



Ontario

Office of the Conflict of
Interest Commissioner

Annual Report 2014-2015

conflict

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**Office of the Conflict of
Interest Commissioner**

2 Bloor Street East
Suite 1802
Toronto, Ontario M4W 3J5
Tel: 416 325-1571
Fax: 416 325-4330
E-mail: colcommissioner@ontario.ca
www.colcommissioner.gov.on.ca

**Bureau du commissaire
aux conflits d'intérêts**

18e étage, bureau 1802
2, rue Bloor Est
Toronto (Ontario) M4W 3J5
Tél. : 416 325-1571
Télec. : 416 325-4330
Courriel: colcommissioner@ontario.ca
www.colcommissioner.gov.on.ca



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June 30, 2015

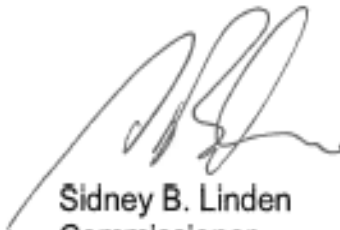
The Honourable Deb Matthews
Deputy Premier
President of the Treasury Board
Minister Responsible for Poverty Reduction
4th Floor, Suite 4320
Whitney Block
99 Wellesley Street, West
Toronto, ON M7A 1W3

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 2014-2015.

Yours sincerely,



Sidney B. Linden
Commissioner

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Commissioner's Message

The 2014/15 fiscal year could be viewed as the year of accountability and transparency. The passage of Bill 8, the *Public Sector and MPP Accountability and Transparency Act*, the launch of open government initiatives and the provincial government's commitment to review the *Municipal Conflict of Interest Act*, were some of the highlights that contributed to this focus. In our world of public sector ethics and oversight, we welcomed this focus as it only helps to advance and preserve public trust and confidence in government.

2014/15 was a busy year for this Office. We handled more matters this year (295) than in any other single year that this office has been operational. This development could be attributed to several factors. First, it was an election year at the municipal and provincial levels which tends to increase inquiries from public servants about their ability to engage in political activity. Second, we provided conflict of interest advice in support of a number of key government initiatives that were launched this year. Third, upon my urging and in compliance with *O.Reg 381/07*, the Public Service Commission began to implement the requirement for public servants who routinely work on matters that involve the private sector to make financial declarations to this Office. This meant that over 100 public servants were required to submit financial declarations this year, more than our Office has systematically processed in any previous year. I look forward to continuing this, as a regular annual activity, into the future.

We were also busy in our education and outreach activities.

- We delivered 15 presentations to various groups of public servants across the province.
- I was invited to Ottawa by the Senate Standing Committee on Rules, Procedures and the Rights of Parliament in October, 2014, to give expert testimony on Ontario's experience with the "gift" rule and to comment on the Senate's proposed amendment to its own "gift" rule.
- In partnership with the Integrity Commissioner, we hosted three successful and highly regarded orientation sessions for newly appointed or reappointed ethics executives. These sessions provided ethics executives with an overview of the conflict of interest, political activity and disclosure of wrongdoing rules and allowed for interactive engagement through analysis and discussion of some challenging ethical case studies.

The important role this Office plays in advancing public sector ethics in Ontario was recognized in 2014/15. I am pleased that we were called upon to provide essential

conflict of interest advice on key initiatives designed to achieve the government's priorities. This Office was asked to assume the role of ethics advisor to the Premier's Advisory Council on Government Assets, as well as to a number of newly appointed "Special Advisor" positions. This is a new role for this Office, but one that is consistent with our mandate, expertise and functions.

I am proud of our accomplishments this year and appreciate the opportunity to report on the impact of our work in building and sustaining a public sector that is ethical, non-partisan, professional and competent.

