

Legislative
Assembly
of Ontario



Assemblée
Législative
de l'Ontario

Annual Report

2002 - 2003

Office of the Integrity Commissioner

Ontario

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Office of the Integrity Commissioner
The Honourable Coulter A. Osborne, Q.C.
Commissioner

Bureau du Commissaire à l'intégrité
L'honorable Coulter A. Osborne, C.R.
Commissaire

July 18, 2003

**The Honourable Gary Carr
Speaker of the Legislative Assembly
Room 180, Legislative Building
Queen's Park
Toronto, Ontario
M7A 1A2**

Dear Mr. Speaker:

It is an honour to present the Annual Report of the Office of the Integrity Commissioner for the period April 1, 2002 to March 31, 2003.

This Report is submitted pursuant to section 24 of the *Members' Integrity Act, 1994*.

Yours very truly

A handwritten signature in black ink, appearing to read 'Coulter A. Osborne'.

The Honourable Coulter A. Osborne

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COMMISSIONER'S REMARKS



The Honourable Coulter A. Osborne

All matters pertaining to the *Members' Integrity Act, 1994*, the *Lobbyists Registration Act, 1998*, *MPP Compensation Reform Act (Arm's Length Process), 2001* and the *Cabinet Ministers' and Opposition Leaders' Expenses Review and Accountability Act, 2002* come within the ambit of my responsibilities as Integrity Commissioner. This is my second Annual Report as Integrity Commissioner since my appointment in September 2001.

With the passage of the *Cabinet Ministers' and Opposition Leaders' Expenses Review and Accountability Act, 2002* my office was given additional responsibilities, generally related to the review of expense claims of Ministers, Parliamentary Assistants, Opposition Leaders and their respective staffs. As a result of these additional responsibilities in April 2003 we moved from 415 Yonge Street to 2 Bloor Street East, Suite 2101, Toronto, M4W 1A8. Our telephone, fax numbers and email addresses remain the same.

I have reported separately on the review of expense claims required by the *Accountability for Expenses Act*. Accordingly, I will limit my comments on that *Act* by first observing that all three parties have endorsed the *Act's* objectives of achieving an open, accountable and fair system in relation to expense claims. Second, I want to thank all those covered by the *Act*, and their staffs for their cooperation in establishing workable systems for the review that is required by the *Act*. There are, of course, some wrinkles in the system. I am, however, confident that as we move forward an acceptable and sensible degree of consistency in the filing of expense claims by those covered by the *Act* can be achieved. I have written to the Premier, the Leader of the Opposition and the Leader of the Third Party seeking their comments about some of the identified problems in the system.

The principal work of this office continues to involve responding to members' inquiries, investigating complaints about alleged breaches of various provisions of the *Members' Integrity Act, 1994*, receiving and reviewing members' financial disclosure statements, meeting annually with all members and preparing members' public disclosure statements. I deal with all of those

matters as an Officer of the Legislature whose jurisdiction is defined by the provisions of the *Members' Integrity Act, 1994*.

Section 28 of the *Members' Integrity Act, 1994* permits members to seek my opinion and recommendations, "...on any matter respecting the members' obligations under this Act and under Ontario Parliamentary Convention". In the past year my office has provided 292 opinions and recommendations under section 28. As a matter of practice, absent exigent circumstances, we receive section 28 inquiries in writing, although the first contact with my office is frequently by telephone. The requirement for writing, which is required by the *Act*, permits us to better match the inquiry and the response. I encourage members to continue to be aware of, and use, this office to resolve matters of concern to members provided, of course, that I have jurisdiction to deal with the matter in the prevailing circumstances.

The *Members' Integrity Act, 1994* sets out what amounts to a code of conduct for members and Cabinet Ministers. There are specific sections, such as sections 2, 3 and 4 which, if breached, constitute an offence under that *Act*. In addition to specific offence sections, the *Members' Integrity Act, 1994* clearly makes a breach of "parliamentary convention" an offence under the *Act*. In Reports responsive to conflict allegations I have defined parliamentary convention as:

"[T]hat which is generally accepted as a rule or practice in the context of norms accepted by parliamentarians. The elements of parliamentary convention are framed by the core principles which provide the general foundation for the *Act* as set out in the *Act's* preamble."

It is my hope members will be mindful of their specific responsibilities under the *Act* and in addition mindful of their clear and equally important, obligation to act in a manner consistent with parliamentary convention.

Under the *MPP Compensation Reform Act (Arm's Length Process), 2001* I will not be reviewing members' compensation until 2005, consistent with the recommendations of The Honourable Gregory Evans, Q.C. in his August 2001 Report under that *Act*. At present I am attempting to determine, well in advance of the next review, whether I have jurisdiction over members' pension arrangements. I hope to be able to clarify that issue shortly.

I continue to be concerned about the behaviour of members in the Legislature. As someone looking from the outside in, it appears to me that the line between reasonable debate and partisan, personal attack is too frequently blurred. Too often the product of what is passed off as discussion and debate is nothing short of a public embarrassment. It is my hope, which I do not express with much confidence, that steps will be taken to significantly elevate behaviour in the Legislature.

