



Office of the Integrity Commissioner

Legend for decision origin
I – Integrity Commissioner
C – Conflict of Interest Commissioner
M – Ministry
P – Public Body

CASE SUMMARIES: POLITICAL ACTIVITY

The anonymized summaries in this document are from selected decisions of Ethics Executives. They are provided to promote consistency in the interpretation and application of the conflict of interest and political activity rules.

The summaries below focus on the political activity rules in the *Public Service of Ontario Act, 2006*.

Spouse May Become a Candidate in a Future Provincial Election (I02-19/20)

PSOA, s. 79 (1); O. Reg. 381/07 s. 3, 5, 6 & 8

- Public Body
- Commissioner
- Political Activity
- Campaign
- Candidate
- Spouse

The spouse of an Ethics Executive was potentially going to be a candidate in a provincial election. The Ethics Executive asked for the Commissioner's advice about the application of the political activity rules. The Ethics Executive was not a specially restricted public servant.

The Commissioner advised that even though the Ethics Executive was not specially restricted, the political activity rules still applied. He determined that supporting a spouse's candidacy could reasonably be seen as demonstrating support for a political party. The Commissioner directed that in supporting the spouse, the Ethics Executive could not engage in any political activity in the workplace or associate his position at the public body with political activities. Further, the Commissioner directed that the Ethics Executive could not use any government resources to support his spouse's candidacy, could not solicit campaign funds on behalf of his spouse (although he could contribute himself) and could not comment publicly on policy matters or proposals related to his duties with the public body. His public body title should not appear in any campaign materials. The Ethics Executive was not prohibited from visiting his spouse's campaign office or attending campaign related events, but he was reminded to be sure that if he did so, that he fully complied with the Commissioner's directions.



Soliciting Funds for a Political Party (I03-19/20)

PSOA, s. 79 (1)

- Public Body
- Commissioner
- Political Activity
- Fundraising/Soliciting funds

The Commissioner became aware that an Ethics Executive was engaging in fundraising for a political party. The Commissioner wrote to the Ethics Executive to explain the Rules and how the Ethics Executive was subject to the political activity restrictions governing most public servants. The Commissioner determined that the Ethics Executive was prohibited from soliciting funds while he was the chair of the public body. This is because the Ethics Executive had a supervisory role over the other appointees to the board (as Ethics Executive). The direction to not solicit funds also prohibited the Ethics Executive from soliciting funds using his private email.

Running for a Band Council (C01-18/19)

PSOA, s. 79; O. Reg. 381/07 s. 8.

- Conflict of Interest
- Political Activity
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking
- Political Activity - Specially Restricted Public Servants

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

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

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

Elected to Municipal Office (C02-18/19)

PSOA, s. 101(3).

- Political Activity
- Conflict of Interest Commissioner
- Political Activity - All Other Public Servants

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

Unlike the situation with federal/provincial elections, election to municipal office does not lead to the automatic termination of a public servant's employment/appointment. Rather section 101(3) requires an ethics executive to consider whether the municipal councillor role would interfere with the performance of the public servant's duties. The Commissioner pointed out that the language of section 101(3) is very similar to the language of the conflict of interest rules set out in paragraph 3 of section 8 of O. Reg. 381/07 which requires an ethics executive to consider if an outside activity would interfere with the public servant's ability to perform his or her duties to the Crown. The Commissioner suggested that an ethics executive consider the application of section 101(3) first and then consider the conflict of interest rules only if employment/appointment was not terminated.

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

Putting Up a Sign (C03-18/19)

PSOA, s. 92.

- Political Activity

- Conflict of Interest Commissioner
- Political Activity - Specially Restricted Public Servants

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

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

Elected Mayor (M02-16/17)

PSOA, s. 77 & 79; O. Reg. 281/07, s. 8.

