certain conflict of interest and political activity matters with respect to specified employees of ministries and employees and appointees of public bodies.

The commissioner aims to fulfill this mandate in the following ways:

- Providing clarity and guidance to the Ontario public service regarding conflict of interest and political activity matters
- Encouraging excellence and consistency within the Ontario public service in the application of the conflict of interest and political activity rules
- Raising awareness in the Ontario public service about conflict of interest and political activity matters

These goals are achieved through three main areas of activity:

- Offering advice and making decisions on conflict of interest and political activity matters involving Ontario public servants and former public servants
- Providing advice and direction to Ontario public bodies regarding the standards of ethical conduct established by the conflict of interest rules
- Developing and sharing information that provides guidance and promotes understanding regarding Ontario's conflict of interest and political activity rules

PRINCIPLES AND VALUES

The Office of the Conflict of Interest Commissioner has established principles and values to guide its operations: integrity, administrative fairness, independence and impartiality, transparency, consistency, timeliness, and cost-effectiveness.

These principles and values are in keeping with the function of our office as an administrative tribunal that is part of the overall administrative justice system in Ontario.

GOVERNANCE AND ACCOUNTABILITY

The Conflict of Interest Commissioner is appointed by the Lieutenant Governor-in-Council for a fixed term. The commissioner is accountable to the Minister of Government Services for fulfilling the mandate prescribed in the *PSOA* and is required to report to the minister annually on the activities of our office during the preceding year. However, with respect to making statutory decisions, the commissioner is, and must be seen to be, independent and impartial.

A memorandum of understanding between the government and the Office of the Conflict of Interest Commissioner recognizes this independence and, at the same time, sets out reporting and other responsibilities related to the management, administration, and operation of the office.

ACTIVITIES IN THIS FISCAL YEAR

Generally speaking, the commissioner's responsibilities can be viewed as either activities prescribed in the *PSOA*, such as acting as ethics executive for certain individuals, or as activities that are implicit in the commissioner's role in advancing the underlying intent of the *PSOA*. This year, our office dealt with 168 inquiries or requests. Of these, 121 related to conflicts of interest and 15 related to political activity. The remaining 32 involved inquiries about other ethical issues, some of which were beyond our jurisdiction.

The commissioner believes that situations where conflict of interest may arise could be avoided through raising public servants' awareness of their obligations when carrying out their duties and through aiding ethics executives in carrying out their oversight responsibilities. Accordingly, the commissioner continues to seek opportunities to advance public servants' understanding of Ontario's ethical framework. Several recent opportunities are described in this year's report.

MAKING DECISIONS AND OFFERING ADVICE ON SPECIFIC MATTERS

ACTING AS ETHICS EXECUTIVE

The Conflict of Interest Commissioner is the ethics executive for deputy ministers, chairs of public bodies, the Secretary of Cabinet, and other specified individuals. In this capacity, the commissioner is responsible for providing these individuals with advice or direction on situations or activities, including political activities, that may have an impact on fulfilling their duties as public servants.

During this fiscal year, the commissioner provided advice or direction, as ethics executive, on 37 matters involving conflict of interest or political activity.

ASSISTING OTHER ETHICS EXECUTIVES, OFFICIALS OR OFFICES

Like the commissioner, other senior officials or offices within the Ontario public service have responsibilities under the *PSOA*. They may be called upon to provide advice on the application of the conflict of interest and political activity rules, determine whether a conflict of interest exists, or determine whether a certain political activity is permitted.

To assist individuals or offices in fulfilling these responsibilities, the *PSOA* provides that they may seek the commissioner's guidance. The ethics executive, or designated individual or

office, retains responsibility for the matter in these situations. In other circumstances, an ethics executive may seek to refer a matter to the commissioner. In accepting such a request, the commissioner assumes the decision-making responsibility.

During this fiscal year, other ethics executives and designated individuals and offices sought the commissioner's advice on 72 matters involving conflict of interest or political activity, and 6 matters were referred to the commissioner for a determination.

Last year, the commissioner introduced the practice of meeting with all newly appointed and reappointed chairs of public bodies. The meetings are an opportunity to orient these appointees to their responsibilities as ethics executives and to review the ways in which the commissioner can assist them in fulfilling their responsibilities. This year, the commissioner met with 37 newly appointed or reappointed chairs.

CONSIDERING REQUESTS TO PARTICIPATE IN POLITICAL ACTIVITIES

The *PSOA* sets out political activity rights and restrictions for all public servants, and also makes specific provision for individuals to seek permission to participate in activities that are not otherwise permitted. Part-time appointees to certain public bodies must seek such permission from the commissioner, as must public servants for whom the commissioner is the ethics executive. These types of requests are most common during an election period, and this year, there were no such requests.

RECEIVING AND PROVIDING ADVICE ON PUBLIC SERVANTS' FINANCIAL DECLARATIONS

Public servants routinely working on matters that might involve the private sector (under circumstances and definitions set out in the *PSOA*) must make a financial declaration to the commissioner. The financial declaration discloses certain financial interests, including those of specified family members. A revised declaration is to be submitted to the commissioner when there is a change in financial information that must be disclosed.

As part of the effort to raise public servants' awareness about the conflict of interest rules and roles and responsibilities regarding compliance, the commissioner established the practice of meeting with each public servant who makes a declaration in order to review the declaration form and have the public servant sign it in the commissioner's presence. The meetings also provide an opportunity to discuss, more generally, the applicable conflict of interest rules and the roles of the commissioner and the public servants' ethics executives.

This year, the commissioner met with 19 public servants required to make a financial declaration.

PROVIDING DIRECTION AND ADVICE REGARDING THE STANDARDS OF ETHICAL CONDUCT

ADVISING ON, REVIEWING AND APPROVING RULES SUBMITTED BY PUBLIC BODIES¹

The conflict of interest rules that apply to public servants working in government ministries also apply to public servants appointed to or employed by public bodies. These rules are set out in Ontario Regulation 381/07 (see Appendix 3) and specify the activities that could put a public servant at risk of a conflict of interest.

The rules are intended to be broad enough to cover most situations, but the *PSOA* allows public bodies to develop their own rules for the commissioner's review and approval. To meet with the commissioner's approval, proposed rules must, at a minimum, meet the degree of ethical conduct provided for in the regulation.

One of the government's objectives in formulating the regulation was to have a consistent set of rules for all public servants. Accordingly, early in his mandate, the commissioner encouraged public bodies to rely on the regulation wherever possible. He suggested that public bodies only submit their own rules for approval if their unique mandates gave rise to increased likelihood of potential conflicts and additional rules would more thoroughly address those circumstances.

The commissioner has approved the rules of 22 public bodies, and these rules are posted on the commissioner's website. Our office continues to work with public bodies that are considering whether to continue to rely on the regulation or to develop their own rules. In the latter part of the year, two public bodies indicated their interest in developing rules and the commissioner continues to assist them in this regard.

IDENTIFYING ENHANCED ORGANIZATIONAL PRACTICES

On occasion, and sometimes in the course of addressing a specific conflict of interest or political activity matter, the commissioner may become aware of and provide advice on introducing or revising an organizational policy or practice. The commissioner provides advice of this nature if he is of the view that the change would better align with the *PSOA* and minimize the risk that situations of concern will arise. As well, ethics executives may seek the commissioner's advice regarding the general application of the *PSOA* in situations

¹ The term "public bodies" means the agencies, boards, and commissions that are subject to the *PSOA* and its regulations.

that may be particular to the mandates of their organizations. The following are some illustrative examples:

- Ministry of Northern Development Mines and Forestry sought advice on its guidelines for employees regarding investment holdings in the mining and forestry sectors
- Ministry of Revenue sought advice on its practices in relation to employees' conflict of interest declarations and the ministry's conflict of interest processes
- Niagara Parks Commission consulted on the "duty of loyalty" of members appointed to the commission on the basis of their roles as municipal councillors in jurisdictions located in the Niagara region

DEVELOPING AND SHARING INFORMATION

CONTRIBUTING TO GENERAL UNDERSTANDING OF THE LEGISLATIVE FRAMEWORK AND RULES

The introduction of the *PSOA* established a broader definition of "public servant". A result of the broader definition is that in-service and post-service restrictions on certain activities are applicable not only to ministry employees, but also to appointees and employees of certain government agencies that are defined as public bodies.