Before concluding I want to recognize the contributions to my office of my Executive Administrative Officer, Lynn Morrison and my Administrative Assistant, Claire Miller. My work is made much easier as a result of the productive on-going relationship between Ms. Morrison and members' Queen's Park and Constituency Office staff.

OVERVIEW

A. *NEW PREMISES*

As a result of the recent increase in the responsibilities of this office and the resultant need for additional office space, our office moved in April, 2003. We are now located at:

Suite 2101, 2 Bloor Street East,	416-314-8983 (voice)
Toronto, Ontario, M4W 1A8	416-314-8987 (fax)

Telephone and fax numbers and email addresses have not changed.

B. *DISCLOSURE STATEMENTS*

MPPs have the option of filing Annual Private Disclosure Statements either manually or electronically. We have now had two years' experience with the electronic filing system and each year, the number of users has increased. It is our hope that over time all members will file on-line.

On December 20, 2002, we filed 103 Public Disclosure Statements with the Clerk of the Legislative Assembly in accordance with s.21(6) of the *Members' Integrity Act, 1994*. All members were in compliance with the *Act*.

The Public Disclosure Statements are available for examination by the public and copies are available through the Clerk of the Legislative Assembly. It is our intention to have Public Disclosure Statements available on the website.

C. *THE ACCOUNTABILITY FOR EXPENSES ACT (CABINET MINISTERS AND OPPOSITION LEADERS) 2002*

On November 28, 2002, *The Accountability for Expenses Act (Cabinet Ministers and Opposition Leaders) 2002* was introduced. It received Royal Assent on December 13, 2002. In introducing the legislation, The Honourable David Tsubouchi, Chair of Management Board of Cabinet stated:

I'm pleased to introduce the latest measure in this government's ongoing commitment to improve accountability in the way taxpayers' dollars are spent. The legislation... will... put into place a clear and transparent means to govern the expenses of ministers, parliamentary assistants, the leaders of the opposition parties and their staff. It would protect Ontario's taxpayers from unnecessary expense by bringing a consistent and high level of oversight to expenses paid out

of the public purse. It will bring more openness, accountability and fairness than there ever has been in Ontario or in fact in Canada before.

The legislation gives the Integrity Commissioner the authority to review expenses and direct repayment or recommend other remedial action with respect to expenses relating to travel, hotels, meals and hospitality.

The *Act* provides that all expenses incurred by ministers, parliamentary assistants, leaders of the opposition and their staff must be filed with the Integrity Commissioner by the end of April in each year and the Integrity Commissioner is required to report annually to the Speaker of the Legislative Assembly.

As a first step, and as provided by the *Act*, expenses incurred during the period 1995 to 2002 were filed with the Integrity Commissioner by December 31, 2002 and a report by the Integrity Commissioner was issued on January 31, 2003 with respect to the review of those expense claims. A copy of the report is available on our web site at <http://integrity.oico.on.ca>

This review was a substantial undertaking because of the number of transactions involved and the short time provided by the *Act* to complete and report on the review. Many reimbursements were generated before the review process began as a result of internal reviews of expense claims. In addition, the various queries made to contact persons generated further reimbursements totaling \$54,500.

The Commissioner was satisfied that the expenses which were reviewed, net of reimbursements made, were allowable expenses under the *Act* and made the following recommendations:

- (1) *Expense claims should invariably set out of the business purpose of the expenditure incurred (i.e. reference to an event, meeting etc.);*
- (2) *Expense claims for meals should include details of the persons in attendance and reasonable information of the items paid for. I recognize that there will be some instances where for privacy and confidentiality reasons it may not be appropriate to include information with respect to the persons in attendance as part of the expense claim. In such instances the expense claimant should at the very least maintain a record of those in attendance. I hope to meet with the Speaker and the Chair of Management Board in the near future to establish an arrangement under which my office can be informed about the attendees at meetings involving third parties;*
- (3) *Taxi chits should include To/From information;*
- (4) *Mileage claims should include information about the particular locations traveled to and, of course, the business purpose of the trip;*
- (5) *Where practicable original receipts should be made part of expense claims, in addition to credit card slips or credit card statements. This will avoid*

