Ontario

Office of the Conflict of Interest Commissioner

Annual Report 2012-2013

Office of the Conflict of Interest Commissioner

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June 30, 2013

The Honourable John Milloy
Minister
Ministry of Government Services
Suite 4320 Whitney Block
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RE: Office of the Conflict of Interest Commissioner 2012-13 Annual Report

Dear Minister:

I am pleased to present to you the Office of the Conflict of Interest Commissioner's Annual Report for fiscal year 2012-13.

Yours truly,

The Honourable Sidney B. Linden
Commissioner

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Commissioner's Message

In a recent speech, Mark Carney, former Governor of the Bank of Canada, talked about rebuilding trust in the banking system. He mentioned "five Cs"—Capital, Clarity, Capitalism, Connecting with Clients, and Core Values. Since public trust in Ontario public servants is at the heart of our system of government, three of those "Cs"—Clarity, Connecting with Clients, and Core Values—apply to our approach to conflict of interest in the public service.

The importance of clarity in the rules and the consequences of the lack of it have been underscored in recent news reports about conflict of interest among municipal elected representatives in Ontario. In response to a complaint that he may have had a conflict of interest, one school board trustee said, "We have no clear rules. If we had rules, I would know what to do." To appropriately deal with a conflict of interest situation, people first need to recognize what constitutes a conflict of interest and they need to know the rules. "I didn't know" should never be an excuse. The right thing to do is not always obvious, but we work toward clarity in the rules every day through our activities in providing education, raising awareness, and in producing reference materials.

We 'connect with clients' through our continuing education sessions and by seeking to maintain a user-friendly process for finding information, reporting, and obtaining advice. In a complex world, conflicts of interest are not unusual and even ethical public servants may find themselves faced with a conflict of interest situation during their careers. What is important is an individual's actions when a real or potential conflict of interest occurs. In those situations, we encourage people to come forward without hesitation so that we can identify the conflict and, if possible, help to develop a mitigation strategy.

Finally, we emphasize the importance of 'core values'. Rules and procedures, although important, only go so far. Our objective is to embed and reinforce core values related to conflict of interest in the organizational culture of the public service. We must continue our efforts to strengthen an ethical culture where doing the right thing is actively encouraged. As Canadians, we believe that the vast majority of people want to do the right thing and part of our responsibility is to help and encourage them to do so.

Each year, our activities seek to advance these four objectives:

- Increase clarity about conflict of interest and political activity matters
- Make it easier to access information
- Promote transparency and consistency in the application of the rules
- Reinforce the ethical culture of the public service

Ultimately, public servants must take individual responsibility for their actions when they are faced with a conflict of interest situation. I am confident that the public service of Ontario is up to the challenge. This office is committed to continuing to assist public servants as they strive to serve the greater public interest.

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 ethical and accountability framework governing the public service of Ontario.

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 the lines of accountability in applying these rules, thereby contributing to transparency and understanding, both within and outside government, with regard to conflict of interest, 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 for specified public servants.

The Commissioner fulfills 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 public service of Ontario 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 public bodies in Ontario 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

In April 2010, with the proclamation of the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* (*ATAGAA*), the Commissioner was also assigned responsibility for approving the ethics plans for Ontario's tribunals. The objective of these plans is to ensure that tribunal board members are familiar with the ethical requirements associated with their positions.

Principles and values

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

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 the 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 Ministry of Government Services 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 legislation (i.e., *PSOA* and *ATAGAA*), 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 legislation. In 2012/13, the office dealt with 130 inquiries or requests. Of these, 91 related to conflicts of interest and 5 related to political activity. The remaining 34 matters involved inquiries about other ethical issues, some of which were beyond the jurisdiction of the Commissioner. Six requests were for the Commissioner's approval of tribunals' ethics plans and one request was for advice on an organization's policies or procedures intended to guide public servants' application of the rules.

