



Ontario

**Office of the Conflict of
Interest Commissioner**

ANNUAL REPORT

2008-2009

**Office of the Conflict of
Interest Commissioner**

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June 30, 2009

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

Re: Office of the Conflict of Interest Commissioner Annual Report

I am pleased to present to you the annual report of the Office of the Conflict of Interest Commissioner, for the fiscal year 2008-2009.

Yours sincerely,

The Honourable Sidney B. Linden
Commissioner

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COMMISSIONER'S MESSAGE

This is my second report as Ontario's Conflict of Interest Commissioner. I submitted my first report only nine months after my appointment, when the basic processes of starting a new organization had only begun. We are continuing to develop and improve upon the mechanisms for carrying out the mandate of this office.

We spent considerable time this year determining criteria for matters falling within our jurisdiction. We have an overarching mandate to facilitate consistency in the application of the conflict of interest and political activity rules across the Ontario public service. We also have specific responsibilities in relation to certain public servants. A very broad interpretation of our responsibilities would risk circumventing the decision-making responsibility of others, particularly ethics executives. Even if that were desirable, the resulting large caseload would tax the resources of this small office. A very narrow interpretation, on the other hand, could constrain our ability to be helpful and to fulfill the full role the government envisioned for the office. While I believe that the criteria and procedures we are developing will achieve an appropriate balance, I am also committed to continually improving our efforts to achieve this end.

In addition to receiving inquiries and requests for advice and continuing to develop procedures, a significant part of our work this year was concerned with the application of Ontario Regulation 381/07 under the *Public Service of Ontario Act, 2006 (PSOA)* to public bodies.¹ The regulation sets out conflict of interest rules governing both ministry employees and employees and appointees of public bodies. Notwithstanding the intended broad application of these rules, the Act allows public bodies to develop their own rules for my approval.

While many agencies considered developing their own rules prior to August 20, 2008 (one year following proclamation of the Act and the date on which the regulation would apply to them), only a few did. However, the process of considering whether to do so was productive and served to raise awareness about the ethical standards to which all public servants are held. In my view, the small number of agencies that submitted rules for my approval can be attributed to the clarity of the rules set out in the regulation. They proved to be broadly applicable and to address most circumstances.

The need to avoid real or potential conflicts of interest is not a new imperative for those who choose to serve in government. Public servants have always been expected to act with integrity, and the Ontario public service has a well-deserved reputation for excellence in that regard. The implementation of the regulation has provided a consistent and clear standard to assist public servants, within both ministries and many agencies, in upholding that reputation.

¹ "Public bodies" means the subset of Ontario government agencies, boards, and commissions that are subject to the PSOA and regulations.

The role of this office is likewise to assist public servants in their own efforts to avoid conflict of interest. I believe we have a leadership role within the larger ethical governance framework of Ontario's public service. The objective of our office is to support and enhance, rather than to replace, the decision-making responsibility of public servants and their ethics executives. We endeavour to work with public servants toward the common objective of maintaining the public's confidence in the Ontario public service.

The Government of Ontario has laid the groundwork for meeting that objective through the passage of the *PSOA* and by establishing this office. I am confident that this report on our activities conveys our progress toward achieving what the government intended.

The Honourable Sidney B. Linden
Commissioner

INTRODUCTION: THE OFFICE OF THE CONFLICT OF INTEREST COMMISSIONER

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 Ontario public service.

More specifically, the *PSOA* aimed to achieve greater consistency in the application of conflict of interest and political activity rules throughout the public service. The government also sought to clarify lines of accountability in applying those rules, thereby achieving a higher level of transparency and understanding, within and outside government, with regard to conflict of interest and political activity and related best practices.

Among other things, the *PSOA* provided 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 rules and in developing best practices in this area. The *PSOA* also explicitly assigns to the commissioner responsibility for certain conflict of interest and political activity matters with respect to the employees of ministries and public bodies and the individuals appointed to public bodies:

- handling requests for advice or determinations from ethics executives (deputy ministers, chairs of public bodies, and other designated individuals) on conflict of interest matters and political activity matters
- receiving disclosures of financial information from public servants working on matters that involve the private sector
- considering requests from part-time appointees of prescribed public bodies who wish to engage in political activities other than those expressly permitted in the *PSOA*
- serving as the ethics executive for certain public servants
- approving the conflict of interest rules of public bodies.

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. A memorandum of understanding between the government and the Office of the Conflict of Interest Commissioner sets out additional reporting and other responsibilities related to the management, administration, and operation of the office. However, with respect to making statutory decisions, the commissioner is, and must be seen to be, independent and impartial.

Principles and Values

The Office of the Conflict of Interest Commissioner has established principles and values to guide its operations: integrity, administrative fairness, independence and impartiality, transparency, consistency, timeliness, and cost-effectiveness. These principles and values are in keeping with its function as an administrative tribunal that is part of the overall administrative justice system in Ontario.

ACTIVITIES IN THIS FISCAL YEAR

Translating the Mandate into Action

The Office of the Conflict of Interest Commissioner is part of a larger ethical framework for the Ontario public service. The *PSOA* identifies the individuals in ministries and public bodies who are the designated “ethics executives.” For ministries, the ethics executive is the deputy minister. In public bodies, the chair is usually the ethics executive. The commissioner is the ethics executive for certain individuals.

Ethics executives are responsible for providing direction and promoting ethical conduct within the organization. They answer questions about the application of conflict of interest and political activity rules, determine whether the rules have been or are likely to be contravened by an employee or appointee, and provide direction on ways to minimize the likelihood of breaching the rules. However, the statute allows for an ethics executive to seek the commissioner’s advice on how to address a matter or to refer a matter to the commissioner for a determination.

The commissioner’s role

An early priority last year was to analyze the legislation and accompanying regulation to delineate the commissioner’s specific responsibilities within that framework. With that analysis complete, the priority for this year was to ensure a common understanding, within and outside the public service, of the specific manner in which the commissioner’s responsibilities would be carried out.

The commissioner must be able to provide helpful advice, yet neither assume the decision-making responsibility assigned to ethics executives nor fetter his discretion in his own decision-making function in the event that an ethics executive decides to refer the matter to him. Thus, a clear distinction had to be made between, on the one hand, providing advice, and on the other, making a determination, and the commissioner's approach to requests and inquiries had to be set out in detail.