Sidney B. Linden

Commissioner





Mandate, Vision, Values

Mandate, Vision, Values

Mandate

The Office of the Conflict of Interest Commissioner (OCOIC) is governed by the *Public Service of Ontario Act, 2006*, and its regulations. The PSOA is intended to strengthen the ethical and accountability framework governing the Ontario Public Service, and provides for the appointment of a Conflict of Interest Commissioner.

The Commissioner's mandate is contained in the PSOA and its accompanying regulations. The PSOA assigns the Commissioner a leadership role in contributing to public servants' understanding of the conflict of interest and political activity rules and in the interpretation of those rules. The PSOA also explicitly assigns to the Commissioner responsibility to act as ethics executive for certain conflict of interest and political activity matters for specified public servants.

The Commissioner fulfills this mandate in three ways:

- Contributing to public servants' understanding of, and compliance with, conflict of interest rules
- Encouraging excellence and consistency in the application of conflict of interest rules
- Being a leader in promoting ethical conduct

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

Our Vision

A province where people trust government.

Our Values

The OCOIC has established values to guide us as we deliver on our E.T.H.I.C.S mandate:

Efficient: ***We maximize our resources to deliver quality services.*** As a publicly-funded office, our expenditure policies reflect our accountability for the effective and responsible stewardship of public resources. We work to meet or exceed the Ontario government service standards established for the functions of our office with respect to inquiries and feedback, taking into consideration the need for enough flexibility to investigate sufficiently and respond appropriately.

Transparent: ***Our procedures are accessible, easy to understand and open.*** We provide anyone who contacts our office with the information necessary to easily understand our role and our procedures. We also balance the need to adequately protect an individual's privacy with the need to disclose information where the Commissioner has an obligation to do so.

Helpful: ***We support public servants to be non-partisan, professional, ethical and competent.*** We develop procedures and practices with a view to meeting the highest ethical and legal standards.

Independent: ***Our determinations and advice are free from the control and influence of others.*** Administratively, our office is accountable to the government as one of its agencies. However, the Commissioner provides independent advice and decisions, subject only to the potential for judicial review.

Consistent: ***We treat people fairly but not necessarily the same.*** In keeping with the government's objective of promoting consistency in the application and interpretation of the ethical framework, we have developed processes that allow us to apply our growing body of knowledge about conflict of interest and political activity matters in a consistent manner.

Strategic: ***We leverage our unique position of trust and responsibility within Ontario's ethical framework.*** We are committed to continually advancing and updating our knowledge and to monitoring developments in other jurisdictions to ensure that we are aware of approaches that might enhance our own practices.



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2014/15 Operational Performance

2014/15 Operational Performance

In 2014/15, as in previous fiscal years, the OCOIC focused its activities in four key areas:

1. Making decisions and offering advice
2. Reviewing and approving conflict of interest rules
3. Developing and delivering education and awareness sessions
4. Building organizational capacity

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. This year, our office dealt with 295 inquiries. Of these, 120 (41%) related to conflict of interest, 18 (6%) related to political activity and 98 (33%) related to financial declarations and rules approval. The remaining 59 (20%) involved inquiries about other ethical issues.

Making decisions and offering advice

Acting as ethics executive

The Commissioner is the ethics executive for chairs of designated 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 that may have an ethical impact on their ability to fulfill their public duties.

During this fiscal year, the Commissioner provided advice, information and/or direction, as ethics executive, on 43 matters involving conflict of interest and political activity.

Assisting other ethics executives, officials or offices

Like the Commissioner, other senior officials, such as deputy ministers and chairs of public bodies, 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 or determine whether a conflict of interest exists or a certain political activity is permitted.

To assist senior officials or offices in fulfilling these ethics executive responsibilities, the *PSOA* provides that they may seek the Commissioner's guidance. The ethics executive retains decision-making responsibility for the matter in these situations. In some situations, 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 2014-15, other ethics executives sought information and advice from the Commissioner on 92 matters.

