



Ontario

Office of the Conflict of
Interest Commissioner

Bureau du commissaire
aux conflits d'intérêts

Annual Report 2017-18

Office of the Conflict of Interest Commissioner

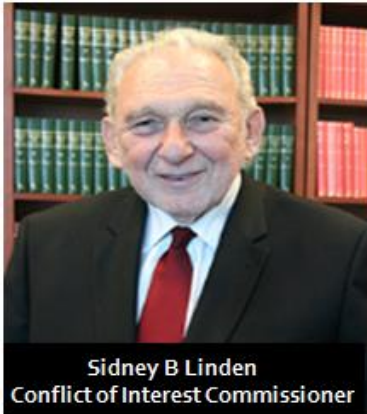
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Commissioner's Message



This past year has been interesting and challenging. A number of recent events in Ontario, Canada and the United States have raised the public profile of conflicts of interest and ethics. At the same time, our office has seen more interest from public servants regarding their rights and responsibilities and we have responded by enhancing our education and capacity building program while ensuring that we are operating as efficiently as possible.

During the year, we delivered two Ethics Executive Orientation sessions for newly appointed or reappointed chairs of public bodies and other designated ethics executives. What began as a simple one-on-one interview with newly appointed chairs has developed into a full scale education program that we share with the Integrity Commissioner. We have expanded the audience to include counsel and other senior officials who provide support to the ethics executives. This year our office interacted, either through providing advice and determinations or education and training, with 84 of the 159 public bodies or groups of public bodies within our jurisdiction.

Our office continues to enhance its inventory of advice and decision summaries on the Office of the Conflict of Interest Commissioner's (OCOIC)

website. Although not binding, these anonymized summaries have been very helpful to ethics executives who deal with similar issues. The object of creating the inventory of summaries is to create a tool that can assist public servants and ethics executives to consistently interpret and apply the conflict of interest and political activity rules. There are over 150 summaries in our database that is searchable by key word, relevant rule, and source of decision, whether by our office, a ministry or a public body.

Our office has once again partnered with the Institute of Public Administration of Canada (IPAC) among others, to host a second conference on 'Public Sector Ethics'. The objective of this conference is to provide a forum for ethics practitioners, academics and decision-makers to discuss matters of common interest and to network and share common practices. The academic papers that were prepared in connection with the 2016 conference are now available online via the [Canadian Public Administration Journal](https://onlinelibrary.wiley.com/toc/17547121/61/S1) website (URL:<https://onlinelibrary.wiley.com/toc/17547121/61/S1>).

In terms of operational efficiency, we are particularly proud that our office is one of the very few in the Ontario Public Service that is paperless. As expected, this has improved our efficiency and enabled us to make a contribution to the reduction of paper consumption.

Finally, I would like to thank my staff for their dedication and professionalism as we continue to fulfill our mandate. It has been a privilege to serve as commissioner of this small but important office.

Mandate

The Office of the Conflict of Interest Commissioner (OCOIC) implements the mandate of the Commissioner as set out in the *Public Service of Ontario Act, 2006* (PSOA) and its regulations as well as the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* (ATAGAA).

Values

The values that guide the OCOIC in carrying out its mandate are captured by the acronym ETHICS as set out below.



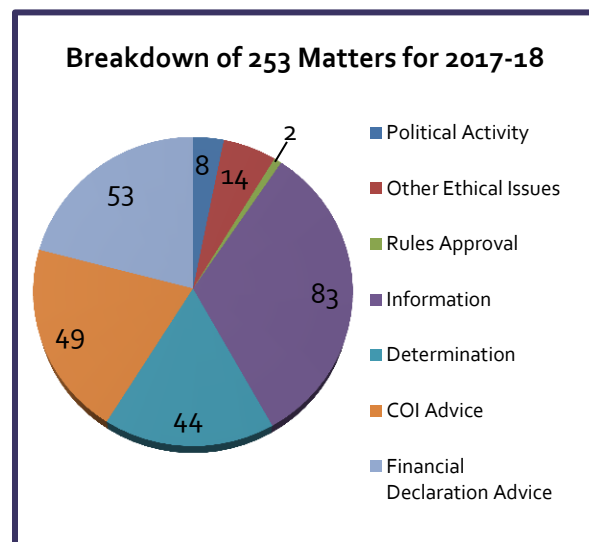
Vision

A province where people trust government

The vision of the OCOIC is to have a province where people trust government. In order to achieve this vision, the office has established three objectives to guide its activities. The following is a summary of the activities for 2017-18.

Contribute to public servants' understanding of, and compliance with, ethics rules

Through interactions with individuals on specific matters, the OCOIC seeks to increase understanding and compliance with the conflict of interest and political activity rules. This year the office dealt with 253 matters. These are categorized as 49 conflict of interest (COI) advice, 53 financial declaration advice, 2 rules approval, 83 information requests, 44 COI determinations, 8 political activity (PA), and 14 other ethical issues as set out in the pie chart below.