The Commissioner believes that situations where conflicts 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 performing 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 chairs of public bodies, the Secretary of the 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 36 matters involving conflict of interest or political activity.

Assisting other ethics executives, officials or offices

Other senior officials or offices within the public service of Ontario also 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.

In 2012/13, other ethics executives and designated individuals and offices sought the Commissioner's advice on 55 matters involving conflict of interest or political activity, and five matters were referred to the Commissioner for a determination.

Early in his mandate, the Commissioner introduced the practice of meeting with all newly appointed and reappointed ethics executives of public bodies. The meetings were an opportunity to orient these ethics executives on their responsibilities as ethics executives and to review the ways in which the Commissioner can assist them in fulfilling their responsibilities.

In 2011/12, the Commissioner introduced group meetings for newly appointed ethics executives of public bodies, instead of the previous one-on-one meetings, in order to establish a community of practice among ethics executives. The group sessions are also open to reappointed ethics executives. The Ontario Office of the Integrity Commissioner participates in the meetings and introduces ethics executives to the role of that office in Ontario's ethical framework. In 2012/13, 18 ethics executives participated in these group meetings. Evaluation reports showed that the sessions were well received.

The Commissioner has continued to make presentations to individual public bodies, as well as newly appointed deputy ministers, to provide an overview of the ethical framework in Ontario.

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 requests for authorization are most common during an election period.

Receiving and providing advice on public servants' financial declarations

Public servants routinely working on matters that might involve the private sector (as 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.

The Commissioner is actively working with government officials to strengthen the application of this requirement.

Providing direction and advice regarding the standards of ethical conduct

Advising on, reviewing and approving rules submitted by public bodies[1]

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.

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

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.

To date, most of Ontario's 171 public bodies have elected to rely on Ontario Regulation 381/07. Our office continues to work with public bodies that are considering whether to rely on the regulation or develop their own rules. The Commissioner also assists public bodies in introducing internal policies or procedures to guide public servants.

In 2012/13, with the benefit of experience in interpreting and applying the conflict of interest rules, the Commissioner completed a review of 11 sets of rules resubmitted by public bodies.

Public bodies' rules, once approved by the Commissioner, are posted on the Commissioner's website.

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 that may be particular to the mandates of their organizations. For example, in 2012/13 the Ministry of Community Safety and

Correctional Services sought the Commissioner's advice on its proposed conflict of interest declaration process for routine matters.

The Commissioner is required to review and approve adjudicative tribunals' ethics plans, in accordance with *ATAGAA*. In 2012/13, the Commissioner reviewed and approved six such ethics plans.

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.

The Commissioner assists public servants, particularly those in public bodies, in understanding the specified roles, responsibilities, rules, and restrictions set out in the *PSOA* in the following ways:

- Orienting all newly appointed or reappointed ethics executives of public bodies through a letter of introduction, followed by their participation in a group orientation session
- Making presentations to ethics executives 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
- Making presentations to other groups of public servants (such as ministries' legal counsel and deputy ministers and their executive assistants) who have a common interest in the application or interpretation of the *PSOA*

With the benefit of over 800[2] matters considered to date, the Commissioner is in a unique position to advise the government regarding provisions of the *PSOA* that may

[2] See Appendix 4

require clarification or modification to improve consistency in interpretation or application.

On occasion, the Commissioner is also asked for his views on government-wide initiatives designed to meet its more general objective of raising public servants' awareness of Ontario's ethical framework.

Acquiring and sharing an expanding body of knowledge

As in previous years, this annual report includes a selection of summaries of conflict of interest and political activity cases addressed during the year. Faced with similar issues, ethics executives 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 public service of Ontario.

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.

The Commissioner has launched an initiative to encourage ethics executives to share summaries of their advice or determinations in order to assist other ethics executives. The objectives of this initiative are to promote consistency in the application and interpretation of the conflict of interest and political activity rules, broaden the collective learning of these decision-makers, and advance the government's interest in establishing a community of practice in the area of conflict of interest. Upon completion, the Commissioner will be the conduit for making the summaries available to other ethics executives.