Considering requests to participate in political activities

The *PSOA* sets out political activity rights and restrictions for all public servants, and also allows individuals to seek permission to participate in certain activities that are not otherwise permitted. Part-time appointees to some public bodies must seek such authorization 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. In 2014-15, the Commissioner made three political activity determinations, one authorization and provided information and/or advice on 14 political activity requests.

Receiving and providing advice on public servants' financial declarations

Pursuant to sections 10 to 13 of Ontario Regulation 381/07 under the *PSOA* (See Appendix 4), public servants who routinely work on matters that might involve the private sector must make a financial declaration to the Commissioner. The financial declaration discloses certain financial interests, including those of specified family members. A revised declaration must be submitted to the Commissioner when there is a change in financial information that must be disclosed.

The Regulation imposes the following requirements on the Public Service Commission (PSC):

- Maintain a list of positions in which public servants routinely work on matters that might involve the private sector, and
- Ensure that those public servants are advised of their duty to submit a financial declaration form to the Commissioner.

In addition, every ethics executive is required to notify the PSC of changes to be made to the list with respect to those persons working in such positions for whom he or she is the ethics executive.

Our office received a list of 104 public servants from the PSC in fiscal year 2014/15 and completed the review and processing of 96 declarations.

Reviewing & approving Rules

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 and specify the activities that could put a public servant at risk of a conflict of interest.

While the rules are intended to be broad enough to cover most situations, 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 our mandate, we encouraged public bodies to rely on the regulation wherever possible. We suggested that public bodies only submit rules for approval if their unique mandates gave rise to increased likelihood of potential conflicts and additional rules were necessary to address those circumstances.

This year, we completed the review of the rules for two public bodies. As a result, the approved rules of 10 public bodies are on our website.

The Commissioner is also required to review and approve adjudicative tribunals' ethics plans, in accordance with ATAGAA. In previous fiscal years, the Commissioner reviewed and approved all plans submitted. This year, the Commissioner was not asked to review and approve updates to any ethics plans for adjudicative tribunals.

Identifying and sharing organizational best practices

There are occasions throughout the year when the Commissioner may become aware of or involved in a matter that may be seen as an example of a best practice from which other provincial public sector organizations could learn. These best practices often pertain to the application of the *PSOA* in situations that may be particular to the mandate of an organization.

Below is an example of a best practice activity that the Commissioner supported this year.

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

Premier's Advisory Council on Government Assets

In the late summer of 2014, the Premier announced the creation of the Premier's Advisory Council on Government Assets mandated to review key government assets such as Hydro One, the LCBO and the Beer Store. Members of the Council were not "public servants" under the PSOA, 2006, but were Order-in-Council appointments. This meant that the members of the Council were not subject to the PSOA and its regulations, including the conflict of interest requirements.

The government suggested, and the Commissioner agreed, that a set of conflict of interest rules modeled on the PSOA be developed for the Council. These rules were developed and govern the in-service and post-service obligations of Council members to ensure that their services would be provided in an ethical, professional and non-partisan manner.

This approach has proven to be an effective example of how conflict of interest rules can be adapted to situations where the legislation does not apply.

Developing and delivering education & awareness sessions

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 (i.e. board members) and employees of government agencies that are identified by regulation as public bodies.

As part of our education and awareness mandate, about three times per year the Commissioner hosts orientation sessions with all newly appointed chairs and reappointed chairs of public bodies who had not been previously oriented. These sessions provide an opportunity to orient these appointees on their responsibilities as ethics executives, and to review the ways in which the Commissioner can assist them in fulfilling their ethics oversight responsibilities. Improvements to the delivery of the sessions were made in three key areas this year:

1. In addition to inviting the chairs of public bodies, training was extended to other designated ethics executives in the public sector who could also benefit from the program.
2. Real-time webcasting continued to make it easier for long-distance and remote invitees to participate, and the video recording of the sessions is posted to our website and is accessible to others for viewing.
3. Educational accreditation from the Law Society of Upper Canada for 1.0 Professionalism Hour(s) and 1.0 Substantive Hour continued to be awarded for the benefit of lawyers who attended the sessions.