As part of the OCOIC mandate, the office continues to provide training to ethics executives. In 2017-18, two orientation sessions were held, attended by 66 ethics executives and other senior public servants in public bodies, in support of capacity building, good governance and accountability.

The OCOIC continued its outreach program to small public bodies that can benefit from dedicated support. Through this program we delivered 19 presentations to public bodies in 2017-18.



Encourage excellence and consistency in the application of ethics rules

The OCOIC is in a unique position to observe the application of ethics rules across ministries and public bodies and is therefore able to institute initiatives and approaches to support the consistent interpretation and application of the rules. For example, the OCOIC publishes an inventory of shared decision summaries on our

website to assist public servants and ethics executives in consistently interpreting and applying the conflict of interest and political activity rules. The inventory now includes 150 decision summaries from our office and ethics executives in ministries and public bodies. In 2017, the inventory was improved to be searchable by key word, relevant rule, matter type and source of decision (i.e. commissioner, public body or ministry).

Public bodies are permitted to develop their own conflict of interest rules for approval by the commissioner, as long as those rules do not set a standard for ethical conduct that is lower than in the PSOA and its regulations. Two sets of rules have been approved for this fiscal year. Altogether, ten public bodies or groupings of public bodies have their own conflict of interest rules, and these are all available on the OCOIC website.

Under the ATAGAA, the commissioner must also approve the ethics plans of administrative tribunals. All administrative tribunals now have ethics plans. No amended plans were submitted for the commissioner's approval in 2017-18.

Be a leader in promoting ethical conduct

The commissioner makes it a priority to interact with officials with comparable responsibilities, within and outside Ontario. This approach enables the commissioner to provide information on best practices that support the intent of the PSOA. One way this is achieved is through the commissioner's quarterly blog. In 2017-18, his blogs addressed the issue of building a community of practice through sharing stories and of building trust in government – the theme of the 2018 public sector ethics conference.

In this fiscal year, the OCOIC began planning the second conference on public sector ethics to be held in 2018. The OCOIC established a conference planning committee that included representatives from the offices of Ontario and Toronto's integrity commissioners, the federal public sector integrity commissioner, the University of Toronto and Osgoode Hall law schools and the Institute of Public Administration of Canada (IPAC). The conference is intended to be larger than the 2016 edition and national in scope, attracting practitioners, academics, lawyers and public sector executives from across Canada.

Activities Planned for 2018-19

Public Body Outreach

Public Sector Ethics Training for OPS and Agency Staff

Public Sector Ethics Conference, "Building Trust in Government"

Identifying and Sharing Organizational Best Practices

Throughout the year, the OCOIC may become aware of, or involved in, a matter that might be seen as an example of a best practice from which other organizations can 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 from 2017-18.

The Workplace Safety and Insurance Board's Code of Business Ethics

The Workplace Safety and Insurance Board (WSIB), is a provincial crown agency governed by a Board of Directors appointed by the Lieutenant Governor in Council.

The WSIB helps when an injury or illness happens on the job. The WSIB moves quickly to help people recover and safely return to work. Covering over five million people in more than 300,000 workplaces across Ontario, the WSIB also promotes health and safety in the workplace with a goal of one day having zero work-related injuries or illnesses.

WSIB "Code of Business Ethics" provides guidance on ethical conduct to staff and directors. WSIB is subject to the conflict of interest rules in O. Reg. 381/07 to the PSOA.

The WSIB's Ethics Framework begins with clear direction from the Board of Directors and senior management. The 'tone from the top' is that clear ethical behavior defines the culture and actions. The WSIB has developed a suite of policies that are aligned with this message and the Code of Business Ethics describes the behaviors that are expected from all employees. Many organizations have ethics policy frameworks but the WSIB's framework includes reinforcement of policies through respectful workplace training, independent monitoring by compliance and a feedback mechanism that allows employees to be co-owners of the framework by providing their input. Ethical behavior is embedded in the organizational culture and policy becomes practice when all are engaged and informed.

An Ethics Hotline is available to current and former WSIB public servants and anyone wishing to report a violation of the Code of Business Ethics. To contact the Ethics Hotline, call toll-free: 1-866-508-0052.