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. A representative from this office attended the 2012/13 conference in Ohio, along with over 400 other ethics professionals. Throughout the year, participation on COGEL's electronic bulletin board provides a valuable perspective on highlighting and introducing best practices.

Municipal Conflict of Interest Framework

In 2012/13, the office met with officials from the Ministry of Municipal Affairs and Housing to discuss the findings of the Mississauga Judicial Inquiry, as well as to offer to serve as a resource in any reform of the Ontario municipal ethics framework.

Chinese Delegations from the Ministry of Justice/the General Council of the State Office

The Commissioner met with two delegations of Chinese government officials interested in learning about how Ontario's legislative, regulatory, and policy framework promotes integrity, accountability, and transparency within the public service, and about the Commissioner's role in promoting ethical conduct.

Ryerson University, Department of Politics and Public Administration

The Commissioner made a presentation to a class of graduate students on the Commissioner's role in mitigating risk within the public sector, specifically among government agencies.

Building organizational capacity

Ongoing review of procedures and tools

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 the office continues to serve as a useful resource for Ontario public servants and others. Advancing the internal knowledge, infrastructure, and organizational capacity of the office also assists the Commissioner in carrying out his mandate effectively.

Meetings with subject matter experts

The office occasionally arranges opportunities to meet with and learn from subject matter experts who provide valuable insight or training on topics relevant to the Commissioner's mandate.

With a view to exploring opportunities to further promote ethics in the public service, the office met with a former municipal integrity commissioner who now provides ethics training to both the private and public sector. The office also met with the director of an academic centre whose mandate is to promote professionalism and ethics in the private sector. Such meetings help to build capacity within the office and assist in identifying additional partners in promoting ethics in the public service.

Measurement and Performance Targets

The Commissioner is interested in enhancing the mechanisms currently in place to gauge the level of satisfaction with the services provided by the office and assess their impact. To that end, greater attention will be paid to collecting data through surveys and through monitoring website traffic.

The 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 "customers" of the 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. Occasionally, matters are brought to the Commissioner's attention by persons outside of the public service. The recently introduced electronic case management system has simplified the process of reviewing and reporting on success in meeting customer service targets. Additional service standards, adopted by the office in 2011/12, ensure compliance with government-wide customer service standards for accessibility.

The Commissioner acknowledges all inquiries concerning the public service of Ontario within five business days. Within a further five business 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 public service of Ontario, the Commissioner replies within five business days.

In 2012/13, the office had a 98 per cent success rate in meeting or exceeding these performance standards. The office has received complimentary feedback 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, in the 2012/13 fiscal year, no complaints were lodged about service, either formally or informally.

Illustrative Case Summaries

The following case summaries are examples of the types of inquiries or requests the Commissioner addressed this year. These summaries are intended to assist Ontario public servants and ethic executives in interpreting the conflict of interest and political activity rules and applying the rules to similar situations. Each summary indicates whether the Commissioner's role in the matter was to provide advice or to make a determination.

1. Political Activity Advice (*PSOA* s. 72, 77, 79; O. Reg. 381/07, s. 5, 6, 8 and 9)

An ethics executive of a public body sought the Commissioner's advice while considering hiring a municipal councillor as a public servant in an administrative role.

Although being a municipal councillor is considered political activity, it is possible for a municipal councillor to be hired as a public servant if he/she can avoid engaging in the specific types of political activities that are prohibited by section 77 or restricted by section 79.

If hired as a public servant, the municipal councillor would also have to ensure that any activities he/she engaged in as a municipal councillor were in compliance with the conflict of interest rules.