- Conflict of Interest
- Political Activity
- Ministry
- Engaging in Business or Undertaking
- Political Activity - All Other Public Servants

A public servant was elected mayor of a small town (fewer than 1,000) after serving as councillor. One year after their election, the public servant declared a potential conflict of interest to their Ethics Executives.

The public servant's mayoral duties were performed outside of normal business hours. The public servant worked in a technical position unrelated to their mayoral duties, so there did not appear to be any overlap between the public servant's duties and their municipal responsibilities. Nor was there any obvious conflict between the public servant's responsibilities and the interests of the Crown.

The Ethics Executives advised the public servant that they should have notified the Ethics Executives when first elected mayor, rather than one year later. However, the Ethics Executives also advised the public servant that provided their elected position was not so demanding of their

time as to interfere with their duties as a public servant, serving as mayor did not raise a conflict that warranted termination. The public servant was also advised to recuse themselves in any situation where they might have to take a position contrary to the interests of the Crown or which might put them in conflict with the Crown.

Being a Municipal Councillor (M03-16/17)

PSOA s. 77 & 79.

- Political Activity
- Ministry
- Political Activity - All Other Public Servants

A ministry employee was a candidate in a municipal election. Advice was sought as to whether the employee could stand for election, and whether if successful they would have to take a leave of absence from the public service for the duration of the term of office, and if not, whether the employee's work as a municipal councillor would present a conflict of interest with their public service duties.

Since the employee was not a specially restricted public servant they were permitted to be a candidate in a municipal election. However, section 79 of the Public Service of Ontario Act says that public servants shall not engage in political activity if doing so could conflict with the interests of the Crown or interfere with the public servant's performance of their duties, unless a public servant has been granted an unpaid leave of absence under section 80. The employee's ministry had only limited interaction with the municipality in question and the employee's duties did not include any decision-making regarding the ministry's relationship with the municipality. Being a municipal councillor would only involve about ten hours of work weekly, outside of the employee's regular hours. Therefore, it was determined that serving as councillor did not conflict with the interests of the Crown or interfere the public servant's duties and that a leave of absence was not required.

Manager Running for Municipal Office (M19-16/17)

PSOA, s. 77, 79; O. Reg. 381/07, s. 5.

- Conflict of Interest
- Political Activity
- Ministry
- Disclosing Confidential Information

- Political Activity - All Other Public Servants

A public service manager contacted their Ethics Executives regarding their intention to run for municipal councillor. In connection with the candidacy, the public servant expected to be fundraising “during the campaign period”, as well as distributing flyers, canvassing and participating in media communications. The public servant sought a determination whether they were required to take an unpaid leave of absence in order to do these things.

While the PSOA permits public servants to undertake political activities, there are a number of restrictions, including the requirement to take a leave of absence before certain activities can be undertaken. It was determined that the applicable restricted activities in these circumstances included 1) raising funds on behalf of a municipal candidate if the public servant’s duties include supervising staff, and 2) engaging in political activity which could interfere with the performance of one’s duties as a public servant.

The request for a leave of absence was approved. The public servant was directed not to undertake any fundraising activities until the leave of absence was commenced, as the public servant was a manager who supervised staff. The public servant was also advised that in accordance with the Public Service of Ontario Act (PSOA), the leave of absence would end on election day. The direction also set out the rule in section 77(d) of the PSOA that public servants are not allowed to associate their public service position with political activity except to the extent necessary to identify their position and work experience. The public servant was also reminded that the PSOA continues to apply during the leave of absence and of the rules regarding confidential information in section 5 of O. Reg. 381/07. The public servant was asked to advise the Ethics Executives of the outcome of the election so that next steps required under the PSOA could be determined.

Breakfast Meeting Hosted by MPP (P02-16/17)

PSOA, s. 72.

- Political Activity
- Public Body
- Political Activity - Specially Restricted Public Servants

A specially-restricted appointee to a public body sought a determination as to whether they could attend a breakfast meeting sponsored by the local chamber of commerce and featuring their MPP. The breakfast, to be held at a local restaurant, was open to any member of the public who made a reservation. The cost was \$20 per ticket. Promotional material for the event described to the

breakfast as a fact-sharing meeting and time for feedback and made no reference to any portion of the cost being directed to a political party.