To assist public servants, particularly those in public bodies, in understanding the specified roles, responsibilities, rules, and restrictions set out in the *PSOA*, the commissioner undertook a number of initiatives:

- Introduction of orientation packages, distributed when meeting with newly appointed chairs, with information regarding the legislated responsibilities of the commissioner, the rules and restrictions governing public servants, and tools for ethics executives and other decision-makers to assist them in promoting ethical conduct within their organizations
- Orientation of all newly appointed or reappointed chairs of public bodies by way of a letter of introduction, followed by meeting with the commissioner
- Overview presentations to chairs of public bodies, their boards of directors, and/or senior management, on the commissioner's and ethics executives' respective roles and on how the conflict of interest and political activity rules and restrictions apply to employees and appointees in public bodies

- Presentations to groups of public servants, such as ministries' legal counsel, chairs of adjudicative tribunals, and deputy ministers, who have a common interest in the application or interpretation of the *PSOA*
- Development of a brochure to provide a general overview of the role and responsibilities of the Conflict of Interest Commissioner (see Appendix 4)
- Development of "road maps" to assist ethics executives in analyzing public servants' requests to participate in political activities (see Appendix 5), as well as plain language summaries of the conflict of interest rules and political activity restrictions (see Appendix 6)
- Redesign of the commissioner's website to better communicate the role of the commissioner and our office within Ontario's ethical framework for government, inform and guide public servants in applying and interpreting applicable conflict of interest and political activity rules, and direct visitors to other sources of information and assistance as needed

In addition, with the benefit of almost four years' experience and over 400 matters considered to date, the commissioner is in a unique position to advise the government regarding provisions of the *PSOA* that may require clarification or modification to improve consistency in interpretation or application.

The commissioner also advises the government on initiatives designed to meet its more general objective of raising public servants' awareness of Ontario's ethical framework. This year, the commissioner was asked for his views on a number of government-wide reviews of relevant procedures and practices, such as those related to conflict of interest declarations and agency governance. The commissioner also contributed to the government's recently launched "Do the Right Thing" awareness campaign, intended to remind public servants of their obligations and expected standards of conduct.

ACQUIRING AND SHARING AN EXPANDING BODY OF KNOWLEDGE

As in previous years, this annual report includes a selection of summaries of the conflict of interest and political activity cases addressed during the year. Faced with similar issues, public service decision-makers can refer to the case summaries to assist them in interpreting and applying conflict of interest and political activity rules in a consistent manner. Access to this information also contributes to public confidence in the standards of conduct within the Ontario public service.

The commissioner continues to explore and offer ways in which ethics executives can share information about the disposition of common or emerging issues while complying with the rules intended to protect privacy and confidentiality.

IDENTIFYING AND SHARING BEST PRACTICES

The commissioner makes it a priority to learn from other jurisdictions that have comparable responsibilities, with a view to adopting methods, tools, or approaches that may be well suited to Ontario's legislative framework. The commissioner also welcomes opportunities to share information about Ontario's high standard of ethical conduct for public servants and its framework for maintaining that standard.

Council on Governmental Ethics Laws (COGEL)

The Office of the Conflict of Interest Commissioner is an active participant in COGEL, an international organization that facilitates the exchange of information on developments and trends in government ethics and best practices in ethics administration. Each year, the annual conference offers an important opportunity to share ideas and experiences with over 400 other ethics professionals. This year, our office accepted an invitation to participate on a panel to present Ontario's approach to ensuring that public servants are aware of their post-service obligations. Throughout the year, participation on COGEL's electronic bulletin board provides a valuable perspective on improving or introducing best practices.

Oliphant Inquiry

The recommendations in Justice Oliphant's report on the inquiry into allegations concerning business and financial dealings between Karlheinz Schreiber and former prime minister Brian Mulroney focused on the federal ethics regime governing elected officials' transition from public to private life. Our office analyzed Justice Oliphant's findings and recommendations and shared a summary with other offices in the Ontario government that have responsibilities under the *PSOA*.

Mississauga Public Inquiry

Issues and analysis arising from the public inquiry into certain transactions involving the City of Mississauga's mayor may be relevant to the application of the conflict of interest rules under the *PSOA*. Our office followed the proceedings with a particular interest in the panel discussion among experts on conflict of interest in the public sector.

With a view to sharing experiences and best practices, the commissioner facilitated an introductory meeting between Mississauga's newly appointed integrity commissioner and Ontario's integrity commissioner.

Delegation from Chinese Academy of Governance

The commissioner met with a delegation of Chinese government officials to provide an overview of Ontario's ethical framework and to describe the commissioner's role, responsibilities, and approaches to promoting ethical conduct in the Ontario public service.

Ontario government partners

During the year, a number of Ontario government offices requested the commissioner's views as they sought to strengthen or introduce measures to further the objectives of the *PSOA*.

BUILDING ORGANIZATIONAL CAPACITY

The commissioner has devoted considerable attention to defining the scope of his responsibilities and to developing the procedures and tools for carrying out those responsibilities. The procedures and tools are continually assessed in light of accumulated experience and practical application. Ongoing review helps ensure that our office continues to serve as a useful resource for Ontario public servants and others. Advancing the internal knowledge, infrastructure, and organizational capacity of our office also assists the commissioner in carrying out his mandate effectively. This year, building organizational capacity focused primarily on two areas.

REFINING THE ELECTRONIC CASE MANAGEMENT DATABASE

Last year, our office designed and implemented an electronic case management system. The new system brought several advantages:

- Improved recording, tracking, and management of all inquiries and requests received each year
- Better tracking of customer service timeliness
- Improved access to data for reporting on matters brought to the commissioner's attention and for identifying trends
- Enhanced ability to retrieve and reference information on previous matters to assist with the analysis of current matters.

This year, with the benefit of several months' experience in using the new system, modifications and enhancements were implemented to improve the efficiency of the database and enable it to better meet other objectives.

REDESIGNING THE WEBSITE

The commissioner's website (www.coicommissioner.gov.on.ca) was redesigned to better describe the role and responsibilities of the commissioner within Ontario's ethical framework and clearly communicate how the commissioner can assist government decision-makers in carrying out their responsibilities, as ethics executives, under the *PSOA*. The site also provides general information on the conflict of interest and political activity rules applicable to public servants and offers useful links to other resources.

The banner for the new website was chosen to capture the continuing objective of our office: *Promoting an ethical, non-partisan public service.*

PERFORMANCE TARGETS

For the purpose of service performance targets, the “customers” of our office are primarily public servants for whom the commissioner is the ethics executive and individuals and offices assigned to the commissioner in his advisory or decision-making role. On occasion, however, matters are brought to the commissioner’s attention by someone outside the public service.

Accordingly, our office is required to adhere to the Ontario government’s customer service standards for timeliness and continues to make every effort to meet or exceed them. The recently introduced electronic case management system has simplified the process of reviewing and reporting on success in meeting these targets. Additional service standards, adopted by our office this year, ensure compliance with government-wide customer service standards for accessibility.

The commissioner acknowledges inquiries concerning the Ontario public service within 5 days. Within a further 5 days, the commissioner strives to either provide a response or request additional information in order to provide a response. When additional information is requested, the commissioner aims to provide a response within 10 days of receiving the information. In the case of inquiries where the matter does not concern the Ontario public service, the commissioner replies within 5 business days.

This year, our office had a 96 per cent success rate in meeting or exceeding these performance standards, and once again received many indications of appreciation for prompt and helpful responses to inquiries.

A procedure for submitting formal complaints about service was established during the first year of operation. As in previous years, no complaints were lodged about service this fiscal year, either formally or informally.