As a result of these sessions, this year the Commissioner met with 110 newly appointed or reappointed chairs, other designated ethics executives and other public body staff.

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. Although not a specific legislative mandate, education and awareness is key to building organizational capacity and a “culture of ethics”, in the OPS and the agency sector.

In addition to the orientation sessions for ethics executives, the Commissioner participates in orientation sessions of newly appointed Deputy Ministers and Assistant Deputy Ministers and provides them with an overview of the conflict of interest rules and their role in advancing ethical behavior among public servants.

The Commissioner does outreach presentations and delivers speeches to various audiences external to the Ontario Public Service. This year, our office delivered 15 presentations (including three ethics executives’ orientation sessions), one-third of which were the result of follow-up requests from previous presentations. The Commissioner also posts a periodic blog to the office’s website in which he shares his views and addresses current themes in public sector ethics.

Meetings with subject-matter experts

Our 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.

This year the Commissioner invited two distinguished speakers to lunch and learn sessions with our Office: Greg Levine, an ethics academic and integrity commissioner for several municipalities and Jane Garthson, President of Garthson Leadership Centre, an ethics and governance consultancy.



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Performance Measurement

Performance Measurement

Performance Measurement Plan

In order to help achieve our vision of a province where people trust government, our office must play a key role in creating a culture of ethics in provincial public sector institutions (mainly public bodies). This task, however, is more art than science. Hence, it is imperative to develop a robust performance measurement framework that allows for the collection and tracking of data in order to measure the efficacy of our office.

In the last quarter of 2013/14 we researched and developed a performance measurement framework and system that is tailored to our environment. We identified the key resources and activities (inputs) that would generate the results we seek (outputs) in order to have the impacts we desire (outcomes). Measures were then developed in the areas of efficiency, effectiveness and satisfaction to help determine if the outcomes were achieved. We have adopted a process of annual monitoring and reporting on performance against these measures. Early this fiscal year, we gathered initial data in order to generate a baseline report and set targets for our operations and services. A second report will be prepared in early 2015/16 to assess our performance against those targets.

A sample of performance measures supported by data is provided below:

Output	Measure	Data Source	Baseline 2013-14	Target 2014-15	Achievement 2014-15
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Effectiveness

Greater awareness of existence and role of Office of Conflict of Interest Commissioner	% of matters originating from distinct initiators.	Case management database [A]	114 distinct initiators out of 130 or 88%	No target: monitor.	265 distinct initiators out of 295 or 90%
	% change in number of information requests received		28 information requests received	No target: monitor.	62 information requests received, or +220%

Satisfaction

Education and outreach	% increase of number of presentations arising from referral due to previous presentation.	COIC events and engagements log [A]	7 of 17 presentations or 41%	50% of presentations arise from referral	4 of 12 presentations or 33%
Output	Measure	Data Source	Baseline 2013-14	Target 2014-15	Achievement 2014-15

Efficiency

Robust and sustainable office able to provide quality advice, determinations and other supports.	% of cases completed within customer service timelines.	Case management database [A]	98% of cases acknowledged within 5 days of contact 99% of cases resolved within 10 days of contact	90% of cases acknowledged within 5 days of initial contact 90% of cases resolved within 10 days of contact	95% of cases acknowledged within 5 days of initial contact 95% of cases resolved within 10 days of contact
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Output

COI/PA advice and determinations	Number of advice and determination letters.	Case management database [A]	31 advice and determination letters	No target: monitor	39 advice and determination letters
Financial Declaration Advice	Number of financial declarations reviewed.	Case management database [A]	3 financial declarations reviewed	No target: monitor	96 financial declarations reviewed
Ethics executive orientation	Number of ethics executive orientation sessions held.	Corporate shared drive [A]	3 orientations sessions held	3 orientations sessions held	3 orientation sessions held

Customer Service Standards

As in the past, our office is required to comply with the Ontario government's customer service standards for timeliness in responding to enquiries. We make every effort to meet or exceed those targets each time our office is contacted. The customer service targets require us to acknowledge all inquiries within five business days and provide a final response or request for additional information within 10 business days of the initial inquiry. When additional information is requested or a meeting required, we aim to provide a response within 10 business days of receiving the information.