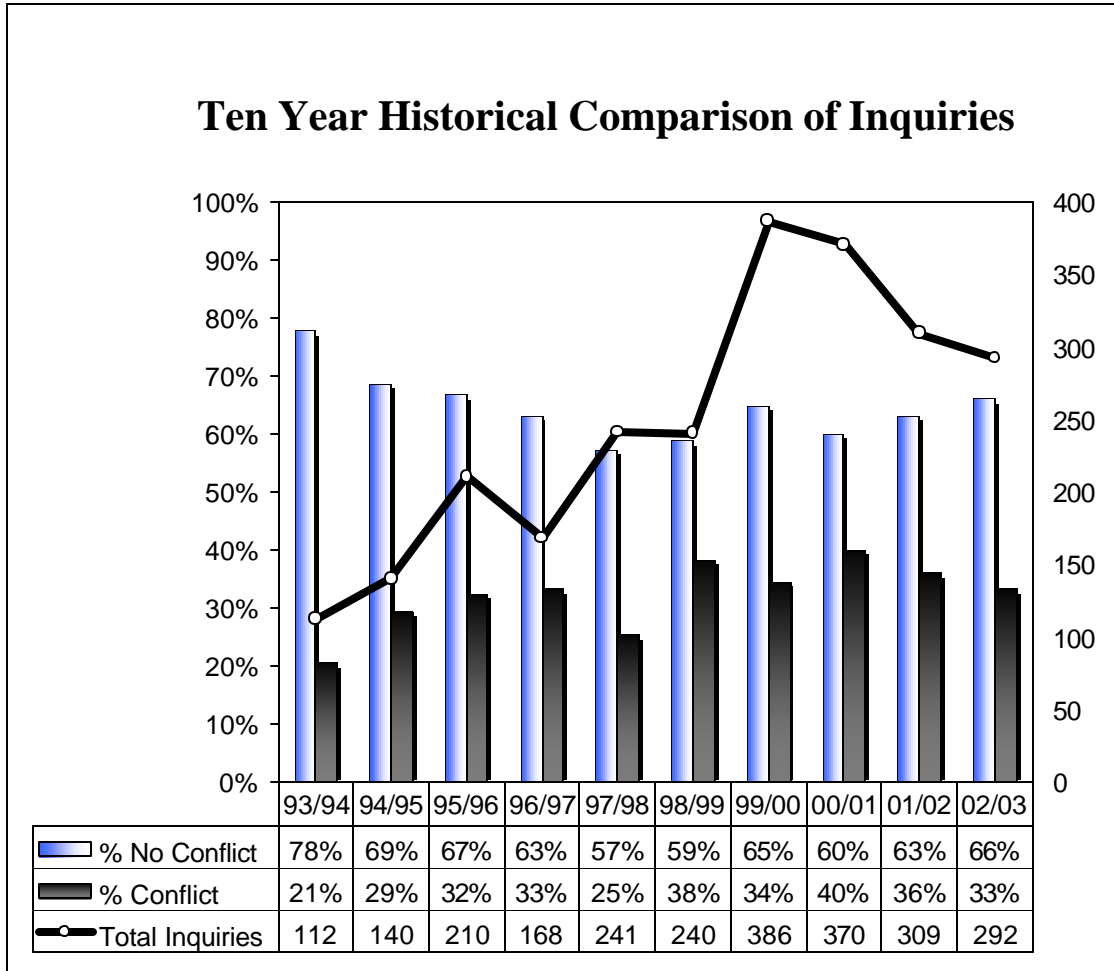
the relatively few instances where an expense claim was made twice, once on the basis of a credit card slip and again on the basis of the original receipt.

(6) To facilitate ongoing reviews of reviewable expenses all ministries should record, process and retain expense claims in the same way. Reviewable expense claims should be made available to my office at regular predetermined intervals. I will discuss those systemic issues with the Speaker and the Chair of Management Board shortly.

A review of all expense claims for the period January 1, 2003 to March 31, 2003 has also been completed, and a Report to the Speaker was filed on June 9, 2003. The Report is available on our web site at <http://integrity.oico.on.ca>.

INQUIRIES

A. STATISTICS



Not all annual percentages total 100%. The difference represents miscellaneous inquiries which were withdrawn or were not within the Commissioner's jurisdiction.

Inquiries Received April 1, 2002 to March 31, 2003

Received from	Number Received	Conflict	No Conflict	No Jurisdiction
Member	284	97	185	2
Spouse	0	0	0	0
Trustee	0	0	0	0
Caucus	2	0	2	0
Executive Council	1	1	0	0
Committee	0	0	0	0
Former Minister	5	0	5	0
TOTAL	292	98	192	2

B. SELECTED INQUIRIES UNDER SECTION 28

The following summary of inquiries reflects advice provided by the Commissioner in the past fiscal year. These examples are not exhaustive and are abbreviated due to space limitations. The summaries are intended to raise the awareness of members and their staffs and bring to their attention potential issues with the expectation that this office will be contacted for advice and guidance when such issues arise. It should be noted that each inquiry is based on its own disclosed facts and that the opinion issued is based on those facts.

INQUIRY NO. 1

Issue:

A constituency assistant inquired as to her office's responsibilities with respect to a police fraud investigation of a constituent for whom they have provided assistance.

Opinion:

Records held by MPPs are excluded from coverage under the *Freedom of Information and Protection of Privacy Act*. Accordingly, MPPs do not have an obligation under the *Act* to release any information; however, the ultimate decision is up to the MPP. If the MPP decides to release information, the Commissioner suggested that the basic privacy principles be taken into account. For guidance, the MPP was referred to Part III of *FIPPA*.