As the municipality was within the geographical area affected by the actions of the public body, the Commissioner concluded that there was potential for conflicts between the individual's roles as a municipal councillor and public servant. The Commissioner suggested that, if the individual were to be hired, the ethics executive should implement strategies to mitigate the potential for conflicts. For example, the ethics executive could restrict the individual's access to matters related to the municipality he/she represents and require the individual to refrain from participating in discussions or decision-making at the municipality on any issues relating to the public body.

2. Political Activity Advice (*PSOA* s. 72(d), 79(1)(c)(e); O. Reg. 381/07, s. 5 and 8)

An ethics executive sought advice as to whether a public servant would be permitted to lobby a Member of Provincial Parliament (MPP) to propose a private member's bill to change legislation and policy administered by the ministry in which the public servant worked.

The Commissioner advised that lobbying the MPP to introduce a private member's bill constituted restricted political activity under the *PSOA* and that the public servant could only engage in that type of activity if on an unpaid leave of absence. The Commissioner advised that such an unpaid leave of absence should remain in effect until the later of the following:

- The MPP decides not to pursue a private member's bill;
- A private member's bill is introduced but not passed; or
- A private member's bill is passed and new legislation comes into force and effect.

3. Conflict of Interest Advice (O. Reg. 381/07 s. 4)

An ethics executive sought advice as to whether a public servant would be permitted to keep a prize, of greater than nominal value, which he/she had won as a result of attending a conference on behalf of the Crown.

The Commissioner advised the ethics executive to consider whether the prize was meant to influence the public servant in the performance of his/her duties. The Commissioner was of the view that the organizers of the conference were not seeking to influence the public servant, given that the public servant's name was selected at random from a list of all conference attendees.

4. Conflict of Interest Advice (O. Reg. 381/07 s. 3 and 4)

A public servant in a public body was presented with a gift as a token of appreciation for speaking at an event hosted by a private entity that neither does, nor seeks to do business with the Crown. Subsequent to accepting the gift, the public servant became aware that the gift had a greater than nominal value.

The Commissioner noted that while the private entity does not currently do business with the Crown, the public servant had received the gift in his/her public service capacity. Accordingly, the Commissioner determined that the public servant should not accept the gift personally, since public servants should not use their positions to benefit themselves. The public servant could accept the gift on behalf of the public body and display it in a public area of the public body's offices.

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

A public servant sought a determination as to whether he/she would be permitted to accept a one-time free ticket from a stakeholder to an event aimed at gathering stakeholders and communities to share information. The cost of the ticket was greater than nominal value.

The Commissioner determined that while it was appropriate for the public servant to attend the stakeholder event, a reasonable person might conclude that the ticket was offered by the stakeholder in hope of furthering future business opportunities with the Crown. The Commissioner recommended that the public servant purchase the ticket and seek reimbursement for the expense in the usual way, in keeping with the government's policy of being open and transparent.

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

The chair of a public body wished to provide a letter of reference in support of a friend who was applying for a position on the board of the same public body.

The Commissioner determined that providing a letter of reference could create the appearance of preferential treatment based on friendship with the chair. The Commissioner recommended that the chair not provide the letter of reference.

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

A newly appointed public servant at a public body sought a determination from the Commissioner as to whether any conflicts of interest arose from his/her past employer responding to multiple Requests for Proposals (RFPs) issued by the public body, and with which the public servant was involved at his/her past employer.

The Commissioner determined that there was a risk that the public servant would appear to be giving preferential treatment to his/her past employer, particularly given that the public servant knew the rationale and the individuals involved with the past employer's responses. To minimize this risk, the public servant volunteered to have no involvement with these RFPs until after the public body reached an agreement with the successful proponent. The Commissioner agreed with this approach.

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

The chair of a public body sought a determination about whether his/her spouse's future volunteer activities at a private entity could lead to a conflict of interest, given that the private entity received funding from the public body. The chair's spouse had ceased the volunteer activities when the public body became involved in a matter involving the private entity.