In 2014/15, the office achieved a 95% success rate in acknowledging inquiries or holding a meeting within five business days, and a 95% success rate in providing final responses within ten business days of initial inquiry. The office continues to receive complimentary feedback on the timeliness and quality of the responses provided.

As required by policy, a mechanism is in place for "customers" to submit formal complaints about the service they receive from our office. As in previous years, there have been no complaints submitted to the COIC, either formally or informally.



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Outlook for 2015/16

Outlook for 2015/16

The OCOIC will continue to focus on building a culture of ethics in the public service.

- We will enhance our outreach specifically to smaller agencies that do not have the capacity to offer ethics training and support to their staff.
- We will focus on implementing and perfecting our performance measurement system so that it becomes a leading model among ethics organizations.
- We will undertake the conversion of all of our paper records to electronic format and transition to a fully paperless office.



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Illustrative Case Summaries

Illustrative Case Summaries

The following case summaries are examples of some of the inquiries or requests the Commissioner addressed this year. These summaries are intended to assist public servants and decision-makers in interpreting the conflict of interest and political activity rules, and applying these rules to similar situations.

For the full list of our case summaries, visit the case summaries section of our website.

Conflict of Interest



1. Can I get a pass?

A designated senior public servant in a public body, who would soon be retiring, asked the Commissioner for a waiver of the one year post-employment restriction. The public servant anticipated post-retirement employment opportunities with certain government organizations.

The Commissioner advised the public servant that there was no provision in law for such a waiver and that accordingly one could not be granted.

The Commissioner reminded the public servant that the one-year restriction only applied to those entities with which the public servant had been substantially involved. The public servant was advised to contact the Commissioner once a specific opportunity arose, at which time a determination could be made.

(O. Reg. 381/07, s. 19)



2. Family matters

The spouse of an ethics executive for a public body was the head of an organization that regularly had dealings with the public body. The ethics executive advised the Commissioner that in order to mitigate the risk of a conflict of interest, steps had been taken to shield the ethics executive from any conversations or emails within the public body regarding the organization, and that the appropriate individuals had been advised of the potential conflict.

The Commissioner confirmed that the ethics executive had acted appropriately and put in place an effective mitigation strategy.

(O. Reg. 381/07, s. 5, 6 and 9)



3. Hanging my shingle, Part 1

A designated senior public servant in a public body was on a paid leave of absence. Following the expiration of the paid leave of absence, the public servant was due to retire. The public servant wished to work as an independent consultant while on the paid leave, building on her career as a public servant, and had been approached with specific opportunities.

The Commissioner determined that while on the paid leave of absence, the public servant could provide independent consulting services, in specific scenarios, but that the in-service conflict of interest rules continued to apply. The public servant's work as a consultant must not conflict with her duties to the Crown, and no person could derive an advantage, in connection with her consulting work, as a result of her employment with the public body. In addition, the public servant must not appear to give clients of the public body any preferential treatment. Specifically, the public servant should not participate in discussions or decisions with other entities with respect to clients of the public body.

The Commissioner reminded the public servant that on retirement, the post-service conflict of interest rules would apply, including the one-year restriction on lobbying and employment.

(O. Reg. 381/07, parts I and II)



4. Hanging my shingle, Part 2

A former designated senior public servant wished to provide consulting services. The advertisement for these services indicated that the former public servant had been appointed to a certain public body and was able to assist with matters involving the public body.

The Commissioner determined that the former public servant could advertise this previous experience as it was part of the public servant's resume. Also, more than one year had passed since the former public servant had ceased to be a public servant, and therefore the one-year restriction on employment no longer applied. The Commissioner reminded the former public servant of the post-service conflict of interest rules that were still applicable. In particular, the former public servant could not assist with any matter in which the former public servant had been involved as a public servant.