The Ethics Executives considered the definition of political activity in section 72 of the *Public Service of Ontario Act, 2006* (PSOA), and concluded that attending the event described by the public servant was not political activity, as defined, and determined, therefore, that the public servant was not prohibited from attending. The Ethics Executives's decision was supported by his view that it is not the intent of the PSOA to deny public servants opportunities that will enable them to make informed decisions concerning major issues and to benefit from meaningful representation in the legislature.

Commentaries (C01-15/16)

PSOA, s. 72 & 79.

- Political Activity
- Conflict of Interest Commissioner
- Political Activity - All Other Public Servants

The Ethics Executives of a public body sought the commissioner's advice as to whether an employee of that public body should be allowed to publish an op-ed article that was critical of a policy of a political party. Since section 72 of the Act defines political activity as including anything done in support of or in opposition to a political party, the commissioner concluded that the writing of such an article would constitute political activity.

Section 79 of the Act prohibits a public servant from engaging in certain kinds of political activity without first seeking a leave of absence without pay. Such prohibited political activity includes making public comments outside of a public servant's duties on a matter directly related to those duties, if the matter is addressed in the policy of a political party. The Ethics Executives was advised to consider whether the article met this test, in particular whether the content of the article overlapped with the area of work in which the public servant was engaged. If the test was met, the employee must then request an unpaid leave of absence in order to publish the article and deal with any associated matters.

The commissioner also reminded the Ethics Executives that section 79(d) of the Act prohibits a public servant from engaging in any political activity if doing so could interfere with the performance of his or her public duties, and that section 79(e) prohibited public servants from engaging in any political activity if doing so could conflict with the interests of the public body.

Specially Restricted (C02-15/16)

PSOA, s.72, 85, 89 & 92.

- Political Activity
- Conflict of Interest Commissioner
- Political Activity - Specially Restricted Public Servants

A part-time member of an adjudicative tribunal sought advice from his Ethics Executives, the chair of the tribunal, whether he was able to continue to engage in political activity. The tribunal member had regularly been involved in partisan political activity prior to his appointment to the tribunal. The Ethics Executives sought the commissioner's guidance.

The commissioner advised the Ethics Executives that appointees to adjudicative tribunals were considered specially-restricted public servants, and therefore were subject to more stringent political activity restrictions than appointees to other public bodies.

The Act provides steps an Ethics Executives must take to deal with the contravention of political activity rules, including giving direction to an appointee.

The commissioner also advised the chair that the Act permits an Ethics Executives of a specially-restricted public servant to allow the public servant to be a candidate in a municipal election or to campaign on behalf of a municipal candidate. Furthermore, a part-time member of an adjudicative tribunal could seek authorization from the Conflict of Interest Commissioner to engage in most other kinds of political activity if, in the commissioner's opinion, such activity did not interfere with the appointee's public-service duties or conflict with the interest of the tribunal.

Vote for me (C02-14/15)

PSOA s. 72 and 79.

- Political Activity
- Conflict of Interest Commissioner
- Political Activity - All Other Public Servants

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

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

Transition Advice (C03-14/15)

PSOA s. 92.

- Political Activity
- Conflict of Interest Commissioner
- Political Activity - Specially Restricted Public Servants

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

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

Vote for me... (C01-13/14)

PSOA s. 72 & 79.

- Political Activity
- Conflict of Interest Commissioner
- Political Activity - All Other Public Servants

The chair of a public body wanted to stand for election as a municipal councillor. They asked the Commissioner whether they could run for this office.

