

Office of the Conflict of Interest Commissioner

Annual Report 2018/19

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Commissioner's Message

I am pleased to present the final Annual Report of the Office of the Conflict of Interest Commissioner (OCOIC), covering the fiscal year 2018-19.

On April 30, 2019, I will be retiring from my role as Ontario's first and only Conflict of Interest Commissioner after more than 40 years of public service, the last 12 in this role.

Looking back, I am proud of the work we have done in the OCOIC since I assumed the Commissioner's role in July 2007. In December 2006, the *Public Service of Ontario Act, 2006* (the Act) was proclaimed and, combined with its regulations, it introduced the role and mandate of the Conflict of Interest Commissioner as an agency. This was a new and innovative concept for such a public service role in Canada, as in all other provinces and the federal government, the role and responsibility for adjudicating conflict of interest and political activity matters for public servants resides inside a ministry such as the Treasury Board Secretariat. Ontario set a new standard that was unique and leading-edge in this regard.

As public servants, ethical conduct is a critical part of who we are and what we do regardless of our assigned roles and responsibilities. Acting with integrity and complying with all applicable laws is essential to our reputation and we work hard to earn and maintain the trust of the public. The Act, which received Royal Assent in December 2006, has several stated purposes including ensuring that the public service is effective, non-partisan, professional, ethical and competent.

Our office has been able to create an impressive record in promoting understanding and compliance with the ethics rules by public servants, encouraging the consistent application of the rules by ethics executives and, working with our public sector partners to promote ethical conduct. Since 2007, we have dealt with over 2,000 matters while maintaining a 98% compliance rate with our stated customer service timelines. In addition, there are four major achievements that I am particularly proud of.

First, is our achievement in becoming a paperless office. We launched the OCOIC Information Renewal Project in 2015 in advance of our office being designated as a public body under the *Archives and Recordkeeping Act* which we needed to be compliant with by March 2016. This project also coincided with our need for more filing space for our paper case records. In 2015-16 we succeeded in implementing a paperless recordkeeping system that included the adoption of a new functional classification scheme, recordkeeping policies and a records retention schedule. This achievement has made our office one of a few in the public service of Ontario that is fully digital, and it has improved our efficiency and allowed us to make a significant contribution to the reduction of paper consumption.

Secondly, we developed a mechanism for ethics executives to learn from each other by sharing summaries of interesting and significant cases. These are decision summaries that our office and other ethics executives have made, and although not binding precedents, they have proved to be very helpful to ethics executives in ministries and public bodies across the public service of Ontario. There are 150 summaries available in our online database that are searchable by keyword, relevant rule, type of matter and source of decision.

Thirdly, we organized and hosted a national public sector ethics conference to bring together colleagues from across the country who work in this field to share their experiences and create a community of practice. We have hosted two such conferences (2016 and 2018) in partnership with the Institute of Public Administration of Canada and other partners including the Office of the Integrity Commissioner. We have produced two legacy publications, including a compendium of peer-reviewed scholarly articles in a special edition of Canadian Public Administration Journal.

Finally, we wanted to see the two ethics offices in Ontario merge their resources and expertise to create a 'Centre of Excellence' in public sector ethics. In November 2018 the government announced the merger of the OCOIC with the Office of the Integrity Commissioner (OIC) effective May 1, 2019. I am confident that the merger under the direction of the Integrity Commissioner, the Honourable J. David Wake has the potential to raise the subject of public sector ethics and integrity in Ontario to new heights.

It has been a honour and a privilege to have served as Commissioner.



Sidney B Linden
Commissioner

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.

- ❖ **Efficient**
We maximize our resources to deliver quality service
- ❖ **Transparent**
Our procedures are accessible, easy to understand and open
- ❖ **Helpful**
We strive to provide advice and determinations that are helpful to public servants, taking a non-adversarial approach
- ❖ **Independent**
Our decisions are free from the control or influence of others
- ❖ **Consistent**
We apply our knowledge of conflicts in a consistent manner
- ❖ **Strategic**
We leverage our unique position within Ontario's ethical framework

Vision

A province where people trust government

The vision of the OCOIC is to have a province where people trust government. To achieve this vision, the office has established three objectives to guide its activities. The following is a summary of the activities for 2018-19 as they relate to those objectives.