The commissioner seconded a senior administrative lawyer from the Office of the Information and Privacy Commissioner to undertake this very important step. The commissioner's responsibilities under the *PSOA* and in regulations were distilled into procedures setting out the commissioner's role and approach in a variety of circumstances. The procedures address responsibilities such as providing general advice on conflict of interest and political activity matters and authorizing requests to engage in otherwise prohibited political activity.

The commissioner's approach, including the distinction between giving advice and making a determination, is communicated to ethics executives on a case by case basis, and the office has also taken steps to ensure a common understanding of the commissioner's role. The procedures mentioned above are providing the basis for a series of fact sheets for distribution to public servants who seek the commissioner's assistance (see Appendix 5, Sample Fact Sheet).

Shared responsibility with other agencies

During its first months of operation, the office opened lines of communication with other Ontario government agencies that contribute to the ethical framework for Ontario's public service. The intent was to lay a foundation for future work where responsibilities intersect.

This year, the office initiated a number of collaborative efforts with other agencies that have a prescribed role in the administration of the *PSOA*. The objective was to identify gaps or overlapping responsibilities under the *PSOA*, as well as to identify opportunities to work together to assist public servants and ethics executives in applying the Act.

The commissioner's mandated role in relation to the chairs of public bodies and some part-time appointees, as well as in providing advice regarding appointments to these bodies, has provided opportunities to work with the Public Appointments Secretariat during the last year. The objective is to ensure a common understanding of the commissioner's role and to explore ways in which the office may assist during the appointments process. For example, the office is making progress toward developing procedures that are compatible with those of the Public Appointments Secretariat.

The Public Service Commission is another important contributor to advancing the government's ethical framework objectives. The Public Service Commission is responsible for ensuring that public servants who are required to make a financial declaration to the commissioner are advised of this obligation. The office and the Public Service Commission have collaborated to ensure that procedures are compatible and seamless from the public servant's point of view.

Establishing a permanent office structure

Although a notional structure for the office was contemplated by the Ministry of Government Services prior to proclamation of the *PSOA*, the commissioner delayed putting a permanent structure in place pending a full analysis of the functions and actual operating requirements of the office.

The government expected that the Office of the Conflict of Interest Commissioner would be one part of a larger ethical framework, and that officials within the Ontario public service would be responsible for the ethical conduct within their organizations. The commissioner's intent was to limit the office structure accordingly. Following completion of the operational analysis, the commissioner decided on a small permanent staff of five, engaging additional professional, technical and other assistance on a temporary basis as and when necessary.

Contributing to the Understanding of Ontario's Ethical Framework

The expanded definition of "public servant"

Compared with previous public service legislation, the *PSOA* expanded the definition of "public servant" and expanded the categories of individuals thus defined. The purpose was to better ensure consistency in the application of the conflict of interest and political activity rules across the Ontario public service.

With this change, appointees to public bodies are explicitly bound by the rules applicable to other public servants. Some appointees are subject to the additional political activity rules applicable to a specially restricted classification of public servant. For some appointees, activities previously permitted are no longer permitted, or are only permitted if authorized by the commissioner. This is the case for part-time appointees to administrative tribunals. To reflect their decision-making responsibilities, they are now subject to a higher threshold of political neutrality. Where the commissioner has not authorized a request to engage in certain political activities, the change has required some appointees to choose between continuing to serve on a tribunal and continuing to engage in those political activities.

Assisting appointees now governed by the more stringent political activity restrictions with adjusting to their newly-defined status is achieved, for the most part, by communicating the rules and their application. In some cases, the commissioner provided advice on how a specific potential situation could be avoided.

Sharing knowledge

During the year, the commissioner and staff members made several presentations to groups of public servants, including deputy ministers, lawyers, and chairs and appointees of public bodies. These occasions were an opportunity to exchange information and perspectives, thereby furthering the goal of raising awareness of conflict of interest matters and enhancing understanding of the application of the rules.

This year, the commissioner was one of a number of Ontario experts asked to speak to a delegation of Chinese government officials about approaches to avoiding conflict of interest. An

exchange of experiences and views also took place with the outgoing Toronto Integrity Commissioner and with the newly appointed commissioner for Windsor.

The commissioner and staff benefited from a seminar with a well-known ethics expert, invited to discuss emerging issues and trends and administrative fairness practices in government-related ethics, particularly conflict of interest.

The office will continue to seek and respond to opportunities to collaborate with other ethics agencies, including those in other jurisdictions, in order to learn, share experience, and develop best practices.

Approvals, Advice, Determinations and Authorizations

I. Approving rules submitted by public bodies

As of August 2008 (one year following the passage of the *PSOA*), the conflict of interest rules that apply to public servants in government ministries also apply to public servants appointed to or employed in public bodies. These rules are set out in a regulation and specify the prohibited activities that could put a public servant at risk of a conflict of interest (see Ontario Regulation 381/07, Appendix 3). The rules were intended to be broad enough to cover most circumstances a public servant would encounter. Nevertheless, the *PSOA* allows public bodies to develop their own rules for the commissioner's review and approval.

The office assisted some public bodies with assessing the merits of supplementing the rules set out in regulation. By August 20, 2008 (the date after which the conflict of interest rules for ministry employees would be applicable to public bodies), over thirty public bodies had contacted the office to discuss the option to submit their own rules for the commissioner's approval. Ultimately, only 18 of the more than 200 public bodies chose to do so. However, public bodies may seek the commissioner's approval for proposed rules at any time. Rules submitted for approval are analyzed to ensure that the degree of ethical conduct contemplated in them is at least equivalent to the rules in the regulation.

Under the *PSOA*, rules submitted and approved take effect when they have been posted on the website of the Office of the Conflict of Interest Commissioner. In compliance with government standards for public access, approved rules were posted on the office's website (www.coicommissioner.gov.on.ca) in both official languages and in alternative format for the visually impaired.