INQUIRY NO. 2

Issue:

A constituent who was considering seeking the Progressive Conservative nomination for the next provincial election asked an MPP for detailed monthly expenses associated with the MPP's

position as MPP and with the government, together with a copy of all applicable policies and procedures.

Opinion:

The MPP is not required to provide the requested information, however, he could provide a copy of the relevant sections of the Guide to Members' Allowances and Services and Members' Support and Caucus Staff. The MPP may also wish to advise the constituent as to the process to be followed to obtain information which is made available to the public either directly through the Finance Department of the Legislative Assembly or through Access to Information.

INQUIRY NO. 3

Issue:

A Crown Attorney has refused to drop a prohibition motion with respect to firearms owned by a constituent and the constituent is requesting the MPP's assistance in retrieving the firearms.

Opinion:

Although the Legislature and the judiciary are both branches of the provincial government, they are separate and independent and in accordance with parliamentary convention, any encroachment in either direction is strictly forbidden. Our democratic system of government is composed of three branches – Legislative, Executive, and Judicial. Each is supreme within its own jurisdiction. A court case is a judicial proceeding with specific provisions for appeals. Legislators should never communicate with a judge or other judicial officer with respect to a matter which is or which has been before the court.

If the constituent is not happy with the outcome in court, the MPP may consider providing advice with respect to the appeal procedures which are available to the constituent. However, any further involvement may be interpreted as an attempt to interfere with or influence the decision, contrary to the *Members' Integrity Act, 1994*.

INQUIRY NO. 4

Issue:

A family has a complaint against a local Children's Aid Society ("CAS") and the Executive Director of the CAS has requested a meeting with the constituent in the MPP's office. The MPP has indicated that he is only facilitating the process and not intending to direct it.

Opinion:

The constituent is not represented by counsel, and it was the Commissioner's opinion that under s.5 of the *Members' Integrity Act*, the MPP is entitled to act as a facilitator during the meeting.

INQUIRY NO. 5

Issue:

An MPP's campaign team has asked the MPP if they can provide a link from their web site to the MPP web site, in preparation for the upcoming election.

Opinion:

The *Members' Integrity Act* does not apply to the riding associations or the members' campaign offices. However, linking the MPP web site to the campaign or riding association web site would be inappropriate, as such link would be political in nature.

INQUIRY NO. 6

Issue:

A constituent asked an MPP to contact the Minister of Enterprise, Opportunity and Innovation in support of a business enterprise for which government funding is being sought. In addition, the constituent has requested a referral to a provincial/federal lobbying firm that would be qualified to assist in this regard.

Opinion:

Contacting the Minister as requested is considered a permissible activity under s.5 of the *Members' Integrity Act, 1994*. However, referring constituents to a particular business, e.g. a lawyer or lobbyist, may be interpreted as favouring that business. Although not necessarily a violation of the *Act*, it was the Commissioner's opinion that the safer route would be to refer the constituent to the Lobbyists Registration Office web site.

INQUIRY NO. 7

Issue:

Is it permissible to include reference to a specific part of a party's election plan in response to a letter of inquiry from a constituent.

Opinion:

Providing political information in response to a specific request by a constituent does not violate the *Members' Integrity Act*, on the condition that it is responsive to the inquiry and not gratuitous or propaganda. In addition, producing a mass mailing of political information from the constituency office would be inappropriate.

INQUIRY NO. 8

Issue:

A constituency assistant became a Commissioner of Oaths for taking affidavits and inquired as to whether it would be appropriate to use that status as a Commissioner outside the office as a side business.

Opinion:

The authorization granted to MPPs and staff to commission affidavits, etc., is granted for the singular purpose of assisting constituents as part of constituency office business. It would not be appropriate to expand that general authority to engage in what was referred to as a "side business". To do so may expose not only the constituency assistant, but also the constituency office and the MPP to criticism.

INQUIRY NO. 9

Issue:

One of the parties involved in a matter before the Environmental Review Tribunal has submitted a Notice of Appeal stating “Any ‘public process’ which a Member of the Tribunal attempts to conduct will become a political process, conducted in the local media and in raucous public meetings.” The MPP, who is also a Minister, has a community interest in the matter and has inquired as to whether it would be appropriate to appear before the Tribunal to speak to the issue.

Opinion:

Parliamentary convention prohibits all Ministers from personally appearing or advocating on behalf of a private party before any agency, board or commission since Ministers always wear the cloak of ministerial responsibility.

An appearance by the MPP/Minister at the hearing may be considered by the Tribunal as an action intended to influence their decision, contrary to the *Members’ Integrity Act, 1994*.

INQUIRY NO. 10

Issue:

An MPP has been invited to serve on the board of an international manufacturer and distributor. The company is also publicly traded on the Toronto Stock Exchange.

Opinion:

There is nothing in the *Members’ Integrity Act, 1994* to prevent the MPP from sitting on the board, however, consideration should be given to the wisdom of being involved with the company and the potential liability of a director, an issue that in part would be determined by the availability of insurance covering the company’s directors and officers.