1. 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. In 2018-19 the office dealt with 256 matters. These matters fall into the following categories.

Matter Categories	Numbers
Conflict of Interest Advice	69
Determination	31
Financial Declaration Advice	41
Information	53
Other Ethical Issues	42
Political Activity	20
Total	256

As part of the OCOIC mandate, the office continues to provide training to ethics executives. In 2018-19, two ethics executive (EE) orientation sessions were held, attended by 44 EE's and other senior public servants in public bodies. These sessions support capacity building, good governance and accountability within the EE community. In addition, as part of our outreach and education program, the OCOIC provided tailored ethics training sessions to the board of directors or staff of nine different public bodies.

2. 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 as a resource to assist public servants and ethics executives to consistently interpret and apply the conflict of interest and political activity rules. The inventory currently contains 150 case summaries and is searchable by matter type, relevant rule, source of decision or keyword search.

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.

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. No new rules were submitted or approved in 2018-19.

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 2018-19.

3. 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. The Commissioner published three blogs in 2018-19 on topics ranging from the biennial public sector ethics conference to the merger of Ontario's two ethics offices.

With respect to the national public sector ethics conference, last spring, the OCOIC in partnership with the Institute for Public Administration of Canada, the University of Toronto and Osgoode Hall law schools and several other co-sponsors, hosted its second biennial public sector ethics conference, entitled "Building Trust in Government". The goal of the conference was to bring a diverse group of professionals together to discuss public sector ethics, strengthen relationships within the ethics practitioner community, expand our networks and identify potential solutions to common challenges. The conference was attended by over 120 professionals in the ethics community from across Canada and, like the 2016 edition, was a resounding success. The proceedings of the conference were recorded in a special issue of *Public Sector Management*, the magazine of the Institute of Public Administration of Canada.

In addition, the OCOIC, in partnership with the HR Policy and Planning Branch of Treasury Board Secretariat successfully hosted two public sector ethics training workshops for public servants in May and September 2018. Through these sessions, over 150 public servants in Ontario government ministries and agencies were trained in the understanding and application of the *PSOA* ethics rules.

Activities Completed in 2018-19

- ❖ Second Biennial Public Sector Ethics Conference, "Building Trust in Government" (May-June 2018).
- ❖ Two Public Sector Ethics Training sessions for OPS and Agency Staff (May and September 2018).
- ❖ Two Ethics Executive Orientation sessions (October 2018 and February 2019) and six Public Body Outreach sessions.

Performance Measures

The OCOIC has a three-year performance measurement plan (2017-18 to 2019-20) that establishes outcomes and related measures against which data is collected and tracked to assess the success of our activities and services. Fiscal year 2018-19 is the second year of the three-year plan.

The performance measures are established for effectiveness, satisfaction, efficiency and output. The following is a sample of our 2018-19 achievements.

Sample Performance Measures 2018-19

Output: Activities in key areas of OCOIC mandate

Activities	2018-19	Change from 2017-18
Conflict of Interest and Political Activity Advice and Determinations Processed	103	+6
Financial Declaration Reviewed	41	-12
Presentations Delivered	6	-15
Ethics Executive Orientation Sessions Held	2	-

Satisfaction: With Ethics Executive Orientations

Activities	2018-19	Change from 2017-18
Overall	88%	-
Relevance	92%	+2
Clarity	87%	-

Efficiency: Provide quality advice, determinations and other supports within customer service targets

Activities	2018-19	Change from 2017-18
Financial Declaration Advice		
Matters acknowledged within 5 business days	100%	+7
Matters resolved within 10 business days	88%	-1
Conflict of Interest and Political Activity Advice and Determinations		
Matters acknowledged within 5 business days	97%	+9
Matters resolved within 10 business days	87%	-4

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

Public Service of Ontario Act, 2006, S. 8 O. Reg. 381/07 s. 79 18-14

An ethics executive sought advice about the *PSOA* to a specially-restricted public servant who was considering running for election to a band council in an indigenous community.