II. Addressing requests for advice, authorizations and determinations

In total, the office received approximately 115 inquiries and requests during this fiscal year. The first step in dealing with inquiries and requests is to determine whether, and how, the matter relates to the commissioner's mandate. Matters within the commissioner's mandate are then categorized by issue and the commissioner's specific role in the matter is determined.

A. Determining jurisdiction

Inquiries and requests are, broadly speaking, first placed in one of three categories that reflect the extent of the commissioner's responsibility.

The first category is matters unrelated to the government of Ontario. Approximately 25 inquiries were in this category. They were fully outside the commissioner's jurisdiction, in that they were unrelated to a provincial government office or to a public servant as defined in the *PSOA*. In these matters, the reason why the commissioner was unable to pursue the matter was explained to the individual.

The second category is matters concerning some aspect of the government of Ontario, but in which someone other than the commissioner likely has primary responsibility. Approximately 46 inquiries and requests fell into this category. After some analysis, these matters are directed to a more appropriate source of assistance or resolution within the Ontario government. Assisting the government in maintaining public confidence in the public service is one of the commissioner's responsibilities, and it is therefore important that such matters be handled correctly.

For example, one inquiry raised policy questions regarding the secondment of senior ministry officials. A senior ministry official had been seconded to an agency for which that official held significant responsibilities or made high-level decisions. This circumstance could influence the public servant's decisions or exercise of responsibilities in the new position. The situation preceded the commissioner's appointment, but it raised issues that, in the commissioner's view, the minister responsible for policies in the area of secondment of senior officials should consider. The commissioner apprised the minister of the issues and encouraged him to review the relevant policies with a view to mitigating concerns about conflict of interest.

The third category is matters that fall squarely within the commissioner's mandate; that is, where the role of the commissioner in such a matter is explicitly set out in the *PSOA* or accompanying regulations. This year, 46 inquiries and requests were found to be in this category and required full analysis.

B. Defining the issue

Generally, issues in the third category may relate to conflict of interest or political activity.

(i) Conflict of Interest

In public service, conflict of interest is generally understood to mean situations in which public servants have interests outside their responsibilities as public servants that might interfere with their ability to carry out their duties objectively and competently. Prohibited conduct that might lead to a conflict of interest is set out in Ontario Regulation 381/07 (Appendix 3), or in the case of some public bodies, the rules submitted to and approved by the commissioner.

The onus is on public servants to disclose to their ethics executive any situations that have resulted in or might lead to a conflict of interest. Heads of public bodies and other designated public servants and former public servants disclose any such situations to the commissioner as their ethics executive. Other ethics executives, such as deputy ministers, may seek the commissioner's advice in deciding a matter, or may refer a matter to the commissioner for a determination.

During this fiscal year, the commissioner addressed 23 matters concerning an actual or potential conflict of interest.

(ii) *Political Activity*

The *PSOA* sets out permitted and prohibited political activity for public servants. To reflect the nature of their responsibilities, some public servants are designated "specially restricted," and are subject to additional political activity restrictions. Part-time appointees to certain public bodies, for example, are classified as specially restricted. Specially restricted public servants must seek authorization from the commissioner to become involved in political activities beyond those expressly permitted. The commissioner considered three matters related to political activity during this fiscal year.

C. Determining the commissioner's role in the matter

A further distinction is applied, depending on the commissioner's role: providing advice, making a determination, providing authorization, or receiving a financial declaration.

(i) *Providing Advice*

Typically, the commissioner provides advice to assist a public servant or a public servant's ethics executive in making a decision on how to prevent a contravention of the political activity or conflict of interest rules. In the course of providing such advice to the decision-maker, the commissioner may identify relevant sections of the *PSOA* or regulations, or highlight factual or legal issues to consider. He may provide information from related decisions, or offer a possible interpretation of the Act. However, in providing advice, the commissioner does not make findings of fact, draw conclusions regarding the matter, or endorse or reject a course of action.

(ii) *Making a Determination*

In certain situations, usually where the commissioner is the public servant's ethics executive or where an ethics executive has referred a matter to the commissioner, the commissioner is the decision-maker. In making a determination, the commissioner will not only identify relevant information and considerations, as when providing advice, but will also make findings of fact, draw conclusions, and/or provide direction.

(iii) Providing Authorization

A public servant may seek authorization from the commissioner to engage in certain political activities that are otherwise not permitted under the *PSOA*. In making an authorization decision, the commissioner may identify and make findings on relevant factual and legal issues to be considered, refer to other relevant decisions (e.g., of the courts) and/or give advice on how to avoid risking a breach of the political activity rules.

(iv) Receiving Financial Declarations

Public servants routinely working on matters that might involve the private sector (under defined circumstances) must make a financial declaration to the commissioner. This requirement is applicable to public servants in ministries and public bodies. The financial declaration discloses certain financial interests, including those of specified family members. A revised declaration may be required when there is a change in the financial information provided.

The commissioner meets with the public servant to review the declaration. The purpose of the meeting is to discuss the information declared, along with the relevant conflict of interest rules and how they might apply. Following the meeting, the commissioner provides the public servant with written advice. The advice includes steps the public servant might take to ensure compliance with the rules. This year, the commissioner met with 21 public servants to discuss their financial interests and the applicable conflict of interest rules. A sample letter of advice from the commissioner is found in Appendix 4.

Illustrative Case Summaries

The following are summaries of some of the political activity and conflict of interest cases the commissioner addressed this year. The case summaries are intended to serve as examples of inquiries and requests in a variety of situations. Each example makes it clear whether the commissioner was offering advice or making a determination to assist readers in making that distinction.

Case 1: Political Activity – Advice

The chair of a public body sought the commissioner’s advice as to whether a public servant may

- support a person before that person is officially nominated as a political candidate, but after the person has publicly announced an intention to seek nomination to become a candidate
- attend a political party’s annual general meeting, annual dinner, or other events such as a summer barbeque.

Appointees to the public body in question are classified as “specially restricted public servants” under section 85(2) of the *PSOA*. They are only permitted to engage in forms of political activity that are specified in section 89(1).