ILLUSTRATIVE CASE SUMMARIES

1. Political Activity Determination (*PSOA*, s. 72, 77 & 79)

A public servant working in a public body was considering whether to speak at an annual conference, on a subject unrelated to his/her public service role, and sought a determination on whether it would be appropriate to do so. The purpose of the conference was to bring together individuals and activists who share a political philosophy and to discuss strategies, ideas, and techniques with current and former political leaders.

In assessing whether this activity constitutes “political activity,” the commissioner considered how a reasonably well-informed member of the public might view the activity. Although the conference was not hosted by a political party, it was nonetheless aligned with a political philosophy and designed to encourage interactions with politicians who share that philosophy. Accordingly, the commissioner determined that attendance at the conference could be seen as an activity in support of a political party and therefore considered “political activity”. The individual was not in the category of public servants who are specially restricted for political activity purposes. Public servants who are not specially restricted are permitted to engage in a wide array of political activities under the *PSOA*, provided that, in doing so, they do not engage in any of the activities restricted by s. 79 or prohibited by s. 77 of the *PSOA*. Accordingly, the commissioner determined that the public servant was permitted to speak at the conference, provided that he/she did not engage in the activities listed in s. 79, such as soliciting funds on behalf of a political candidate or party.

2. Political Activity Determination (*PSOA*, s. 72, 89 & 90)

The name of a specially restricted public servant working in a public body was included, without the public servant’s consent, on a list of individuals purported to endorse a candidate in a municipal election. That public servant’s personal email account was used to solicit funds for the same candidate. The public servant thereafter took steps to make it clear that he/she was neither endorsing nor soliciting funds for the candidate. As ethics executive, the commissioner was asked to provide a determination as to whether the public servant had contravened the political activity rules.

A specially restricted public servant may only engage in the forms of political activity specifically permitted in sections 89 and 90 of the *PSOA*. In order to assess whether the incidents described constituted political activity, the commissioner considered whether the public servant had control over the use of his/her name in either of these instances. The commissioner determined that the public servant did not seek to be included on the broadcasted list of supporters and that someone else had used the public servant’s personal email account inadvertently. Accordingly, the commissioner determined that the public

servant had not engaged in political activity and had taken steps to disassociate him/herself from the incidents. In making this determination, the commissioner cautioned that, since the actions of others can make it appear that a public servant is engaging in prohibited forms of political activity, public servants should be vigilant about the unintended use of their names in support of any candidate.

3. Conflict of Interest Advice (O. Reg. 381/07, s. 6)

The Public Appointments Secretariat sought the commissioner's advice with respect to the proposed appointment of a full-time chair of a public body. The proposed appointee had a background in the sector regulated by the public body and was currently employed in a high-profile role by an entity regulated by that public body.

Although the individual intended to resign from his/her current position if appointed, and would not receive any ongoing compensation, his/her background in the sector had the potential to create the risk of conflict of interest. The commissioner advised that, if appointed, the individual should ensure that neither preferential treatment nor the appearance of preferential treatment would be given to persons or entities with whom he/she had interacted in the past. The appointee might also be required to recuse him/herself from discussions or decisions of the public body if they related to those persons or entities.

4. Conflict of Interest Advice (O. Reg. 381/07, s. 16, 17 & 20)

A former public servant sought clarification of the rules about interacting with the public body to which he/she was formerly appointed, and specifically whether it would be permissible to give evidence before another administratively related public body.

As a former public servant, the individual is subject to the post-service conflict of interest rules set out in Part II of the regulation. These rules may restrict the former public servant's ability to interact with the public body to which he/she was formerly appointed or with another administratively related public body. For example, the rules may limit the individual's ability to give evidence on a particular matter, as he/she must not seek preferential treatment from or privileged access to current public servants when doing so. Former public servants must also ensure that they do not disclose or use any confidential information when giving evidence, and they should ensure that they do not advise or otherwise assist a public body, person, or other entity in connection with a proceeding, negotiation, or other transaction if they had previously advised the Crown on that issue.

5. Conflict of Interest Determination (O. Reg. 381/07, s. 16, 17, 18 & 19)

A ministry and a former public servant who had held a senior position in that ministry sought a determination as to whether the former public servant could take part in a ministry initiative involving his/her current employer, an entity outside the public service.

The former public servant had not been directly involved in any ministry decision-making related to the initiative, had not received any briefings on it, and had not provided any direction. Given this circumstance, the commissioner determined that the post-service conflict of interest rules would not prevent the former public servant from participating in the initiative. However, restrictions did apply to the types of activities in which the former public servant could engage while involved in the initiative. In particular, the former public servant was prohibited from seeking preferential treatment from or privileged access to current public servants, and from disclosing or using any confidential information. He/she was also prohibited from lobbying the minister or public servants in the minister's office or ministry.

6. Conflict of Interest Determination (O. Reg. 381/07, s. 15, 16, 17, 18, 19 and 20)

A senior public servant who was employed in a ministry had accepted employment with a public body that had a reporting relationship to that ministry. The public servant sought the commissioner's determination regarding the application of the conflict of interest rules, in particular the post-service rules, to this situation.

The commissioner observed that the post-service rules applicable to public servants who move from ministries to public bodies differ from those applicable to public servants who move between ministries. Read together, sections 15, 18, 19, and 20 restrict a public servant who previously worked in a ministry from lobbying on behalf of a public body, accepting a position with a public body (in some situations), and advising a public body about certain proceedings, negotiations, or transactions. There are no similar restrictions on a public servant who moves from one ministry to another. The differences in the rules take into account the differences between public bodies and ministries.

Although public bodies perform a public function or service, they are not analogous to ministries. Often, a public body is created to perform a specific function that cannot be carried out within the ministry model. Additionally, independence from ministries and other provincial government offices may be integral to a public body's ability to meet its mandate. For that reason, it is reasonable to impose post-service restrictions on a public servant who worked in a ministry and later accepts employment with a public body. The commissioner determined that the public servant was prohibited from seeking preferential treatment from the ministry on behalf of the public body, using or disclosing confidential information, and advising the public body on matters with which he/she had previously assisted the ministry.

The public servant was also prohibited from lobbying the minister or public servants in the minister's office or ministry. However, the commissioner recognized that communication between the public body and the ministry would be necessary. Accordingly, based on input from the ministry, the commissioner provided advice about specific forms of communication that would not be considered lobbying and would therefore be permissible.

7. Conflict of Interest Advice (O. Reg. 381/07, s. 3, 5, 6 & 8)

A public servant working in a ministry wished to pursue secondment opportunities with an organization operating in the same sector as the ministry. The public servant's ethics executive sought the commissioner's advice about the conflict of interest rules applicable during such a secondment.

The commissioner advised that, for the purposes of applying the conflict of interest rules, a public servant remains a current public servant while on secondment and is not considered a former public servant during that time. Therefore, the ethics executive should evaluate whether the public servant would be able to comply with the in-service conflict of interest rules during the secondment. In assessing whether a specific secondment would create a conflict, the ethics executive should consider the responsibilities of the public servant, the intersection between the interests of the outside organization and the ministry, and the intersection between the stakeholders of the outside organization and the ministry. The closer or more frequent these intersections, and the more the public servant's responsibilities involve them, the more likely that a secondment with the outside organization would contravene the rules. To mitigate the risk of conflicts, the commissioner suggested that the ethics executive consider restricting the public servant from engaging in certain activities while on secondment, including lobbying or seeking preferential access to public servants in the ministry.

The commissioner also drew the ethics executive's attention to the post-service rules set out in Part II of O. Reg. 381/07. If the public servant chose to retire or leave the public service, those rules could prevent the public servant from immediately thereafter accepting certain types of employment.

8. Conflict of Interest Advice (O. Reg. 381/07, s. 3, 5, 6 & 8)

An ethics executive sought the commissioner's advice as to whether a public servant employed in a ministry could accept employment, while on an authorized leave of absence, with an outside firm that does work for the ministry.