If the MPP chooses to accept the invitation to serve on the board, he should take into account the conflict provisions set out in s.8 of the *Act* :

A member of the Assembly who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Assembly or the Executive Council, or a committee of either of them, shall, if present at a meeting considering the matter,

- (a) disclose the general nature of the conflict of interest; and*
- (b) withdraw from the meeting without voting or participating in consideration of the matter.*

INQUIRY NO. 11

Issue:

Can an MPP assist a constituent who does not reside in the MPP’s riding?

Opinion:

Although it is generally accepted that constituents seek the assistance of the MPP representing their riding, there are occasions when a constituent finds it necessary to seek that assistance from a neighbouring MPP.

The Commissioner was not aware of any rules that specifically set out that MPPs “can’t help constituents who are not in their riding” and it was his opinion that providing assistance to an individual who is not a constituent is a decision to be made by the MPP being asked to assist. Such action does not place that member in contravention of the *Members’ Integrity Act, 1994*.

INQUIRY NO. 12

Issue:

Can a Minister provide written support for an application to the International Medical Graduate program?

Opinion:

It is an accepted convention that there are limitations on the ability of a Minister to act on behalf of constituents, and the practice has evolved whereby Ministers and their offices do not deal directly with public servants, but go through the office of the responsible Minister.

As the International Medical Graduate program falls under the jurisdiction of the Ministry of Health and Long Term Care, the MPP/Minister is entitled to write a letter of support, however, such letter must be addressed to the Minister responsible for the program. In order to avoid a potential conflict of interest, it is recommended that a copy of the letter not be provided to the constituent, otherwise there is a loss of control of the use of the letter.

INQUIRY NO. 13

Issue:

A Minister has been asked if his name, as the MPP for the constituency, can be used on a letter with respect to a fundraiser for a well-known Foundation.

Opinion:

Since this is a registered charity, the Minister may lend his support to the fundraiser by permitting the use of his name on the letterhead and he may also participate in the fundraising activities on the following conditions:

- (a) He does not further or seek to further his private interest or improperly further another person’s private interest; and
- (b) He is not in a position to confer or deny a benefit to any donor.

INQUIRY NO. 14

Issue:

A Minister has been asked to assist a constituent with respect to an Ontario Municipal Board (OMB) decision, including taking the matter to Cabinet. Is this appropriate?

Opinion:

Parliamentary convention prohibits all Ministers from personally appearing or advocating on behalf of a private party with any agency, board or commission. Ministers always wear the cloak

of ministerial responsibility. There is no way that their actions, whether verbal or written, and whether in the member's position as an elected member of the Legislature or as a Minister can be considered by the recipient as other than actions by a Minister. Any action by the Minister could reasonably be considered as attempting to influence or interfere in a decision, contrary to the *Members' Integrity Act, 1994*.

All appeal procedures must be exhausted by the constituent. The Minister is entitled to make inquiries of the OMB for information with respect to the status of the matter and the policies and procedures and to so advise the constituent. However, for the Minister to advocate to the OMB or to take the matter to Cabinet, would place the Minister in violation of the *Members' Integrity Act*.

It is an accepted convention that there are limitations on the ability of a Minister to act on behalf of constituents as far as quasi-judicial tribunals are concerned. The practice has evolved whereby Ministers and their offices do not deal directly with public servants, but go through the office of the responsible Minister. In this respect, the Minister may consider forwarding the constituent's letter to the Minister responsible for the OMB.

INQUIRY NO. 15

Issue:

A part-time constituency assistant provides translation services from time to time for a local association. She has been asked to attend the Ontario Works office to translate for an individual applying for social assistance. The concern is that she often provides assistance through the constituency office to people having difficulty with Ontario Works. Should the constituency assistant accept the offer from Ontario Works?

Opinion:

The constituency assistant is entitled to attend the offices of Ontario Works to provide the requested translation services on the condition that such services are provided on her own time, and not during the time she is working as a constituency assistant.

Should the particular case before Ontario Works come to the MPP's constituency office, another member of the staff should deal directly with Ontario Works.

INQUIRY NO. 16

Issue:

A constituent has applied for a number of government jobs and has asked the MPP to look into why he has not been offered an interview.

Opinion:

Those making the decisions in government with respect to employment opportunities must be free of any political pressure. It is inappropriate for the MPP to make inquiries in this regard as such action may be interpreted as an attempt to interfere with or influence the process, contrary to the *Members' Integrity Act, 1994*.

INQUIRY NO. 17

Issue:

A constituent has asked that an MPP write a letter verifying that the constituent was a “ward of the Crown”, however, the constituent was not prepared to provide proof of the claim. As this is a legal matter, can the MPP become involved?

Opinion:

Based on the lack of information available to the MPP, it would be inappropriate to provide the requested letter.