In light of the spouse's ongoing interest in the private entity, the Commissioner determined that there was a potential for conflict if the chair were to participate in matters involving the entity. To minimize potential conflicts, the chair was to avoid participating in discussions and decisions involving the private entity, unless the entity was one of a large group involved in the matter. In such cases, the Commissioner recommended that the Chair declare his/her spouse's role with the entity, and that the declaration be recorded in the minutes of discussion.

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

The Commissioner's advice was sought with respect to the proposed part-time appointment of an individual to a public body. There was concern about the potential for conflicts of interest as the potential appointee had, through the course of his/her external employment, worked closely with and had provided services to the public body.

The Commissioner advised that the potential appointee's external employment could create conflicts of interest, but that these could be mitigated if the individual's activities were restricted at both the public body and the external employment. The Commissioner suggested that the proposed appointee not have any involvement at the public body in discussions, decision-making or providing input on matters related to his/her employer. Similarly, in the course of his/her employment, the proposed appointee would recuse him/herself from matters related to the public body.

The Commissioner suggested that the mitigation strategy be shared with the board and staff of the public body as well as with the employer and the general public. This would promote compliance and minimize the appearance that the proposed appointee's employer would receive preferential treatment from the public body.

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

The chair of a public body sought a determination on whether there was the potential for a conflict should he/she also be appointed to the board of a second public body. The second public body's objectives included soliciting money and property and entering into partnerships and agreements with the private sector or public bodies.

The Commissioner determined that there would be some potential for conflicts of interest arising from performing both roles. The Commissioner advised the chair that he/she should not recommend or influence a partnership with the second public body if appointed to its board. To ensure this, the Commissioner recommended that the chair recuse him/herself from discussions and decisions at both public bodies where they involved the other public body. Moreover, the Commissioner recommended that the public servant not solicit funds on behalf of the second public body from the public body that he/she chairs, its stakeholders, or the Government of Ontario.

11. Conflict of Interest Advice (O. Reg. 381/07, s. 3, 4, 5, 6, 8 and 9)

The chair of a public body sought advice about a board member whose private company had been engaged by a third party to provide consulting services with respect to various matters, some of which directly related to the mandate of the public body. It was expected that the third party would likely respond to an upcoming RFP to be issued by the public body. The board member had proactively ensured that his/her private company excluded him/her from matters related to that third party, including all discussions and decision-making surrounding the specific files relating to the mandate of the public body.

The Commissioner agreed with the steps already taken by the board member. To further mitigate the appearance that the third party might receive preferential treatment as a result of the board member's position at the public body, the Commissioner suggested that the board member also recuse him/herself from any discussions and decision-making at the public body related to the RFP or the third party. The Commissioner added that, as always in such cases, the recusals should be documented and communicated to all board members.

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

The chair of a public body sought a determination as to whether he/she would be permitted to act as an expert witness on behalf of a law firm. The chair had been approached by the law firm because of his expertise in a specific field, and not because of his/her position with the public body.

Since there was some overlap between the field of expertise and the activities of the public body, the Commissioner determined that there was some potential for conflicts of interest if the chair acted as an expert witness. The Commissioner advised the chair to ensure that he/she did not use or disclose any confidential information in the course of giving expert testimony, and to state at the beginning of the testimony that he/she would not be testifying in his/her capacity as a public servant but rather in his/her capacity as an expert in the field. In addition, the Commissioner advised the chair to be careful not to make any statements or public comments known to be contrary to the policies of the Ontario government. The Commissioner suggested that the ministry responsible for the public body be made aware of the chair's intention to testify on the matter.

13. Conflict of Interest Advice (O. Reg. 381/07, s. 3, 4, 6 and 8)

An ethics executive sought advice as to whether a class of public servant would be permitted to purchase licenses to engage in activities governed by regulations that the public servants are responsible for enforcing.