The commissioner advised that a public servant on authorized leave of absence remains a public servant and is subject to the in-service conflict of interest rules. The ethics executive should evaluate whether the proposed employment would contravene the conflict of interest

rules and affect the public servant's ability to resume his/her duties. The ethics executive used the commissioner's advice to implement measures to mitigate the risk of conflict of interest.

9. Conflict of Interest Advice (O. Reg. 381/07, s. 5, 6, 8 & 9)

A public servant wished to step down as chair of a public body, for a limited time, to assume an advisory role with the minister who has oversight of the public body. The public servant sought the commissioner's advice as to whether there would be any conflict of interest concerns if he/she continued to serve as a member of the public body during that time.

Given the duration of the advisory role and time commitment involved, the commissioner agreed that it would be appropriate for the public servant to step down as chair of the public body while serving in the advisory role. The commissioner noted that, if the public servant continued to serve as a member of the public body, there would be potential for intersections between that role and the advisory role. For example, since both roles are accountable to the same minister, they could involve interaction with the same ministry officials and/or experts. Moreover, given the broad language of the public body's enabling legislation, the public body and the advisory role could be involved in policy development on similar issues. The potential for such intersections could create a risk of conflict of interest. To minimize the risk, the commissioner imposed restrictions on the public servant's activities in the advisory role, such as recusing him/herself from discussions or decision-making where there was the potential for intersections between the two roles.

10. Conflict of Interest Advice (O. Reg. 381/07, s. 3, 6, 8 & 9)

An appointee to a public body had, in a private sector role, prepared a report that related to the public body's field of activity. The public body was considering whether it would be appropriate for an applicant to use this report to support an application before the public body. The ethics executive of the public body sought the commissioner's advice as to whether allowing the use of the report would be seen as a conflict of interest.

The commissioner approved the steps the public body had already taken. To mitigate the potential for monetary benefit to the appointee, the appointee had waived the fee for the report. Communication between the appointee and other board appointees involved with the application was restricted to mitigate the perception of bias. The commissioner recommended that the public body develop a formal protocol, based on these steps, to guide the public body in any future situations where appointees have an outside, professional involvement with an application. He further recommended that the public body make the protocol publicly available and accessible.

11. Conflict of Interest Determination (O. Reg. 381/07, s. 3, 5, 6 & 9)

The chair of a public body commenced an appeal before that public body and sought a determination on the application of the conflict of interest rules.

The commissioner determined that bringing an appeal before a public body while chair of that public body creates a risk of conflict of interest. For example, it could create the perception that the chair might be able to direct or influence the outcome of the appeal or receive preferential treatment. However, this public body is unique in that its appointees are necessarily drawn from the group it oversees, and members of that group, including appointees to the public body, must themselves have recourse to the appeal process. The commissioner recognized, therefore, that the public servant was entitled to bring an appeal before the public body, notwithstanding the risk of conflict of interest. However, in order to minimize the potential for conflict of interest, the commissioner imposed certain restrictions. For example, the chair was to refrain from sitting on any appeals until his/her own appeal was resolved, and also to refrain from engaging in any discussion about the ongoing appeal with any employees or appointees of the public body. In light of the unique mandate and composition of this public body, there is the possibility that it would be required to hear future appeals by other appointees. The commissioner recommended that the public body develop a specific protocol to govern such appeals, as well as an objective system for assigning appointees to hear appeals.

12. Conflict of Interest Determination (O. Reg. 381/07, s. 4)

The chair of a public body sought the commissioner's determination as to whether it would be permissible to accept, from a major stakeholder of the public body, the payment on his/her behalf of a conference registration fee of approximately \$400.

The commissioner indicated that the payment of the registration fee qualifies as a gift, pursuant to s. 4 of O. Reg. 381/07. The *PSOA* allows public servants to accept gifts of nominal value in some circumstances. "Nominal" is not defined, but in the context of another matter, the commissioner suggested that gifts valued at under \$50 may be considered nominal. Although gifts over this value could be considered nominal in some circumstances, the commissioner concluded that payment of the registration fee in this situation was not of "nominal" value.

The commissioner found that a reasonable person might conclude that one of the stakeholder's purposes in paying the registration fee was to ensure the public servant's attendance at the conference and to provide an opportunity for the stakeholder and its delegates to share their views with the chair. The chair's attendance at the conference as a guest of the stakeholder could influence the performance of the public servant's duties. Taking these considerations into account, the commissioner determined that allowing the

stakeholder to pay the registration fee would be inconsistent with the public servant's obligations under s. 4 of the rules. The commissioner's determination would not prevent the public servant from attending the conference, provided that the public body, and not the stakeholder, paid the cost.

13. Conflict of Interest Advice (O. Reg. 381/07, s. 3, 5, 6, 8 & 9)

The chair of an advisory public body sought the commissioner's advice as to whether appointees would be permitted to accept remuneration for preparing reports (1) if the reports were commissioned by outside organizations and the public body might consider them in making a decision, or (2) if the reports were commissioned by the overseeing ministry subsequent to a decision by the public body.

The commissioner advised that the integrity of the public body's decision could be challenged if an appointee both prepared a report and participated in the decision-making process. In order to enable appointees to provide their expertise to the public body without compromising the integrity of its decisions, the commissioner recommended that appointees be permitted to contribute at the information-gathering stage of the decision-making process but recuse themselves from voting on the decision.

Similarly, a conflict of interest concern may arise if an appointee participates in decision-making that might result in a later opportunity to prepare a report for the ministry. The commissioner advised that ethics executives should consider the likelihood of any benefits flowing to appointees as a result of the public body's decisions. Ethics executives should look to (1) the size of the group that would stand to benefit from the decision, and (2) the relationship between an appointee's interests and the matter before the public body. In some cases, the potential benefit to an appointee may be unlikely or only remotely connected to the public body's decision. In order to minimize the potential for conflicts, the commissioner recommended that chair remind appointees of the restrictions on their outside activities as set out in the *PSOA*.

14. Conflict of Interest Advice (O. Reg. 381/07, s. 5, 6, 8, & 9)

A minister sought the commissioner's advice about whether appointing certain individuals to a public body would contravene the conflict of interest rules. The individuals in question were affiliated with facilities overseen by a public body for which the minister was responsible.

The commissioner indicated that, where members of an oversight body are affiliated with the very facilities being reviewed, the situation creates, at a minimum, the appearance that preferential treatment may be given to some of those facilities. The commissioner advised that appointees who are affiliated with related facilities should refrain from participating in

decision-making or discussions at the public body concerning the oversight of those facilities. They should not participate in or attempt to influence the decision-making at those facilities if the decision could cause a conflict between the facilities' interests and those of the public body or the Crown. The commissioner recommended that the public body codify its processes and make them transparent to the public body and to all related facilities.

APPENDICES

1. APPOINTEES

In accordance with the memorandum of understanding, the annual report is to include “the name of any appointees including when each was first appointed and when the current term of each appointment expires.”