With respect to the candidate issue, the commissioner said that the first question to decide is whether the appointee's proposed activity falls within the ambit of "political activity" as set out in section 72 of the *PSOA*. Any activity in support of or in opposition to a "candidate" in an election is considered political activity under the section 72(b) of the *PSOA*. The *PSOA* does not define the term "candidate." The commissioner advised that it would be reasonable to adopt the definition provided in the other provincial legislation, which states that an individual only becomes a candidate once an election is formally called through the issuance of an election writ. Based on this definition, the commissioner noted that supporting an individual before he/she is officially nominated as a candidate would generally fall outside the scope of political activity, and therefore this activity would not be subject to the political activity restrictions. However, the commissioner cautioned that, in some circumstances, supporting an individual who has publicly announced an intention to become a candidate and who is *clearly identified with* a federal or provincial political party even before an election is called may be considered an action in support of a political party, and may qualify as political activity as defined under section 72(a) of the *PSOA*.

Regarding the second issue, the commissioner was of the view that attending a political party's annual general meeting, annual dinner, or other event such as a summer barbeque would likely appear to a member of the public to be an activity in support of a political party or candidate. Therefore, the commissioner advised that such activity would likely fit within the scope of political activity, and would not be a permitted form of political activity under the *PSOA*.

Case 2: Political Activity – Advice

The chair of a public body sought the commissioner's advice as to whether a specially restricted public servant could

- purchase tickets for political fundraisers
- attend political fundraisers as either a ticket-holder or as a guest of other ticket-holders.

The primary purpose of a political fundraiser is to raise funds for a particular party or candidate. A member of the public would likely view purchasing a ticket for a fundraiser and/or attending such a fundraiser as an activity in support of a political party or candidate. Accordingly, in the commissioner's opinion, purchasing tickets for political fundraisers and attending political fundraisers, as either ticket-holders or as guests of ticket-holders, would likely fit within the scope of political activity set out in sections 72(a) and (b).

Since specially restricted public servants are prohibited from engaging in any political activity other than what is expressly listed in section 89 of the *PSOA*, the commissioner considered whether the activities in question fell within the scope of these permitted activities. Section 89(1)(b) of the *PSOA* permits a specially restricted public servant to financially support a party or candidate. However, purchasing political fundraiser tickets not only provides financial support for a party or candidate, but also permits the purchaser to attend in person at the fundraiser. In so doing, the public servant is publicly identifying himself/herself as a supporter

of a particular political party or candidate. In the commissioner's view, this would likely be viewed as an additional step in support of a party or candidate and therefore would likely be considered outside the scope of political activity that is permitted under section 89.

Case 3: Conflict of Interest – Advice

The chair of an advisory agency asked the commissioner for advice regarding a concern that an appointee of the agency could benefit from a decision made by the agency in carrying out its mandate. Specifically, the concern was that the decision could generate income opportunities for the appointee.

Section 3(1) of Ontario Regulation 381/07 prohibits public servants from using or attempting to use their employment to directly or indirectly benefit themselves, their spouses, or their children. Section 9(1) states that 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.

The commissioner suggested that the chair consider the likelihood that a benefit would flow to the appointee as a result of the decision. The closer the nexus between the appointee's interests and the decision made, the greater the likelihood of a conflict of interest. In circumstances where a public body's decision could potentially benefit a large proportion of the population, the decision cannot reasonably be seen to be of particular benefit to an appointee.

The commissioner advised that if the chair had any concern that an appointee's participation in the decision-making process had the potential to contravene the conflict of interest rules, the chair could consider steps to minimize the risk. To assist the chair in deciding on steps to minimize the risk of a conflict of interest, the commissioner drew the chair's attention to the range of options available to ethics executives in comparable situations:

- Pursuant to section 9(2) of Ontario Regulation 381/07, the chair may permit an appointee to participate in the decision-making process if, for example, preventing the appointee from participating would severely hamper the organization in carrying out its business.
- Pursuant to section 9(2) of Ontario Regulation 381/07, the chair may allow an appointee to contribute to the decision-making process at the information gathering stage, but preclude him/her from deliberations and from contributing to a final decision.
- Pursuant to section 1(4) of Ontario Regulation 383/07, the chair may request that the appointee recuse himself/herself from participating in any discussions, deliberations and decision-making.

The commissioner advised that in determining which option would be most appropriate, the chair would need to balance concerns about an appointee's potential benefit as a result of a decision with the appointee's anticipated contribution to the decision-making process.

Case 4: Conflict of Interest – Determination

The chair of an adjudicative agency asked the commissioner to determine whether it would be appropriate for him/her to accept free tickets, of nominal value, to an event hosted by a private sector organization. The chair was the former chair of a regulatory agency responsible for governing and regulating the private sector organization.

In his capacity as the chair's ethics executive, the commissioner determined that the role and function of the adjudicative agency the individual presently chaired had no connection to the private sector organization offering the tickets, and that the chair no longer had any decision-making power with respect to the regulation of the private sector organization. The commissioner thus determined that accepting the invitation would not influence the chair in performing his/her current duties as chair of an adjudicative agency. Accordingly, accepting free tickets of nominal value under these circumstances was not prohibited under section 4(1) of Ontario Regulation 381/07.

Case 5: Conflict of Interest – Determination

The chair of a regulatory agency asked the commissioner to determine whether it would be appropriate for him/her to maintain membership in a professional association that had an interest in the work of the agency.

In his capacity as the chair's ethics executive, the commissioner determined that the chair's continued membership in the professional association would contravene the conflict of interest rules set out in section 6, 8(1) and 9(1) of Ontario Regulation 381/07.

Section 6 prohibits a chair from giving preferential treatment to any person or entity while performing his/her duties as chair. Moreover, section 6(2) requires the chair to endeavour to avoid creating the appearance that a person or entity is receiving preferential treatment. Given the overlapping interests of the regulatory agency and the professional association, the commissioner said that the chair's continued affiliation with the professional association could call into question the impartiality of the chair in matters brought to his/her attention by the professional association.

Section 8(1) prohibits a public servant from engaging in an undertaking if his/her private interests in connection with the undertaking could conflict with his/her duties as a public servant. Section 9(1) prohibits a public servant from participating in decision-making 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. The commissioner said that continued involvement with the association could conflict with the chair's ability to perform his/her duties. As a member of the professional association, the chair could benefit from decisions made by the agency affecting the professional association, and therefore would be prohibited from participating in such decisions.