The political activity rules under the *PSOA*, apply to federal, provincial and municipal elections. In the past, the Commissioner interpreted the term “municipal election” to include elections for a school board trustee as these types of elections are governed by the *Municipal Election Act, 1990*. The Commissioner considered various processes by which band council elections could be held and concluded that seeking election to a band council did not, in it of itself, constitute political activity as defined in section 72 of the *PSOA*. As such, the specially-restricted public servant was not prohibited under the political activity rules from seeking a position on a band council.

The conflict of interest rules related to outside activities set out in section 8 of O. Reg. 381/07 are more relevant to this situation. The Commissioner suggested the ethics executive consider (1) seeking a position on a band council and (2) serving on a band council as two distinct activities undertaken outside of a public servant’s role. More specifically, the ethics executive should consider the time commitments associated with both activities, whether these commitments would impact the public servant’s role and if the impact could be minimized through recusals.

Political Activity – Request for Advice

Public Service of Ontario Act, 2006, s. 101(3) 18-257

An ethics executive sought advice about the application of the section 101(3) of the *PSOA* – that is whether a public servant’s employment/appointment should be terminated because the public servant was elected to municipal office.

Unlike the situation with federal/provincial elections, election to municipal office does not lead to the automatic termination of a public servant’s employment/appointment. Rather section 101(3) requires an ethics executive to consider whether the municipal councillor role would interfere with the performance of the public servant’s duties. The Commissioner pointed out that the language of section 101(3) is very similar to the language of the conflict of interest rules set out in section 8(3) of O. Reg. 381/07 which requires an ethics executive to consider if an outside activity would interfere with the

public servant's ability to perform his or her duties to the Crown. The Commissioner suggested that an ethics executive consider the application of section 101(3) first and then consider the conflict of interest rules only if employment/appointment was not terminated.

In applying section 101(3), the Commissioner suggested the ethics executive consider the overlap between the duties of the public servant and role of a municipal councillor. In situations where there is some potential overlap, the Commissioner suggested considering whether the overlap is frequent, predictable, or could be limited with minimal disruption.

Political Activity – Request for Authorization

Public Service of Ontario Act, 2006, s. 92 18-140

A specially-restricted public servant sought authorization to place signs on his/her property indicating support for a municipal election candidate.

Specially restricted public servants may not engage in political activity that is not expressly permitted under the *PSOA*, unless authorization permitting such activity is granted by the Commissioner in accordance with section 92 of the *PSOA*. The Commissioner pointed out that the distinction between municipal election and federal/provincial elections where candidates are aligned with political parties is recognized in the *PSOA* through the imposition of different political activity rules related to municipal elections. As such, while putting up a sign supporting a candidate in a municipal election clearly identifies support for a candidate, it does not necessarily demonstrate support for any political party. Ultimately, the Commissioner granted authorization for the public servant to place signs on his/her property indicating support for a municipal election candidate provided the sign did not identify the public servant as a public servant. The Commissioner also reminded the public servant to not engage in any of the prohibited forms of political activity set out in section 88 of the *PSOA*.

Financial Information

Fiscal Year 2017-18

Standard Account	Printed Estimates	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

Fiscal Year 2018-19

Standard Account	Printed Estimates	*Actual Expenditures
Salaries and Benefits	482,700	528,945
Employee Benefits	65,000	45,726
Transportation and Communication	22,000	5,749
Services	281,800	364,775
Supplies and Equipment	6,000	2,191
Total	857,500	947,386

* (Numbers to be finalized in the 2018-19 Public Accounts)