INQUIRY NO. 18

Issue:

An MPP has inquired as to whether it would be a conflict to participate in the discussion and voting on a Bill of general application in a specific area which will directly affect a member of the MPP’s family.

Opinion:

“Private interest” is defined in the *Members’ Integrity Act, 1994*, as:

- “private interest” does not include an interest in a decision,*
- (a) that is of general application,*
- (b) that affects a member of the Assembly as one of a broad class of persons, ...*

Although the family member will be directly affected by the proposed legislation, the application of the proposed Bill affects a broad range of individuals in Ontario and is not specific to the family member. It is, therefore appropriate for the MPP to not only participate in the discussions, but also vote on the Bill.

INQUIRY NO. 19

Issue:

A constituent had a disabled parking permit taken away on the basis of “misuse of disabled permit” and was seeking the assistance of the MPP to have the permit returned. In an effort to be of assistance, the constituency assistant made a telephone inquiry to the Toronto Police Services about the investigation and decision to lay a charge. She also faxed supporting documentation to the Sergeant in charge, resulting in a message from the Sergeant that *“the fax on the MPP’s official paper must have been sent in error as surely a MPP would not interfere in a police investigation”* and asking that the MPP call him personally. The MPP spoke with the Sergeant indicating that the call to the police was done without the knowledge of the MPP and that the constituency assistant had been reprimanded.

Opinion:

This case illustrates problems which can arise when dealing with a matter in the courts or in this case, under police investigation. The police appear to have immediately concluded

that the constituency assistant was attempting to interfere with the investigation, or as others might argue, the *Provincial Offences Act* proceedings giving rise to the seizure of the disabled parking permit.

While it was inappropriate for the constituency assistant to have contacted the police, the Commissioner was satisfied that she did so in good faith and had caused no harm. In addition, the MPP had not only taken steps to avoid such action in the future but had also contacted the Integrity Commissioner's office immediately upon learning of the issue. It was the Commissioner's opinion that all the steps necessary were taken to rectify the matter.

INQUIRY NO. 20

Issue:

An MPP has received a confidential copy of a constituent's proposal in an RFP process as yet to be completed. Having received advice from the Minister's office that "*it would be inappropriate for you to review the ... proposal, as it would interfere with the due diligence surrounding the process..., and with the government's efforts to maximize the objectives articulated...*", the MPP was seeking further guidance as to whether or not it would be appropriate to open the proposal.

Opinion:

As the RFP process has not been completed, opening the package prior to the completion of that process may not only compromise the process but also may place the MPP in violation of the *Members' Integrity Act, 1994*.

INQUIRY NO. 21

Issue:

A constituent gave an MPP an envelope containing \$600 together with an envelope for the staff containing \$100, in appreciation of work done on the constituent's behalf. The MPP tried to return the money unsuccessfully and contacted the Integrity Commissioner for advice as to the most appropriate way to handle the matter.

Opinion:

Section 6 of the *Members' Integrity Act, 1994*, sets out that members of the Legislative Assembly shall not accept a fee, gift or benefit that is connected directly or indirectly with the duties of office. The exceptions include a gift or benefit that is an incident of the protocol, custom or social obligation accompanying the responsibilities of office.

Acceptance of the money by either the MPP or staff is not only inappropriate but a violation of s.6 of the *Act*. The MPP was advised to prepare a letter to the constituent enclosing a cheque for the total amount, stating that the work performed on behalf of the constituent is part of the responsibilities of MPPs and constituency assistants and the MPP and staff are compensated for such work.

INQUIRY NO. 22

Issue:

A constituent has requested the MPP make inquiries of the Workplace Safety and Insurance Board (WSIB) as a year had passed without a decision from the adjudicator. In discussions with the WSIB office, the MPP was advised that there was a new diagnosis and the investigation would take longer, however, the file was placed on a priority level. It was suggested to the MPP that a call be made on a monthly basis for an up-date, however, the constituent continued to call the WSIB himself to assess the progress of his file.

The MPP was inquiring as to whether the constituency office is legally culpable if anything should happen due to the mishandling of the file.

Opinion:

The WSIB is required to follow certain procedures and since the claim involves a new diagnosis, it may well take time to resolve. As the constituent has continued to make calls directly to the WSIB, despite the member's efforts to assist, the Commissioner advised that the MPP had done everything possible to assist the constituent and now has the right to terminate that representation. The MPP has not mishandled the file and is not 'legally culpable' in this regard.

INQUIRY NO. 23

Issue:

Does an MPP or constituency staff bear any legal liability if a constituent is unhappy with the outcome of an investigation into the constituent's concerns and blames the office for the consequences?

Opinion:

It is difficult to provide an opinion in this case with any precision as it depends upon the circumstances around the issue.

Generally speaking, if an MPP is asked to investigate a constituent's concern, there would be no liability for doing what the constituent asked, provided that the investigation was done reasonably, e.g. without breaking confidentiality. Merely discovering information that the constituent preferred left 'buried' would not give rise to liability.