APPOINTEE	EFFECTIVE DATE OF APPOINTMENT	END OF TERM
Justice Sidney B. Linden	July 30, 2007	July 30, 2012

2. FINANCIAL INFORMATION

OFFICE OF THE CONFLICT OF INTEREST COMMISSIONER ANNUAL REPORT 2010-11

FINANCIAL INFORMATION FOR FISCAL YEAR 2009-10

Standard Account	2009-10 Appropriations*	Actual Expenditures
Salaries and wages	632,100	541,836
Employee benefits	68,700	46,977
Transportation and communication	75,200	11,579
Services	153,500	265,016
Supplies and equipment	48,600	8,427
Subtotal:	<u>\$ 978,100</u>	<u>\$ 873,835</u>
Savings Declared**	\$ (22,000)	
Variance		82,265
TOTAL	<u>\$ 956,100</u>	<u>\$ 956,100</u>

Standard Account	2010-11 Appropriations*	Actual Expenditures
Salaries and Wages	598,200	559,615
Employee Benefits	48,200	49,892
Transportation and Communication	15,200	12,607
Services	247,400	269,446
Supplies and Equipment	6,600	4,963
Subtotal:	<u>\$ 915,600</u>	<u>\$ 896,523</u>
Variance		19,077
TOTAL	<u>\$ 915,600</u>	<u>\$ 915,600</u>

*Represents 10-11 printed estimates and in-year approvals

Note:
Statement of financial information prepared by the Business Planning and Financial Management Branch

3. ONTARIO REGULATION 381/07

ONTARIO REGULATION 381/07

made under the

PUBLIC SERVICE OF ONTARIO ACT, 2006

Made: June 27, 2007

Filed: July 25, 2007

Published on e-Laws: July 27, 2007

Printed in *The Ontario Gazette*: August 11, 2007

CONFLICT OF INTEREST RULES FOR PUBLIC SERVANTS (MINISTRY) AND FORMER PUBLIC SERVANTS (MINISTRY)

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PART I RULES FOR PUBLIC SERVANTS WHO WORK IN A MINISTRY

INTERPRETATION

Definitions

1. In this Part,

“confidential information” means information that is not available to the public and that, if disclosed, could result in harm to the Crown or could give the person to whom it is disclosed an advantage;

“gift” includes a benefit of any kind;

“spouse” means,

(a) a spouse as defined in section 1 of the *Family Law Act*, or

(b) either of two persons who live together in a conjugal relationship outside marriage.

Application

2. This Part applies to every public servant who works in a ministry.

PROHIBITED CONDUCT

Benefiting self, spouse or children

3. (1) A public servant shall not use or attempt to use his or her employment by the Crown to directly or indirectly benefit himself or herself or his or her spouse or children.

(2) A public servant shall not allow the prospect of his or her future employment by a person or entity to detrimentally affect the performance of his or her duties to the Crown.

Accepting gifts

4. (1) A public servant shall not accept a gift from any of the following persons or entities if a reasonable person might conclude that the gift could influence the public servant when performing his or her duties to the Crown:

1. A person, group or entity that has dealings with the Crown.

2. A person, group or entity to whom the public servant provides services in the course of his or her duties to the Crown.

3. A person, group or entity that seeks to do business with the Crown.

(2) Subsection (1) shall not operate to prevent a public servant from accepting a gift of nominal value given as an expression of courtesy or hospitality if doing so is reasonable in the circumstances.

(3) A public servant who receives a gift in the circumstances described in subsection (1) shall notify his or her ethics executive.

Disclosing confidential information

5. (1) A public servant shall not disclose confidential information obtained during the course of his or her employment by the Crown to a person or entity unless the public servant is authorized to do so by law or by the Crown.

(2) A public servant shall not use confidential information in a business or undertaking outside his or her work for the Crown.

(3) A public servant shall not accept a gift directly or indirectly in exchange for disclosing confidential information.

Giving preferential treatment

6. (1) When performing his or her duties to the Crown, a public servant shall not give preferential treatment to any person or entity, including a person or entity in which the public servant or a member of his or her family or a friend has an interest.

(2) When performing his or her duties to the Crown, a public servant shall endeavour to avoid creating the appearance that preferential treatment is being given to a person or entity that could benefit from it.

(3) A public servant shall not offer assistance to a person or entity in dealing with the Crown other than assistance given in the ordinary course of the public servant's employment.

Hiring family members

7. (1) A public servant shall not, on behalf of the Crown, hire his or her spouse, child, parent or sibling.

(2) A public servant shall not, on behalf of the Crown, enter into a contract with his or her spouse, child, parent or sibling or with a person or entity in which any of them has a substantial interest.

(3) A public servant who hires a person on behalf of the Crown shall ensure that the person does not report to, or supervise the work of, the person's spouse, child, parent or sibling.

(4) A public servant who reports to, or supervises the work of, his or her spouse, child, parent or sibling shall notify his or her ethics executive.

Engaging in business, etc.

8. A public servant shall not become employed by or engage in a business or undertaking outside his or her employment by the Crown in any of the following circumstances:

1. If the public servant's private interests in connection with the employment or undertaking could conflict with his or her duties to the Crown.
2. If the employment or undertaking would interfere with the public servant's ability to perform his or her duties to the Crown.
3. If the employment is in a professional capacity and is likely to influence or detrimentally affect the public servant's ability to perform his or her duties to the Crown.
4. If the employment would constitute full-time employment for another person. However, this paragraph does not apply with respect to a public servant who is employed part-time by the Crown. This paragraph also does not apply with respect to a public servant who is on an authorized leave of absence from his or her position, but only if the employment is not contrary to or inconsistent with the terms of the leave of absence.
5. If, in connection with the employment or undertaking, any person would derive an advantage from the public servant's employment as a public servant.
6. If government premises, equipment or supplies are used in the employment or undertaking.

Participating in decision-making

9. (1) A public servant shall not participate in decision-making by the Crown with respect to a matter that the public servant is able to influence in the course of his or her duties if the public servant could benefit from the decision.

(2) Subsection (1) does not apply if the public servant obtains the prior approval of his or her ethics executive to participate in decision-making by the Crown with respect to the matter.

(3) A public servant who, in the course of his or her employment in a ministry, is a member of a body or group shall not participate in, or attempt to influence, decision-making by the body or group with respect to a matter if the public servant could benefit from the decision or if, as a result of the decision, the interests of the body or group could conflict with the interests of the Crown.

(4) A public servant described in subsection (3) shall inform the body or group if the circumstances described in that subsection exist.

MATTERS THAT MIGHT INVOLVE THE PRIVATE SECTOR

Interpretation

10. (1) Sections 11 and 12 apply to every public servant who works in a ministry, who routinely works on one or more matters that might involve the private sector and who has access to confidential information about the matter obtained during the course of his or her employment by the Crown.

(2) In this section and in sections 11 and 12,

“matter that might involve the private sector” means a matter,

(a) that relates to services currently provided under a program of the Crown or by a public body, an agency of the Crown or a corporation controlled by the Crown with respect to which it is possible that a private sector entity will provide all or part of the financing for the services or will provide some or all of the services, and

(b) that has been referred to a ministry, a public body or an agency of the Crown by the Executive Council or a member of the Executive Council for review or implementation.

Duty to declare certain financial interests

11. (1) When a public servant described in subsection 10 (1) begins work on a matter that might involve the private sector, he or she shall make a declaration to the Conflict of Interest Commissioner in which the public servant discloses the following matters respecting his or her financial interests:

1. A legal or beneficial interest of the public servant in securities or derivatives of corporations or governments, other than the Government of Ontario.
2. A legal or beneficial interest of the public servant in a business entity or a commercial operation or in the assets of such an entity or operation.
3. A legal or beneficial interest of the public servant in real property.
4. A legal or beneficial interest of the public servant in a mutual fund that is operated as an investment club where,
 - i. its shares or units are held by not more than 50 persons and its indebtedness has never been offered to the public,
 - ii. it does not pay or give any remuneration for investment advice or in respect of trades in securities, except normal brokerage fees, and
 - iii. all of its members are required to make contributions in proportion to the shares or units each holds for the purpose of financing its operations.

(2) Despite subsection (1), the public servant is not required to disclose his or her legal or beneficial interest in any of the following:

1. A mutual fund within the meaning of subsection 1 (1) of the *Securities Act* other than a mutual fund described in paragraph 4 of subsection (1) of this Regulation.
2. Fixed-value securities issued or guaranteed by a government or a government agency.
3. A guaranteed investment certificate or similar financial instrument issued by a financial institution entitled by law to issue such instruments.
4. A registered pension plan, an employee benefit plan, an annuity or life insurance policy or a deferred profit sharing plan.
5. Real property that the public servant, or a member of his or her family, uses primarily as a residence or for recreational purposes.

(3) The public servant shall disclose the information required by subsection (1), with necessary modifications, in respect of his or her spouse and dependent children, but only to the extent that the legal or beneficial interests of the spouse or a child could create a conflict of interest.