The chair subsequently advised the commissioner that he/she would terminate affiliation with the professional association.

Case 6: Conflict of Interest – Advice

The ethics executive of a public body sought the commissioner's advice about a potential conflict of interest involving an appointee. The ethics executive's concern stemmed from the fact that the appointee was also an employee of a private sector company involved in a matter presently before the courts, and there was a possibility that the appointee, in his/her private sector role, would be asked to take a position on the court proceeding.

To assist the ethics executive in arriving at a determination, the commissioner suggested that the ethics executive might consider the following:

- the role of the public body
- the way in which decisions or actions taken by the public body could influence the outcome of the court process
- the extent to which the appointee could affect decisions or actions of the public body referred to above
- the way in which the appointee could potentially give preferential treatment to the company in the context of the judicial proceeding.

The commissioner indicated that, since the public body was not a party to the court proceeding and therefore not in a position to influence the outcome, the potential for a conflict of interest in this matter appeared to be remote. He further advised that the risk of conflict of interest could be further mitigated by directing the appointee to recuse himself/herself from any discussions directly related to the judicial proceeding.

Case 7: Conflict of Interest – Determination

An employee of a public body asked the commissioner for a determination on a potential conflict of interest matter arising from his/her spouse's recent appointment to a senior position in a related private sector industry. In particular, the public servant sought direction as to how to avoid any conflicts of interest that could arise as a result of interaction between the public servant and the private sector industry.

In his capacity as the public servant's ethics executive, the commissioner reminded the public servant that section 6(1) of Ontario Regulation 381/07 prohibits a public servant from giving preferential treatment to any person or entity in the course of performing his/her duties to the Crown. The commissioner also pointed out the section 6(3) restriction on a public servant's offering assistance to a person or entity in dealing with the Crown, except such assistance as is offered in the ordinary course of his/her employment.

The commissioner directed the public servant to recuse himself/herself from any involvement in the public body's discussions or other activities concerning business undertakings related to his/her spouse's employer. The commissioner further directed the public servant to recuse himself/herself from any discussion or involvement in any business undertaking if he/she became aware that his/her spouse's employer was intending to express an interest in that undertaking.

Case 8: Conflict of Interest – Advice

An ethics executive sought the commissioner's advice regarding a situation where the spouse of a public servant was an applicant for a position reporting to the public servant.

In providing his advice, the commissioner referred to section 7(3) of Ontario Regulation 381/07, which states that 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. In the commissioner's view, it would be reasonable to interpret section 7(3) as prohibiting only *direct* reporting or supervision between family members. However, the commissioner further noted that, in some circumstances, *indirect* reporting and supervision may also result in a conflict of interest, depending on the facts of the case. The commissioner advised that in cases of indirect reporting between family members, the potential for conflict should be identified and appropriately managed by ethics executives. The commissioner also cautioned that no public servant should be involved in any recruitment activities in which a family member of the public servant is an applicant.

Case 9: Conflict of Interest – Determination

The chair of an advisory agency, who was also a volunteer member of a non-government organization, asked the commissioner to determine whether a conflict of interest would arise if he/she made certain statements in his/her volunteer capacity.

Considering section 8 of Ontario Regulation 381/07, the responsibilities of the chair, and the mandates of the two organizations, the commissioner determined that making public statements in a volunteer capacity would not conflict with the public servant's role as chair and ability to perform his/her duties.

Case 10: Conflict of Interest – Advice

In his capacity as ethics executive, the commissioner contacted the part-time chair of a public body who had recently accepted a concurrent position. The commissioner reminded the chair of the outside employment restrictions set out in section 8 of Ontario Regulation 381/07. The commissioner explained that the purpose of that section is to ensure that public servants' private interests in connection with businesses or other undertakings outside the government of Ontario do not conflict with their positions with the Crown. The individual responded by stating that he was mindful of this restriction and was satisfied that his new role would not conflict with his current role as part-time chair.

Case 11: Conflict of Interest and Political Activity – Advice

The chair of a regulatory agency asked the commissioner to provide advice as to whether it would be appropriate for the chair to serve on a committee that was to monitor and write a report on media coverage of an election.

In his capacity as the chair's ethics executive, the commissioner considered the conflict of interest and political activity sections of the *PSOA* and regulations. The commissioner concluded that the chair was subject to the limitations on engaging in undertakings outside the scope of

employment with the Crown as set out in section 8, despite the fact that he/she did not intend to receive compensation for participating on the committee. The commissioner advised that the chair should take the following steps to ensure that his/her involvement in the proposed undertaking did not violate section 8:

- ensure that the time spent on committee activities did not interfere with his/her ability to perform his/her duties as a public servant; and
- refrain from using his/her work premises, equipment or supplies in undertaking committee work.

As a public servant, the chair is also subject to the political activity provisions in section 77 and section 79 of the *PSOA*. The commissioner reminded the chair that he/she was prohibited from participating in any activities set out in section 77. The commissioner also advised that section 79(1)(c) of the *PSOA* restricted the chair's ability to comment publicly on matters directly related to his/her duties as a public servant and that are addressed in the policies of a federal party or a federal candidate, unless the chair obtained an unpaid leave of absence. The commissioner therefore advised that if the chair chose to serve on the committee, he/she would have to ensure that his/her actions, including the comments made in any report, did not contravene the restrictions set out in section 77 or section 79(1)(c).

Case 12: Conflict of Interest – Advice

A former public servant, previously an appointee to a public body, asked the commissioner for advice about post-service activities following the public servant's resignation. The former public servant wished to pursue academic studies.

In his capacity as the former public servant's ethics executive, the commissioner said that although the conflict of interest rules do not prohibit a former public servant from pursuing academic studies, the individual was subject to the post-service restrictions in Ontario Regulation 381/07. In particular, the commissioner drew the former public servant's attention to provisions of section 17 regarding the disclosure of confidential information. The former public servant, routinely privy to confidential government information during his/her appointment, was reminded that he/she is prohibited from using and disclosing any of this confidential information in the course of his/her studies.