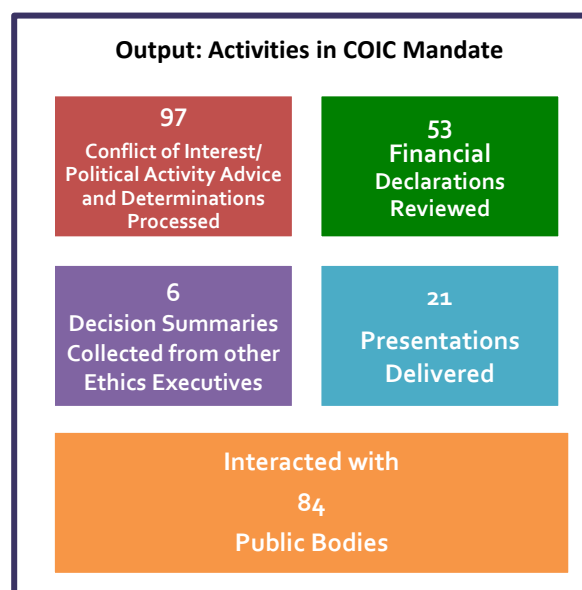
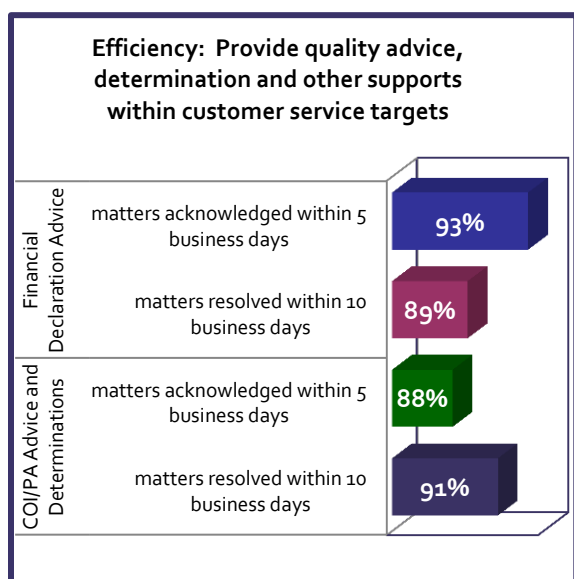
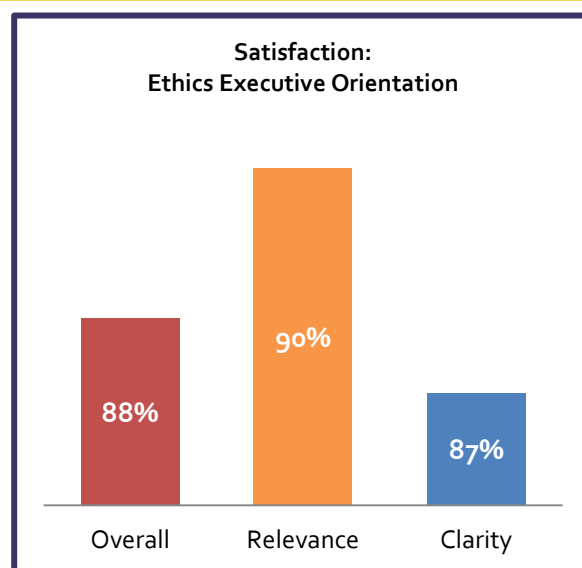
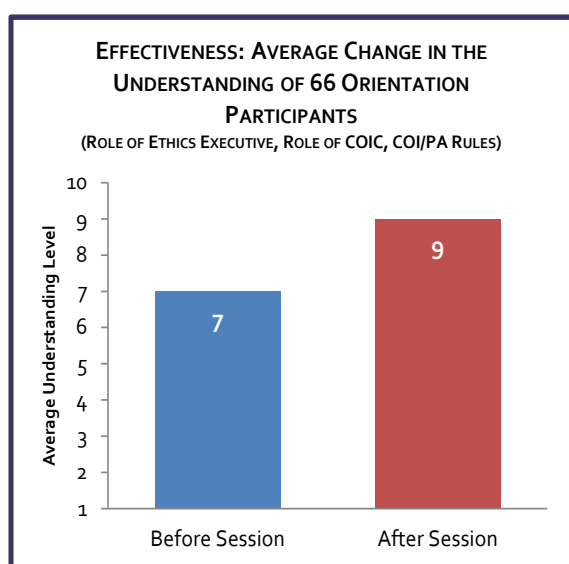
Go to the [WSIB](http://www.wsib.on.ca/WSIBPortal/) webpage for more information about the code.
(URL: <http://www.wsib.on.ca/WSIBPortal/>)

Performance Measures

The OCOIC established its first detailed three year performance measurement plan in 2013-14 that expired in 2017-18. A successor three-year plan was adopted in the second quarter of 2017-18. The plan establishes outcomes and related measures against which data is collected and tracked to assess the success of our activities and services.

The performance measures are established for effectiveness, satisfaction, efficiency and output. The following is a sample of our 2017-18 achievements.

Sample Performance Measures 2017-18



Illustrative Decision Summaries

The following decision summaries are examples of some of the enquiries the OCOIC addressed this year. These summaries are intended to assist public servants and ethics executives in applying the conflict of interest and political activity rules to similar situations. The summaries have been anonymized.