(4) For the purpose of subsection (3), the public servant shall make reasonable efforts to obtain information about the financial interests described in subsection (1) of his or her spouse and dependent children.

(5) The public servant shall give the Conflict of Interest Commissioner a revised declaration whenever there is a change in any of the information required to be disclosed.

Prohibition on certain purchases

12. (1) A public servant described in subsection 10 (1) shall not purchase, or cause another person to purchase on his or her behalf, a legal or beneficial interest in an entity that is carrying on, or proposes to carry on, an activity relating to a matter that might involve the private sector.

(2) Despite subsection (1), a public servant may purchase an interest in a mutual fund (within the meaning of subsection 1 (1) of the *Securities Act*) that includes securities of a person or entity described in subsection (1) but not an interest in a mutual fund described in paragraph 4 of subsection 11 (1) of this Regulation that includes such securities.

(3) The prohibition described in subsection (1) ceases to have effect with respect to the matter,

(a) six months after the date on which the action in respect of the matter is completed; or

(b) six months after the date the Crown ceases to work on the matter.

List of positions

13. (1) The Public Service Commission shall maintain a current list of positions in which public servants work in a ministry and routinely work on one or more matters that might involve the private sector.

(2) The Commission shall ensure that public servants employed by the Crown in the positions described in subsection (1) are advised of the duties and restrictions imposed upon them under sections 11 and 12.

(3) Every ethics executive shall notify the Commission of changes to be made to the list with respect to those persons for whom he or she is the ethics executive.

PART II RULES FOR FORMER PUBLIC SERVANTS WHO WORKED IN A MINISTRY

INTERPRETATION

Definition

14. In this Part,

“designated senior position” means any of the following positions:

1. The Secretary of the Cabinet.
2. Deputy minister, associate deputy minister or assistant deputy minister.
3. A position that is classified under subsection 33 (1) of the Act as SMG 2, XOFA 1, XOFA 2, ITX 2, ITX 3 or ITX 4.

Application

15. (1) This Part applies with respect to every former public servant who, immediately before he or she ceased to be a public servant, worked in a ministry.

(2) Despite subsection (1), this Part does not apply to a person who ceases to be a public servant before the day on which section 57 of the Act comes into force.

PROHIBITED CONDUCT

Seeking preferential treatment, etc.

16. A former public servant shall not seek preferential treatment by, or privileged access to, public servants who work in a minister’s office, a ministry or a public body.

Disclosing confidential information

17. (1) A former public servant shall not disclose confidential information obtained during the course of his or her employment by the Crown to a person or entity unless the former public servant is authorized to do so by law or by the Crown.

(2) A former public servant shall not use confidential information in a business or undertaking.

Restriction on lobbying

18. (1) This section applies to a former public servant who, immediately before ceasing to be a public servant, was employed in a designated senior position.

(2) For 12 months after ceasing to be a public servant, the former public servant shall not lobby any of the following persons on behalf of a public body or another person or entity:

1. A public servant who works in a ministry or public body in which the former public servant worked at any time during the 12 months before he or she ceased to be a public servant.
2. The minister of any ministry in which the former public servant worked at any time during the 12 months before he or she ceased to be a public servant.
3. A public servant who works in the office of a minister described in paragraph 2.

Restriction on employment, etc.

19. (1) This section applies to a former public servant who, immediately before ceasing to be a public servant, was employed in a designated senior position and who, at any time during the 12 months before he or she ceased to be employed as a public servant, in the course of his or her employment as a public servant,

- (a) had substantial involvement with a public body or another person or entity; and
- (b) had access to confidential information that, if it were to be disclosed to the public body, person or entity, could result in harm to the Crown or could give the public body, person or entity an unfair advantage in relation to one or more third parties.

(2) For 12 months after ceasing to be a public servant, the former public servant shall not accept employment with the public body, person or entity or serve as a member of the board of directors or other governing body of the public body, person or entity.

Restriction re certain transactions

20. (1) This section applies to a former public servant who, when he or she was a public servant working in a ministry, advised the Crown about a particular proceeding, negotiation or other transaction.

(2) The former public servant shall not advise or otherwise assist any public body or any other person or entity in connection with the particular proceeding, negotiation or other transaction until the Crown ceases to be involved in it.

(3) Despite subsection (2), the former public servant may continue to advise or otherwise assist the Crown in connection with the particular proceeding, negotiation or other transaction.

**PART III
COMMENCEMENT**

Commencement

21. This Regulation comes into force on the day section 57 of the Act comes into force.

4. OFFICE OF THE CONFLICT OF INTEREST COMMISSIONER BROCHURE

INFORMATION RESOURCE

SHARE KNOWLEDGE AND EXPERIENCE

Each year, the commissioner's annual report includes a selection of summaries of the conflict of interest and political activity matters dealt with during the year. These summaries are intended to assist Ontario public service decision-makers with interpreting and applying conflict of interest and political activity rules to similar situations.

IDENTIFY EDUCATION OPPORTUNITIES

The commissioner assists public servants in increasing their understanding of the rules and their roles and responsibilities under the *PSOA*. This is especially important for public servants in public bodies who, with the introduction of the *PSOA*, are now subject to the same rules as are ministry employees.

SERVE AS A BEST-PRACTICES RESOURCE

In addition to developing a body of knowledge and experience in Ontario, the commissioner makes it a priority to learn about methods and approaches used in other offices with comparable responsibilities within and outside Ontario. This assists the commissioner in providing information and advice on a range of best practices that support the intent of the *PSOA*.



THE CONFLICT OF INTEREST COMMISSIONER

The Honourable Sidney B. Linden is the Conflict of Interest Commissioner for Ontario. Justice Linden previously served as Chief Justice of the Ontario Court of Justice and has held a number of other positions in the public sector, including Police Complaints Commissioner, Information and Privacy Commissioner, Chair of Legal Aid Ontario, and most recently, Commissioner of the Ipperwash Public Inquiry.

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**Office of the Conflict of
Interest Commissioner**
**Bureau du commissaire
aux conflits d'intérêts**

THE ROLE OF THE CONFLICT OF INTEREST COMMISSIONER

The *Public Service of Ontario Act, 2006 (PSOA)* and Ontario Regulation 381/07 set out rules for public servants about conflict of interest and political activity. The conflict of interest rules are intended to ensure that public servants' private interests are not in conflict with their public service responsibilities. The political activity rules strive to balance the neutrality of the public service with an individual's ability to engage in political activity. The *PSOA* provides for the Conflict of Interest Commissioner to have a leadership role in contributing to public servants' understanding of the rules and how to apply them.

The commissioner also has certain responsibilities under the *PSOA* related to employees of ministries and employees and appointees of agencies, boards, and commissions that are defined as "public bodies" in the *PSOA*.

The commissioner's role encompasses three broad areas:

- Offer advice and make determinations on specific matters involving Ontario public servants
- Provide advice and direction to public bodies
- Serve as a resource for developing and sharing information about dealing with conflict of interest and political activity matters

ADVICE AND DETERMINATIONS ON SPECIFIC MATTERS

ASSIST ONTARIO GOVERNMENT OFFICIALS

Ethics executives, generally deputy ministers and the chairs of public bodies, are the individuals who are responsible for promoting ethical conduct within their organizations. Ethics executives may seek the commissioner's advice and guidance, as may other officials of Ontario government offices. In some cases, ethics executives may seek to refer a matter to the commissioner for a determination.

ACT AS ETHICS EXECUTIVE

The commissioner is the ethics executive for specified current and former public servants. Those individuals may seek the commissioner's advice or direction on specific matters that could have an impact on their duty as active public servants or on their post-service obligations.

ADVISE ON FINANCIAL DECLARATIONS

Identified public servants who routinely work on matters that involve the private sector are required to make a financial declaration to the commissioner, disclosing their own and their spouses' and children's financial interests.