In order for the office to be legally liable, the Commissioner advised that there would have to be an independent, unlawful act on the part of the MPP or member of the constituency staff.

INQUIRY NO. 24

Issue:

A constituent attended the MPP's constituency office immediately following the termination of a meeting at the Ontario Works office where a glass door was broken when the constituent left. The constituent was picked up by the police while in the constituency office.

The police are now asking for a statement for the Crown Attorney's office and the MPP was concerned about violating confidentiality and at the same time felt an obligation to cooperate with the police.

Opinion:

In these circumstances, providing a statement to the police is the appropriate action to take and such action does not breach confidentiality.

INQUIRY NO. 25

Issue:

A constituent, who appears to have mental health issues, is upset with the Ontario Health Insurance Plan and is requesting that action be taken by the MPP on her behalf to resolve the matter. The constituent continuously calls the office and asks the same question, not accepting the answer provided. Can the MPP arrange to have a worker from the Comprehensive Rehabilitation and Mental Health Services Office go to the constituent's home to provide assistance? If the constituent does not agree with the offer of assistance, would the MPP be acting ethically by referring the matter to the Mental Health Services Office in any event?

Opinion:

Although the Ministry of Health and Long Term Care is investigating the matter for the third time, the MPP may contact the Comprehensive Rehabilitation and Mental Health Services Office to discuss the situation with a view to seeking assistance for the constituent. This action does not violate the *Members' Integrity Act, 1994*. However, as the constituent apparently does not agree with the intervention, at the very least, the MPP should so advise the Health Services Office of that fact.

INQUIRY NO. 26

Issue:

A student has been suspended from school pending an investigation of allegations of sexual assault of another student. The *Safe Schools Act* requires a mandatory expulsion for anyone found to have violated the rules of the school board where the assault has occurred.

Can the MPP discuss this case with the school principal and provide a letter of support?

Opinion:

The MPP, who knows the student involved, is entitled to speak to the principal on behalf of the constituent to inquire as to the process and to provide a letter of support, however, caution should be used if the police investigation continues. The MPP should not become involved in the process established through the *Safe Schools Act* to determine if there is sufficient evidence to establish if there were grounds for mandatory expulsion.

INQUIRY NO. 27

Issue:

A Minister has received a copy of a new publication which he would like to support by providing a quote for the brochure promoting the publication.

Opinion:

As the publication is not sponsored by the Government of Ontario and as there may be similar publications on the market, to provide such an endorsement may be interpreted as preferring the interests of that publication over others and endorsing the contents of the publication. It was the Commissioner's opinion that such action would be inappropriate.

INQUIRY NO. 28

Issue:

It came to the attention of a Minister that a mailing to the members of the Riding Association was inadvertently printed on MPP letterhead and processed through the MPP account at the Legislative Assembly

Opinion:

The mailing sent on constituency letterhead was to thank all individuals in the riding for their work on the recent leadership race. This was an inappropriate use of constituency letterhead, however, as soon as the Minister became aware of the situation, steps were taken to reimburse the Legislative Assembly for the costs associated with the mailing.

It was the Commissioner's opinion that the Minister took the steps necessary to rectify the situation at the earliest opportunity and there was nothing further that should be done.

INQUIRY NO. 29

Issue:

Can a Minister accept VIP passes for the Toronto Zoo and the Royal Botanical Gardens?

Opinion:

As the provincial government has funded a project at the Toronto Zoo and the Royal Botanical Gardens receives funding from the Ministry of Culture, acceptance of these passes is considered a marketing tool and does not violate the *Members' Integrity Act*.

INQUIRY NO. 30

Issue:

An association in a Minister's riding would like to make a donation of \$5,000 on behalf of the Minister to a local charity and has invited the Minister to attend the cheque presentation ceremony.