In order to mitigate the risk that these public servants would be seen to be using their positions to directly benefit themselves, and to minimize the appearance that they were receiving preferential treatment, the Commissioner suggested that the public servants only be permitted to purchase licenses that applied outside the specific geographical areas where they were responsible for enforcing the related regulations.

14. Conflict of Interest Advice (O. Reg. 381/07, s. 16, 17, 18 and 20)

A former designated senior public servant sought a determination as to whether he/she would have a conflict in accepting a leadership position with a not-for-profit entity that regularly interacts with the Crown and may advocate for policy and/or legislative change.

The Commissioner determined that the former public servant would be permitted to accept the position, provided that he/she took certain precautions to ensure compliance with the post-service conflict of interest rules. The Commissioner cautioned the former public servant to be mindful of the restrictions against seeking preferential treatment from or privileged access to current public servants, and recommended that the public servant avoid initiating contact with any public servant, on behalf of the new employer, for a one-year period. The Commissioner reminded the public servant of his/her obligations to refrain from disclosing confidential information, lobbying his/her former ministry, minister, and minister's office staff for a one-year period, or assisting his/her new employer with matters on which he/she had advised the Crown.

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

A former designated senior public servant sought a determination on the application of the post-service conflict of interest rules with respect to working for a government entity that is neither a ministry nor a public body. The former public servant was to be an independent contractor, not an employee of the entity.

The post-service restriction on employment for designated senior public servants applies only when there has been substantial involvement with the employer while a public servant. For a number of reasons, the individual had imposed an absolute screening while he/she was a public servant, meaning that he/she had not been informed on any matters involving this government entity. The Commissioner determined that the former public servant had not had substantial involvement with the government entity in his/her capacity as a public servant, and that therefore the restriction did not apply.

16. Conflict of Interest Advice (O. Reg. 381/ 07, s. 16, 17, 18 and 20)

A soon-to-be former designated senior public servant of a public body sought a determination on the application of the post-service conflict of interest rules. The public servant had accepted employment with a private entity that intended to submit a proposal in response to an RFP on a matter in which the public servant had been involved.

The Commissioner determined that the conflict of interest rules did not prohibit the public servant from accepting the position, but could restrict his/her ability to engage in some activities in his/her new role. Part of the public servant's role was to oversee RFPs for the public body to ensure that procurement rules were followed, and he/she had been significantly involved in a specific RFP that would likely be of interest to the new employer. The public servant advised that he/she would recuse him/herself from all related discussions and decisions and would not be involved in the RFP process on behalf of the entity. The Commissioner agreed with this approach and advised that the soon-to-be former public servant could only assist the entity on the matter once the RFP process had closed and an agreement had been signed with the successful proponent.

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 29, 2015

2. Financial information

FINANCIAL INFORMATION FOR FISCAL YEAR 2011-2012

Standard Account	**2011-2012* Appropriations**	**Actual Expenditures**
Salaries and Wages	590,200	580,849
Employee Benefits	46,700	48,704
Transportation and Communications	10,700	10,321
Services	290,800	294,172
Supplies and Equipment	5,900	5,503
Subtotal:	$944,300	$939,548
Variance		4,752
TOTAL	$944,300	$944,300

*Represents 11-12 printed estimates and in-year approvals

FINANCIAL INFORMATION FOR FISCAL YEAR 2012-2013

Standard Account	**2012-2013** Appropriations**	**Actual Expenditures**
Salaries and Wages	662,700	577,903
Employee Benefits	63,000	49,564
Transportation and Communications	-57,600	9,791
Services	287,400	313,373
Supplies and Equipment	8,000	1,150
Subtotal:	$963,500	$951,781
Variance		11,719
TOTAL	$963,500	$963,500

**Represents 12-13 printed estimates and in-year approvals

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)

CONTENTS

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 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. Number of Matters considered

Fiscal Year	Total Number of Matters
2007/08	90
2008/09	115
2009/10	189
2010/11	121
2011/12	177
2012/13	130