CONSIDER POLITICAL ACTIVITY REQUESTS

The *PSOA* sets out rights and restrictions related to political activity for all public servants. Some public servants must seek the commissioner's permission to participate in activities that are otherwise prohibited under the *PSOA*. Other public servants may seek permission from their ethics executives to participate in political activities that are otherwise not permitted under the *PSOA*. These requests are most common during an election period.

ADVICE AND DIRECTION TO PUBLIC BODIES

APPROVE CONFLICT OF INTEREST RULES

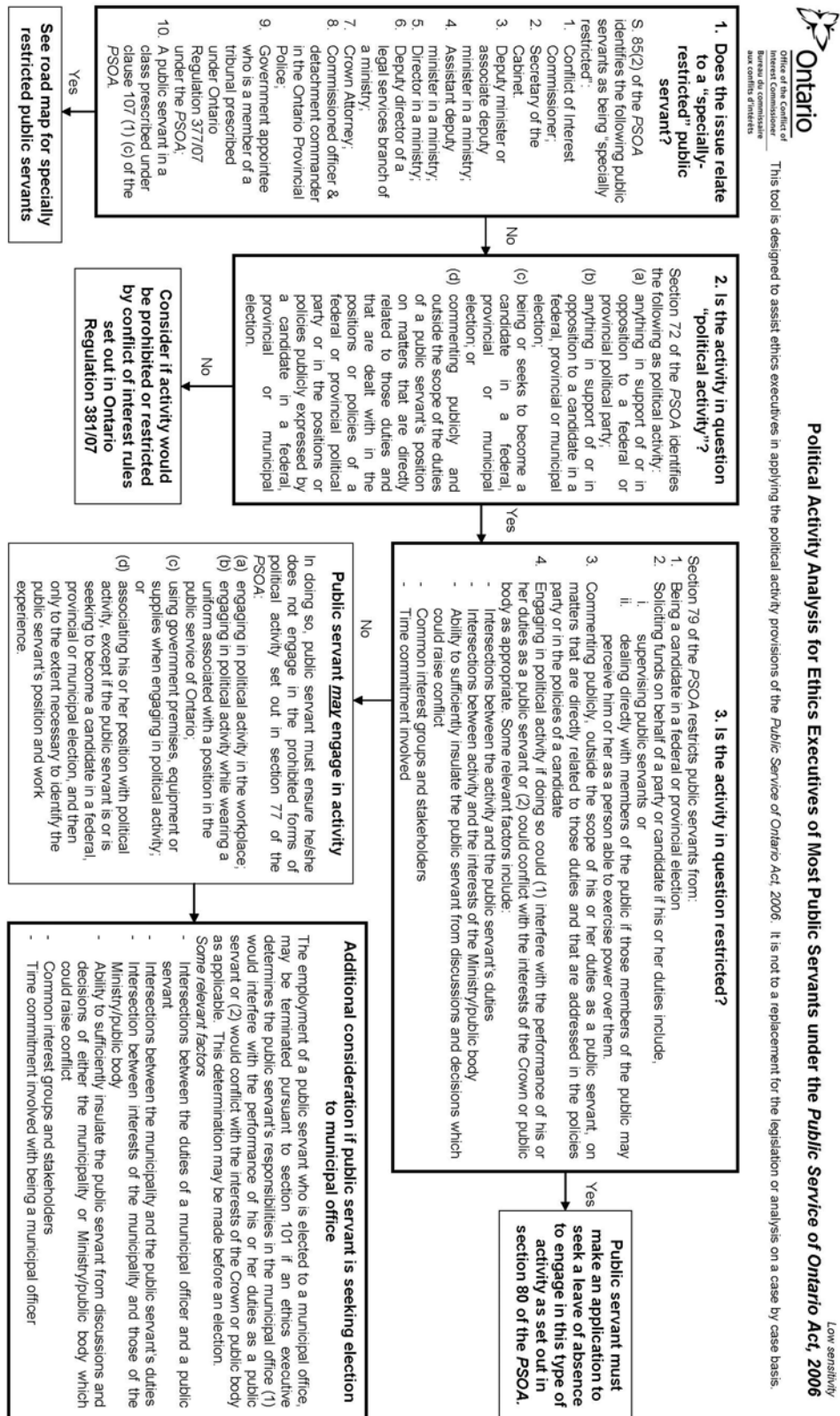
The conflict of interest rules are set out in Ontario Regulation 381/07. The rules apply to all public servants who work in a government ministry or who are appointed to or employed by a public body. The rules specify the activities that are not permitted and that could put a public servant at risk of a conflict of interest.

The rules are intended to be broad enough to cover most situations, but public bodies may develop their own rules if they wish. Such rules must be at least as rigorous as the rules in the regulation and, if approved by the commissioner, they are posted on the commissioner's website.

IDENTIFY POLICIES AND PRACTICES

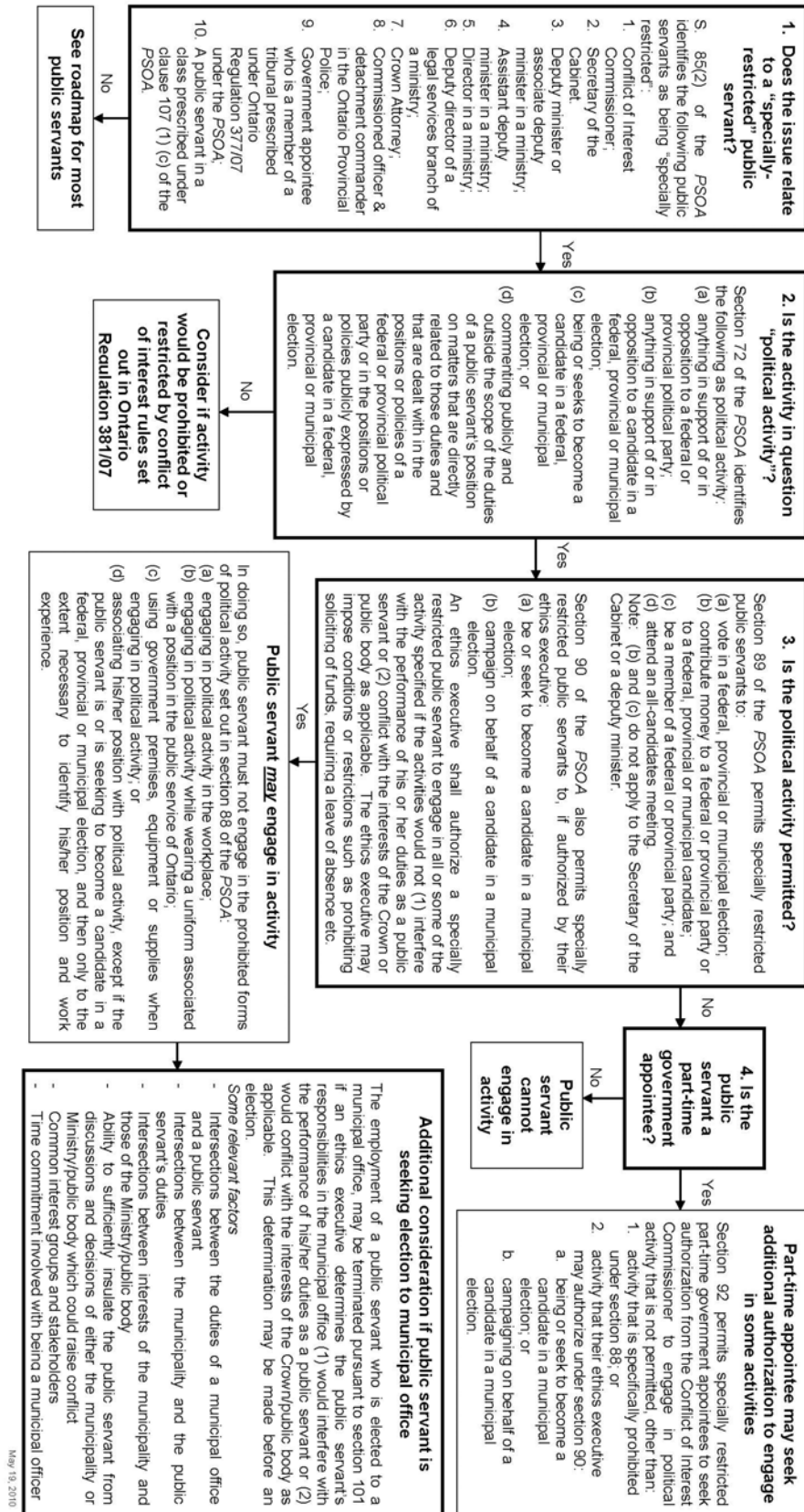
The commissioner may become aware of an organizational policy or practice that, if adopted, would minimize the risk that conflict situations will arise. The commissioner offers advice to public bodies on introducing or modifying policies or practices to reduce the risk of conflict of interest and more effectively align with the *PSOA*.