(O. Reg. 381/07, part II)

Political Activity



1. Transition Advice

A specially-restricted part-time appointee to a public body sought authorization to engage in political activity that depended on the outcome of a provincial election. The public servant had been asked to join a political party's transition team if it won the election.

The Commissioner authorized the public servant to engage in this activity because the public servant's exercise of discretion with the public body could not reasonably be perceived as being affected by political considerations. The Commissioner also reminded the public servant not to engage in any prohibited forms of political activity while working on the transition team.

(PSOA s. 92)



2. Vote for me

An employee of a public body, with a public-facing role, wished to run for municipal office. The employee's ethics executive proposed to move the employee to a non-public-facing role so that the employee would not be required to take a leave of absence.

The Commissioner supported moving the employee and suggested that the decision, including factors considered, be documented. The Commissioner also advised the ethics executive to monitor the situation in case the business of the public body became a municipal issue, or the employee's political activity began to interfere with the employee's duties or conflicted with the interests of the public body.

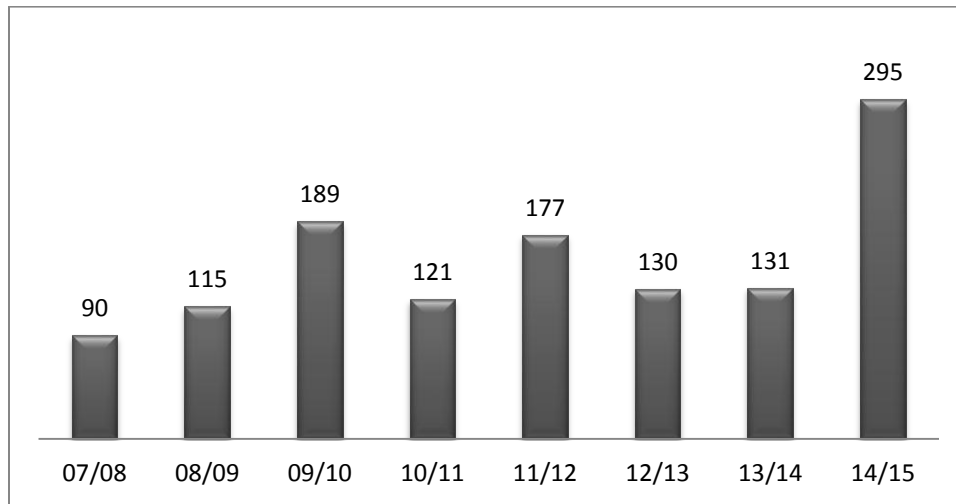
(PSOA s. 77 and 79)



Appendices

Appendix 1

Number of Matters Considered



Appendix 2

Financial Information

Financial Information For Fiscal Year 2013-14

Standard Account

	2013-2014* Appropriations	Actual Expenditures
Salaries and Wages	662,700	597,222
Employee Benefits	65,000	46,978
Transportation and Communication	22,000	29,577
Services	353,000	387,285
Supplies and Equipment	6,000	3,740
Subtotal:	\$1,108,700	\$1,064,802
Variance		43,898
TOTAL	\$1,108,700	\$1,108,700

* Represents 13-14 printed estimates and in-year approvals

Financial Information for Fiscal Year 2014-15

Standard Account

	2014-2015* Appropriations	Actual Expenditures
Salaries and Wages	482,700	406,350
Employee Benefits	65,000	35,928
Transportation and Communication	22,000	28,551
Services	309,700	401,046
Supplies and Equipment	6,000	3,197
Subtotal:	\$885,400	\$875,072
Variance		10,328
TOTAL	\$885,400	\$885,400

* Represents 14-15 printed estimates and in-year approvals

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Note: Statement of financial information prepared by Business Planning and Financial Management Branch, TBS.