Case 13: Conflict of Interest – Advice

A former public servant, previously employed in a public body, requested the commissioner's advice relating to post-service employment with a private sector entity. In particular, the commissioner was asked to advise on any potential conflicts of interest that could arise as a result of the current employer's potential involvement in a project on which the former public servant had worked during the last several months of his/her employment with the public body.

The former public servant advised that his/her current employer was prepared to put barriers in place to isolate him/her from the project by

- identifying individuals working on the transaction and ensuring that they were instructed not to discuss the matter with the former public servant; and
- developing and implementing procedures to ensure that the former public servant did not participate in meetings where the matter was to be discussed.

The commissioner advised that these steps would likely mitigate the risk that a conflict of interest would arise.

Case 14: Conflict of Interest – Determination

An ethics executive referred a matter to the commissioner for a determination pursuant to section 65(6) of the *PSOA*. The issue was whether the conflict of interest rules would restrict a public servant's ability to accept employment with a publicly funded entity.

Following a review of the public servant's positions with the government over the preceding 12 months, the commissioner found that the post-service conflict of interest rules set out in Part II of Ontario Regulation 381/07 would not prevent him/her from accepting the position. However, the commissioner also found that restrictions would apply to the public servant in his/her new position, either permanently or with time limits. Section 16 regarding the restrictions on giving preferential treatment and section 17 regarding the restriction on sharing of confidential information would remain in force permanently. The restrictions on lobbying, set out in section 18, would be in force for a period of 12 months from the date the public servant ceased to be a public servant. Section 20, restricting transactions involving the Crown, would remain in effect until the Crown ceased to be involved in any proceeding, negotiation, or other transaction on which the public servant worked while a public servant.

The commissioner also noted that the restrictions on employment set out in section 19 would not apply because, during the preceding 12 months, the public servant had not had substantial involvement with the new publicly funded entity. In addition, the public servant had sufficiently recused himself/herself from any decisions of the Crown related to that entity.

Case 15: Conflict of Interest – Advice

A public servant's ethics executive sought the commissioner's advice as to when lobbying and employment restrictions would apply to certain former public servants.

Sections 18 and 19 of the *PSOA* impose lobbying and employment restrictions on certain former public servants for a 12-month period starting when they "cease" to be public servants. However, the *PSOA* does not define what it means to cease to be a public servant. In the commissioner's view, there are two possible interpretations:

- public servants cease to be public servants when they relinquish all duties and responsibilities related to their former positions as public servants; or
- public servants cease to be public servants when they fully terminate their relationship with the Crown (for example, when they no longer receive payment).

The commissioner said that "ceases," in this context, appears to suggest a complete termination of public servant status. When a public servant relinquishes his/her duties and responsibilities but continues to be paid deferred salary or other payments related to salary, for example, it may appear to members of the public that the former public servant continues to have an employment relationship with the government. The commissioner advised that, although both interpretations of "cease" to be a public servant are possible, the second interpretation appeared to be more in keeping with the language as well as the general purpose and spirit of the *PSOA*.

The ethics executive subsequently notified the commissioner that the commissioner's preferred interpretation had been adopted.

Case 16: Conflict of Interest – Advice

A former public servant requested advice about the conflict of interest rules under the *PSOA* for the purpose of assessing the appropriateness of pursuing future consulting opportunities with the Ontario government.

In his capacity as the former public servant's ethics executive, the commissioner provided advice about the conflict of interest rules. The commissioner advised that as a former public servant who had been employed in a designated senior position (see section 14 of Ontario Regulation 381/07) immediately before he/she ceased to be a public servant, he/she was subject to the restrictions in sections 16, 17, 18, 19 and 20 of Ontario Regulation 381/07. In providing advice, the commissioner distinguished between restrictions that remain in effect permanently and others that are time-limited. (Please refer to Case 14.)

With respect to the application of section 19, which deals with restrictions on employment, the commissioner said that, in his view, public servants would likely be considered to cease to be public servants only when they fully terminate their relationship with the Crown (for example, they are no longer receiving salary-related payments). (Please refer to Case 15.) The commissioner advised that section 19 would not prevent the former public servant from accepting a consulting opportunity, as long as the consulting assignment was unrelated to the responsibilities of the former public servant during the 12 months prior to ceasing to be a public servant.

PERFORMANCE TARGETS

Government strives to achieve positive outcomes, and with increasing demand for accountability, there is growing emphasis on measurable results. The underlying assumption is that objective numbers allow government administrators to monitor demand for a service and analyze success in providing the service effectively. The functions of this office go beyond easily quantifiable performance indicators. A higher number of requests for advice may signal the value of this office as a resource, but lower figures could just as well be taken as evidence that continuing efforts by the office to educate the public service about conflict of interest and political activity matters and clarify the application of the rules are working well.

Customer service is an area where performance targets may be more readily measured. The “customers” for the office are generally public servants, including ethics executives, individuals for whom the commissioner is the ethics executive or for whom he fulfills another defined advisory or decision-making role, and public servants who work on matters that involve the private sector. Customers, so called, may also be individuals who do not work in the Ontario government, but who wish to raise a concern about a potential conflict of interest or political activity matter involving the government or entirely unrelated to the government.

A procedure for submitting complaints about services that the office provides was put in place in the first year of operation. Preliminary standards are being put in place for handling requests for advice or determinations. A key standard is timeliness. Matters brought to the commissioner’s attention typically move through either two or three stages, depending on how the matter relates to the commissioner’s mandate and the complexity of the matter. The office is developing targets for each stage (initial acknowledgement, making further inquiries required, and providing a response), whether redirecting the inquiry, providing advice, or making a determination, as the case may be. Design and implementation of an electronic case management system to facilitate meeting these targets is a priority for next year.

The execution of the functions of the office is governed by the principles and values established early in its operations. The office is continuing to develop procedures and guidelines based on those principles and values. Once completed, the procedures and guidelines may serve as a foundation for developing further performance measures based on adherence to those principles. Meanwhile, the office received no complaints about service in this fiscal year, either informally or formally through the complaints system.

PRIORITIES FOR NEXT YEAR

In addition to continuing the work described above, the office has identified a number of priorities for next year:

Design and Implement a Case Management System

The work of specifically describing the commissioner's responsibilities has laid the foundation for designing and implementing a case management system and database. This work has helped to clarify the fields of information to be recorded and tracked for each request for advice or determination received.