5. “ROADMAPS” FOR ETHICS EXECUTIVES



Political Activity Analysis for Ethics Executives of Specially Restricted Public Servants under the *Public Service of Ontario Act, 2006*

Low sensitivity



6. CONFLICT OF INTEREST AND POLITICAL ACTIVITY RULES “AT A GLANCE”



CONFLICT OF INTEREST RULES AT A GLANCE*

The *Public Service of Ontario Act, 2006 (PSOA)* sets out conflict of interest rules that establish standards of ethical conduct for public servants. Regulation 381/07 sets out the specific conflict of interest rules applicable to employees in ministries (except ministers' staff) and employees and appointees in public bodies. There are two sets of rules:

- in-service rules that apply to current public servants
- post-service rules that apply to former public servants

In-service Conflict of Interest Rules	
Benefiting self, spouse or children	Public servants can't use their positions for personal benefit or for the benefit of their spouses or children.
Accepting gifts	Public servants shouldn't accept gifts from anyone who does business with or wants to do business with the Ontario government. Public servants also shouldn't accept gifts from companies or individuals if the government provide services to them. "Gifts" include anything from gift baskets to free tickets or dinners. In some cases, a public servant may accept a gift of nominal value provided that it is given as an expression of courtesy or hospitality.
Disclosing confidential information	Public servants are not allowed to disclose confidential information without authorization nor use confidential information for personal benefit.
Giving preferential treatment	Public servants should not provide any preferential treatment to individuals or groups, nor provide assistance other than that given in the ordinary course of their public service duties. Public servants must also avoid creating the appearance that they are giving preferential treatment.
Hiring family members	Public servants can't hire their spouses, children, parents, brothers or sisters. Public servants are also subject to rules regarding supervising their family members.
Engaging in business	Public servants can't engage in business or undertakings (including sitting on boards and volunteer activities) outside their public servant roles if doing so would influence or conflict with their duties as public servants. That means, for example, not doing "outside" work on government time. And, even on their own time, public servants can't use government premises, equipment or supplies for outside activities.
Participating in decision-making	In cases where public servants could benefit from a decision to be made, they must disclose that interest and they may not be allowed to participate in the decision-making process.
Declaring financial interests	Some public servants must disclose certain financial interest and may be prohibited from acquiring financial interests related to their duties as public servants.

Post-Service Conflict of Interest Rules	
Seeking preferential treatment	Former public servants must not seek preferential treatment from existing public servants.
Disclosing confidential information	Former public servants are not allowed to disclose confidential information without authorization or use confidential information for personal benefit.
Switching sides	Former public servants who advised a ministry or public body on a proceeding, negotiation, or other transaction cannot provide advice or otherwise assist others on that matter after they cease to be public servants.
Employment and lobbying	Former public servants who held designated senior positions are subject to employment and lobbying restrictions for a twelve-month period starting from the date they ceased to be public servants.

* The Rules at a Glance are provided for information only. For the authoritative text, refer to the *Public Service of Ontario Act, 2006* and regulations

POLITICAL ACTIVITY RULES AT A GLANCE*

Purpose of the rules

The *Public Service of Ontario Act, 2006 (PSOA)* includes political activity rules intended to balance the neutrality of the public service with a public servant's ability to engage in political activity. The political activity rules that apply to public servants in public bodies and ministries, including both employees and appointees, are set out under Part V of the *PSOA*. Political activity rules apply to public servants at all times, not only during election periods, and public servants should be mindful of the rules whenever they take part in political activity.

What “political activity” includes

Under the *PSOA*, public servants participate in political activity when they engage in any of the following activities:

- Do anything in support of or in opposition to a political party (federal or provincial) or a candidate (federal, provincial or municipal)
- Become or seek to become a candidate in a federal, provincial or municipal election
- Make public comments on any matter dealt with in the position or policy of a political party (federal or provincial) or candidate (federal, provincial or municipal) if comments are outside the scope of the public servant's duties and the matter is directly related to his/her duties

Types of restrictions on political activity

The type of restrictions imposed on public servants depends on the public servant's position. Some prohibitions apply to all public servants. Other restrictions apply to most public servants except those public servants identified as specially restricted. Finally, some rules apply only to specially restricted public servants. A separate set of rules apply to ministers' office staff (for information, visit the Integrity Commissioner's website: <http://oico.on.ca>).

Specially restricted public servants include:

- The Conflict of Interest Commissioner
- The Secretary of the Cabinet
- Every deputy minister or associate deputy minister in a ministry
- Every assistant deputy minister in a ministry
- Every director in a ministry
- Every deputy director of a legal services branch of a ministry
- Every crown attorney
- Every commissioned officer and detachment commander in the Ontario Provincial Police
- All appointees to tribunals listed in Ontario Regulation 377/07

Political Activity Rights and Restrictions

All Public Servants

What is prohibited?

1. Political activity in the workplace
2. Political activity while wearing a uniform associated with the public service of Ontario
3. Using government premises, equipment or supplies for political activity purposes
4. Associating public service positions with political activity (except in specified circumstances)

Most Public Servants (except specially restricted public servants and ministers' staff)	Specially Restricted Public Servants
<i>What is permitted?</i> Most public servants may engage in any political activity that is not prohibited (see above) or restricted. Public servants who wish to engage in restricted activity must be on a leave of absence while they do so.	<i>What is permitted?</i> Specially restricted public servants may only engage in political activity that is <i>specifically permitted</i> . All other political activity is prohibited for most specially restricted public servants.
<i>What is restricted?</i> Restricted activities are set out in section 79(1) of the <i>PSOA</i> and include the following:	<i>What is specifically permitted?</i> Specifically permitted political activities are set out in sections 89 and 90 of the <i>PSOA</i> .
1. Becoming or seeking to become a candidate in a federal or provincial election during an election period (if elected as an MP or MPP, the public servant's employment <i>will</i> be terminated; if elected in a municipal election, the public servant's employment <i>may</i> be terminated) 2. Soliciting funds for a political party or candidate (applies to public servants who supervise others or deal directly with members of the public) 3. Make public comments on any matter dealt with in the position or policy of a political party (federal or provincial) or candidate (federal, provincial or municipal) if comments are outside the scope of the public servant's duties and the matter is directly related to his/her duties 4. Political activity that could interfere with the public servant's duties 5. Political activity that could conflict with the interests of the Crown (in the case of a ministry employee) or a public body (in the case of a public body employee)	All specially restricted public servants may: 1. Vote 2. Attend an all-candidates meeting 3. Become, seek to become, or campaign for a candidate in a municipal election (but only if the public servant's ethics executive has determined that doing so would not interfere with the interests of the Crown or public body). If elected the public servant's employment <i>may</i> be terminated) All specially restricted public servants, <i>except</i> deputy ministers, the Conflict of Interest Commissioner and the Secretary of Cabinet may also: 1. Contribute money to a political party or candidate 2. Hold membership in a political party Only part-time specially restricted appointees may seek the Conflict of Interest Commissioner's authorization to engage in activities not otherwise permitted.

* The Rules at a Glance are provided for information only. For the authoritative text, refer to the *Public Service of Ontario Act, 2006* and regulations