Conflict of Interest

Request for Advice

O. Reg. 381/07, s. 4 and 6

The ethics executive of a public body sought advice about a senior public servant who was offered a ticket, worth more than nominal value, to attend a fundraising event. The tickets were provided by the employer of the public servant's spouse. It was not unusual for the employer to do so and also encourage their employees to bring their spouses. The public servant had previously been screened from matters involving his spouse's employer as the employer was a private sector entity that provided services to the public body.

The Commissioner considered the application of the gifts rule in section 4 of O.Reg. 381/07. Section 4 identifies three sources of potentially prohibited gifts, creates an exception for gifts of nominal value that are given as an expression of courtesy or hospitality and sets up the reasonable person test for assessing if a gift could influence a public servant. The Commissioner suggested that the following factors could be used in assessing if a reasonable person might conclude that a gift could influence a public servant:

- the reason a gift was offered i.e. is it for his activities as a public servant?
- the process by which the gift was obtained i.e. was it sought by the public servant?
- the nature and likelihood of interactions between the public body and the source of a gift;
- the role of the public servant in those interactions; and
- the capacity of the public body to assign other public servants to deal with matters related to the source of a gift if they arose.

The Commissioner also suggested that should the public servant attend the fundraising event, he be reminded of his obligations under section 6 of the conflict of interest rules to avoid creating the appearance that preferential treatment would be given to any attendees at the fundraising event.

Request for Determination

O. Reg. 381/07, s. 3, 5 and 6

The ethics executive of a public body sought advice about the application of the conflict of interest rules to a new employee who is the subject of an investigation by the Ministry which has oversight responsibilities for the public body.

The Commissioner considered the application of the conflict of interest rules related to benefiting oneself, confidential information and preferential treatment set out in section 3, 5 and 6 respectively. Given the public body's affiliation with the Ministry in question, the Commissioner agreed that there was some risk of the employee using his/her newly acquired

public servant position to seek preferential treatment from public servants in that Ministry.

However, this risk could be mitigated by requiring the employee not to seek preferential treatment from the Ministry or use confidential information of the public body during the course of the investigation.

The Commissioner also suggested that the public body consider whether it is necessary to take steps to minimize the risk that the employee could give or appear to give preferential treatment. Depending on the nexus between the public servant's role and the Ministry investigation, there may be certain matters, or matters involving certain individuals that the employee should not deal with until the matter with the Ministry has been resolved.

Political Activity

Request for Advice

Public Service of Ontario Act, 2006, s. 79

A public servant who was not specially-restricted was considering seeking to become a candidate in a provincial election and sought a determination as to when he/she should take a leave of absence from their public servant duties.

Ordinarily, as set out in section 79(1)(a) of the PSOA, a public servant is prohibited from seeking to become a candidate in a provincial election unless they are on a leave of absence. However, if a public servant is seeking to become a candidate outside of an election period then a leave of absence is not mandatory. As this request fell outside of an election period, the Commissioner determined that a leave of absence would be required if the

public servant sought to be a candidate given the visibility of the public servant's position, dealings with members of the public and the scope of discretion exercised. The Commissioner's view was that the leave of absence did not need to commence while the public servant was being vetted by a political party but rather should commence once the public servant made a decision to stand for nomination as a candidate and before such an intention was made public.

Request for Advice

Public Service of Ontario Act, 2006, s. 91

A part-time public servant who was specially-restricted sought advice as to when he/she should seek authorization to become a candidate in a municipal election.

A specially restricted public servant may only vote, donate money to party/candidate, be a member of a political party, or attend an all candidates meeting. Specially restricted public servants must seek authorization from their ethics executive if they wish to become a candidate in a municipal election as set out in section 91. (For all other types of political activity, authorization must be sought from the Conflict of Interest Commissioner under section 92). The Commissioner's view was that authorization should be sought before the public servant did anything that could be considered political activity, other than vote, donate money to party/candidate, be a member of a political party or attend an all candidates meeting. In other words, the public servant should seek authorization upon making a decision to become a candidate and before such an intention is made public.

Financial Information

Fiscal Year 2016-17

Standard Account	Budget	Actual Expenditures
Salaries and Benefits	482,700	440,197
Employee Benefits	65,000	64,182
Transportation and Communication	22,000	21,823
Services	281,800	307,492
Supplies and Equipment	6,000	3,873
Total	857,500	837,567

Fiscal Year 2017-18

Standard Account	Budget	*Actual Expenditures
Salaries and Benefits	482,700	523,494
Employee Benefits	65,000	46,499
Transportation and Communication	22,000	5,977
Services	281,800	385,438
Supplies and Equipment	6,000	1,522
Total	857,500	962,930

* (Numbers to be finalized in the 2017-18 Public Accounts)

This report is available at www.COICommissioner.gov.on.ca

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