Many inquiries lead to additional issues requiring attention. A case management system will help ensure complete and timely file management. It will also assist the commissioner in identifying trends and issues, fulfilling his reporting responsibilities, and achieving consistency in the application of conflict of interest rules across the Ontario public service.

Redesign the Website

Redesigning the website was identified as a priority soon after the commissioner was appointed. It was listed as a priority in last year's report, but it became apparent that to make the redesign effective, other elements, especially procedures and guidelines, should be in place first.

The office remains committed to redesigning the site to better direct and facilitate inquiries and requests, to serve as a vehicle to enhance understanding about Ontario's ethical framework and the commissioner's role within it, and to assist public servants and ethics executives in interpreting and applying the new rules.

Develop Education Materials

Providing information, as procedural or substantive issues with potentially broad application come to light, is an ongoing function of the office. With much of the organizational and procedural foundation in place, the office plans to further advance this objective of contributing to the decision-making of others on conflict of interest and political activity matters. In concert with redesigning the website to make information more accessible, education materials such as periodic bulletins will be developed.

Develop Ways for Ethics Executives to Share Experience

As described above, the intended role of the ethics executive has been an important consideration in defining the extent and limits of the commissioner's responsibilities. Ethics executives are the primary decision-makers within their organizations. When called upon, the commissioner assists them with this task.

The case summaries in this annual report will serve as guideposts when ethics executives are called upon to provide advice or make a determination. However, they are likely a fraction of the matters arising throughout the public service. The commissioner himself is an ethics

executive for certain individuals and could benefit from the experience of colleagues. It would assist ethics executives across the government to know how other ethics executives have dealt with a variety of situations and inquiries. Sharing experience would help to achieve greater consistency in the application of conflict of interest rules. In the coming year, the office intends to work with government officials to identify ways through which ethics executives could share information regarding advice provided and decisions made, keeping in mind privacy and confidentiality requirements.

APPENDICES

Appendix 1: Appointees

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

Appointee	Effective Date of Appointment	End of Term
Justice Sidney B. Linden	July 30, 2007	July 30, 2012

Appendix 2: Financial Summary

FINANCIAL INFORMATION FOR FISCAL YEAR 2008-09

Standard Account	2008-2009	
	Estimated Expenditures	2008-2009 Actual Expenditures
Salaries and wages	\$ 678,300	\$ 443,577
Employee benefits	78,600	38,516
Transportation and communication	71,200	13,992
Services	132,600	397,565
Supplies and equipment	46,000	22,368
Subtotal:	<hr/> \$ 1,006,700	<hr/> \$ 916,018
Variance		90,682
TOTAL	<hr/> \$ 1,006,700	<hr/> \$ 1,006,700

Appendix 3: Ontario Regulation 381/07

ONTARIO REGULATION 381/07

made under the

PUBLIC SERVICE OF ONTARIO ACT, 2006

Made: June 27, 2007

Filed: July 25, 2007

Published on e-Laws: July 27, 2007

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

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

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PART I
RULES FOR PUBLIC SERVANTS WHO WORK IN A MINISTRY

INTERPRETATION

Definitions

1. In this Part,

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

“gift” includes a benefit of any kind;

“spouse” means,

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

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

Application

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

PROHIBITED CONDUCT

Benefiting self, spouse or children

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

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

Accepting gifts

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

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

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

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

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

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

Disclosing confidential information

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

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

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

Giving preferential treatment

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

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

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

Hiring family members

7. (1) A public servant shall not, on behalf of the Crown, hire his or her spouse, child, parent or sibling.
- (2) A public servant shall not, on behalf of the Crown, enter into a contract with his or her spouse, child, parent or sibling or with a person or entity in which any of them has a substantial interest.
- (3) A public servant who hires a person on behalf of the Crown shall ensure that the person does not report to, or supervise the work of, the person's spouse, child, parent or sibling.
- (4) A public servant who reports to, or supervises the work of, his or her spouse, child, parent or sibling shall notify his or her ethics executive.

Engaging in business, etc.

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

Participating in decision-making

9. (1) A public servant shall not participate in decision-making by the Crown with respect to a matter that the public servant is able to influence in the course of his or her duties if the public servant could benefit from the decision.
 - (2) Subsection (1) does not apply if the public servant obtains the prior approval of his or her ethics executive to participate in decision-making by the Crown with respect to the matter.
 - (3) A public servant who, in the course of his or her employment in a ministry, is a member of a body or group shall not participate in, or attempt to influence, decision-making by the body or group with respect to a matter if the public servant could benefit from the decision or if, as a result of the decision, the interests of the body or group could conflict with the interests of the Crown.
 - (4) A public servant described in subsection (3) shall inform the body or group if the circumstances described in that subsection exist.

MATTERS THAT MIGHT INVOLVE THE PRIVATE SECTOR

Interpretation

10. (1) Sections 11 and 12 apply to every public servant who works in a ministry, who routinely works on one or more matters that might involve the private sector and who has access to confidential information about the matter obtained during the course of his or her employment by the Crown.
 - (2) In this section and in sections 11 and 12,
"matter that might involve the private sector" means a matter,
 - (a) that relates to services currently provided under a program of the Crown or by a public body, an agency of the Crown or a corporation controlled by the Crown with respect to which it is possible that a private sector entity will provide all or part of the financing for the services or will provide some or all of the services, and
 - (b) that has been referred to a ministry, a public body or an agency of the Crown by the Executive Council or a member of the Executive Council for review or implementation.

Duty to declare certain financial interests

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

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

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

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

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

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

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

Prohibition on certain purchases

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

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

- (3) The prohibition described in subsection (1) ceases to have effect with respect to the matter,
 - (a) six months after the date on which the action in respect of the matter is completed; or
 - (b) six months after the date the Crown ceases to work on the matter.

List of positions

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

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

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

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

INTERPRETATION

Definition

14. In this Part,

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

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

Application

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

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

PROHIBITED CONDUCT

Seeking preferential treatment, etc.

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

Disclosing confidential information

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

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

Restriction on lobbying

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

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

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

Restriction on employment, etc.