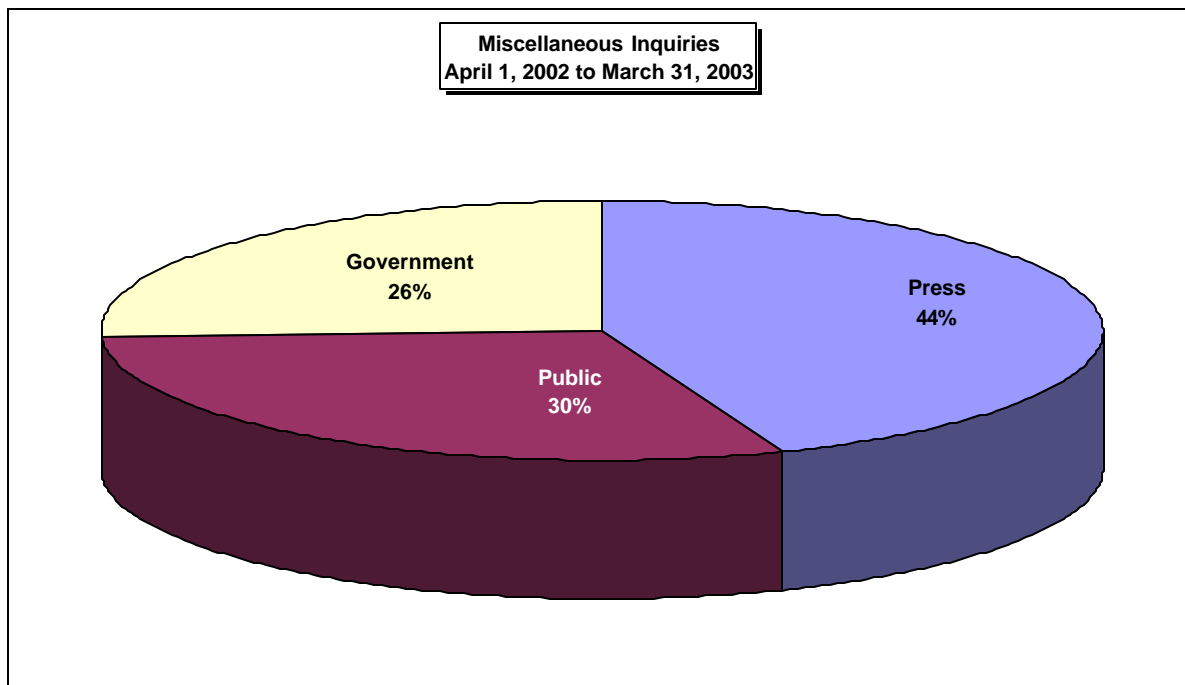
Opinion:

The Association is entitled to make a donation directly to the charity and the Minister is entitled to be present to accept the donation on behalf of the charity, however, any suggestion that the donation is made on behalf of the Minister would be misleading and would place the Minister in a conflict of interest position.

C. MISCELLANEOUS INQUIRIES

During the reporting period of this Report, 131 miscellaneous inquiries were received from all levels of governments, the public and the media.

A variety of questions were raised, including questions about the actions of various government agencies and employees; conflict of interest guidelines for government agencies; complaints with respect to MPPs from members of the public; general interpretation questions regarding the *Members' Integrity Act, 1994* the *MPP Compensation Reform Act, 2001* and the *Accountability for Expenses Act (Cabinet Ministers and Opposition Leaders), 2002*; policies and procedures of the Office, and requests for copies of the Annual Report.



REFERRED QUESTIONS

Section 30 of the *Members' Integrity Act, 1994*, provides as follows:

30. (1) *A member of the Assembly who has reasonable and probable grounds to believe that another member has contravened this Act or Ontario parliamentary convention may request that the Commissioner give an opinion as to the matter.*

(2) *The request shall be in writing and shall set out the grounds for the belief and the contravention alleged.*

(3) *The member making the request shall promptly give a copy of it to the Speaker, who shall cause the request to be laid before the Assembly if it is in session or, if not, within 10 days after the beginning of the next session.*

(4) *The Assembly may, by resolution, request that the Commissioner give an opinion as to whether a member has contravened this Act or Ontario parliamentary convention.*

(5) *The Executive Council may request that the Commissioner give an opinion as to whether a member of the Executive Council has contravened this Act or Ontario parliamentary convention.*

(6) *The Assembly and its committees shall not conduct an inquiry into a matter that has been referred to the Commissioner under subsection (1) or (4). 1994, c. 38, s. 30.*

A Directive regarding the process under this section may be found on our website at <http://integrity.oico.on.ca>.

During the reporting period of this Annual Report, the following three inquiries under s.30 were received and reports were issued by the Commissioner. Complete texts are available on our website at <http://integrity.oico.on.ca> under "Commissioner's Reports", and hard copies are available upon request.

- (1) Report dated May 6, 2002 – Mr. Ernie Eves, Former Member of the Legislative Assembly, Minister of Finance and Deputy Premier, with respect to the MPPs Pension Act, 1996 and the Income Tax Act.
- (2) Report dated December 12, 2002 – Ms. Sandra Pupatello, Deputy Leader of the Official Opposition and Member for Windsor West, with respect to the use of the Government of Ontario Purolator Courier service.
- (3) Report dated February 17, 2003 – The Honourable John Baird, Minister of Energy, Minister of Francophone Affairs and Deputy House Leader, with respect to the new ward boundaries for the City of Ottawa and the Ontario Municipal Board.

FINANCIAL INFORMATION

A. 2002/2003 STATEMENT OF EXPENDITURES

Salaries and Benefits	\$364,449.16
Transportation and Communications	11,607.91
Services	438,894.55
Supplies and Equipment	<u>17,932.47</u>
	<u>\$832,884.09</u>

B. PUBLIC SECTOR SALARY DISCLOSURE ACT, 1996

This statement is provided under the *Public Sector Salary Disclosure Act*.

<u>Employee</u>	<u>Payment</u>	<u>Taxable Benefits</u>
Robert C. Rutherford	\$139,561.07*	\$0
Coulter A. Osborne	\$136,886.71	\$0

* *Payment terminated November 30, 2002*