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

(a) had substantial involvement with a public body or another person or entity; and

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

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

Restriction re certain transactions

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

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

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

Appendix 4: Sample Financial Declaration Letter of Advice

**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: coicommissioner@ontario.ca
www.coicommissioner.gov.on.ca

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

18e étage, bureau 1802
2, rue Bloor Est
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Tél. : 416 325-1571
Télééc. : 416 325-4330
Courriel: coicommissioner@ontario.ca
www.coicommissioner.gov.on.ca



Ontario

**Office of the Conflict of
Interest Commissioner**

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

PERSONAL AND CONFIDENTIAL

September [REDACTED]

[REDACTED]

Dear [REDACTED]:

**Re: Financial declaration regarding matters that might involve the private sector
Ministry of [REDACTED]
Public Service of Ontario Act, 2006
Ontario Regulation 381/07, sections 10, 11**

Thank you for meeting with me on [REDACTED] to make a financial declaration regarding matters that might involve the private sector, under the *Public Service of Ontario Act, 2006* (the Act).

The purpose of our meeting was to allow me to assess certain aspects of your personal financial interests and those of specified family members, to understand the private sector matter(s) you may be involved with, and to provide advice on how you may avoid contravening the relevant conflict of interest rules.

At our meeting, we reviewed the extent of your duty to disclose financial information relating to you and your family members under section 11 of Ontario Regulation 381/07. We also reviewed the financial information you provided relating to you and your family members. You also signed a completed financial declaration form which confirms your current financial interests and those of your family members. In addition, we reviewed and discussed the private sector

matter(s) you may be involved with. Finally, we identified and reviewed some of the conflict of interest rules that may be applicable to your financial situation.

On the basis of the information you provided at our meeting and your financial declaration, it does not appear as though any of the conflict of interest rules in Ontario Regulation 381/07 are being contravened as a result of your financial interests and those of your specified family members. Based on the size and nature of your current holdings, I do not believe it is necessary for you to take any action with respect to these shares at this time. While your current financial interests do not raise any immediate conflict of interest concerns, I wish to remind you of the prohibitions on certain purchases that are set out in section 12(1) of Ontario Regulation 381/07. In addition, you are required to make a revised financial declaration to me if your financial interests, or those of your spouse or dependent children, change. You may also be required to make a financial declaration if your circumstances otherwise change (*e.g.*, you become involved in a new matter that might involve the private sector) or you are directed to do so by your ethics executive, [REDACTED], or the Public Service Commission.

As Commissioner, I am responsible for giving advice to you on issues specifically arising from your financial declaration. However, your ethics executive has broader responsibility with respect to your compliance with all of the conflict of interest rules, and may make determinations or give directions on conflict of interest matters affecting you. Should circumstances arise which could raise an issue under the conflict of interest rules, you are required to notify your ethics executive, [REDACTED], of the matter, pursuant to section 65(3) of the *Act*.

As we discussed, I will provide a copy of this letter to your ethics executive, so that he will be aware that you have met with me. Please do not hesitate to contact my office should you have any questions.

Yours sincerely,

The Honourable Sidney B. Linden
Commissioner

cc.



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

Financial Declaration Fact Sheet

Who needs to make a financial declaration to the Commissioner?

The *Public Service of Ontario Act, 2006* (the *Act*) and its regulations require a public servant to make a financial declaration to the Commissioner where the public servant:

- works in a ministry or public body
- routinely works on one or more matters that might involve the private sector
- has access to confidential information, and
- is beginning to work on the private sector matter²

What is the purpose of the financial declaration?

The purpose of the declaration is to identify possible conflicts of interest arising from your financial interests and those of specified family members, and your work on a matter that might involve the private sector, and to take steps to address them.

How do I start the process?

If you are a public servant who works in a ministry, the Public Service Commission will notify you of your duty to make a financial declaration to the Commissioner, and provide you with a blank financial declaration form. If you believe you have a duty to make a financial declaration but you have not been so notified, you should contact the Commissioner's office for advice as to how to proceed.

What do I do next?

The next step is to fill out the form (but do not sign it) and send the completed form to the Commissioner's office (by regular mail or courier), together with:

- any correspondence you may have received regarding your duty to make a declaration (*e.g.*, a notice from the Public Service Commission)
- a description of the matter or matters that you are or will be working on that might involve the private sector, and
- a list of the private sector entity or entities that are or will be involved in the matter or matters.

² See the definition of the term "matter that might involve the private sector" in Ontario Regulation 371/07, s. 10(2).

What happens next?

The Commissioner's office will review your information and make sure it is complete. If so, the Commissioner's office will contact you to set up an appointment and to provide general information about the financial declaration process.

What happens at the meeting with the Commissioner?

At the meeting, you and the Commissioner will discuss the information you have provided, and the relevant conflict of interest rules and how they may apply. Also, you and the Commissioner will sign the form, if it is accurate and complete.

What happens after the meeting?

Once the Commissioner has all necessary information (including any additional information that may be sought after the meeting), the Commissioner will provide you with written advice on what conflict of interest rules may be applicable to you in light of your financial information, and what steps may be taken to ensure that you are in compliance with these rules. The Commissioner may send a copy of this advice to your ethics executive.

In addition, the Commissioner may provide your ethics executive with written advice about what steps may be taken to ensure compliance with the conflict of interest rules.

Why might my ethics executive become involved?

Your ethics executive has responsibility for ensuring that you comply with the conflict of interest rules, and he or she may make determinations and give directions on conflict of interest matters. Accordingly, the Commissioner may need to inform your ethics executive of relevant information arising from your financial declaration.

Will the Commissioner contact any other individuals or organizations?

At any time during the process, the Commissioner may contact other individuals or organizations for the purpose of confirming or supplementing information that you provide.

Will my information be treated confidentially?

The Commissioner will treat your information as personal and confidential. The Commissioner will hold your information in a secure manner, and will not disclose it to anyone without your consent, unless it is necessary to do so to carry out the purposes of the *Act*, or the Commissioner is otherwise required to do so by law.

What if my financial interests change?

You may be required to make a revised declaration to the Commissioner if your relevant financial information changes.

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