As the chair was not a non-specially restricted public servant, they could run in a municipal election and serve as a municipal councillor as long as these activities did not (1) interfere with the performance of the chair's duties, and (2) conflict with the interests of the public body. The Commissioner considered the following factors:

- Time commitments and the impact on the chair's duties;
- Stakeholders the public body and the municipality have in common;
- The likelihood that candidates or councilors could comment on or make decisions related to the public body or the Ontario government;
- Intersection of the public body's and the municipality's interests, and the likelihood that the chair would advise on or be a party to discussions or decisions on issues impacting the municipality or municipalities in general; and
- the chair's ability to avoid taking part in discussions and decisions at the municipality or public body while carrying out his duties as chair.

The Commissioner determined that the chair could stand for election and serve as a municipal councillor provided that the chair complied with certain restrictions including not commenting publicly on matters that are directly related to his duties as chair and not engaging in political activity while specifically performing his duties as chair.

Vote for us... (C02-13/14)

PSOA s. 77 & 79.

- Political Activity
- Conflict of Interest Commissioner
- Political Activity - All Other Public Servants

J was an appointee to a public body. She wanted to serve in a time-limited, high-profile position with a provincial political party. The chair of the public body asked the Commissioner for advice about whether J could take the job.

J was not a specially restricted public servant. As such she could engage in any political activity that is not specifically prohibited or restricted. In assessing whether this activity was restricted, the Commissioner considered that J's role would be highly visible, involved participation in fundraising discussions and potentially soliciting funds for the campaign. The Commissioner recommended that J take an unpaid leave of absence until her job with the political party ended. While she was on unpaid leave of absence, J would still be a public servant and would have to abide by the political activity restrictions in the *PSOA*. The Commissioner directed J to maintain a distinction between her political role and her public servant role. She would not be allowed to do any of the following:

1. Use her position as a public servant for personal benefit;
2. Use or disclose any confidential information she obtained through her public servant role; and

3. Offer assistance in dealing with the provincial government to any persons or entities connected to the political party.

Hiring a Municipal Councillor (C01-12/13)

PSOA, s. 72, 77 & 79; O. Reg. 381/07, s. 8.

- Conflict of Interest
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking
- Political Activity
- Political Activity - All Other Public Servants

An Ethics Executives of a public body sought the Commissioner's advice while considering hiring a municipal councillor as a public servant in an administrative role.

Although being a municipal councillor is considered political activity, it is possible for a municipal councillor to be hired as a public servant if they can avoid engaging in the specific types of political activities that are prohibited by section 77 or restricted by section 79.

If hired as a public servant, the municipal councillor would also have to ensure that any activities they engaged in as a municipal councillor were in compliance with the conflict of interest rules.

As the municipality was within the geographical area affected by the actions of the public body, the Commissioner concluded that there was potential for conflicts between the individual's roles as a municipal councillor and public servant. The Commissioner suggested that, if the individual were to be hired, the Ethics Executives should implement strategies to mitigate the potential for conflicts. For example, the Ethics Executives could restrict the individual's access to matters related to the municipality they represents and require the individual to refrain from participating in discussions or decision-making at the municipality on any issues relating to the public body.

Lobby a Member of Provincial Parliament (C03-12/13)

PSOA, s. 77 & 79.

- Political Activity
- Conflict of Interest Commissioner
- Political Activity - All Other Public Servants

An Ethics Executives sought advice as to whether a public servant would be permitted to lobby a Member of Provincial Parliament (MPP) to propose a private member's bill to change legislation and policy administered by the ministry in which the public servant worked.

The Commissioner advised that lobbying the MPP to introduce a private member's bill constituted restricted political activity under the *PSOA* and that the public servant could only engage in that type of activity if on an unpaid leave of absence. The Commissioner advised that such an unpaid leave of absence should remain in effect until the later of the following:

- The MPP decides not to pursue a private member's bill;
- A private member's bill is introduced but not passed; or
- A private member's bill is passed and new legislation comes into force and effect.

Authorization to Perform Various Functions (C01-11/12)

PSOA, s. 89 & 92.

- Political Activity
- Conflict of Interest Commissioner
- Political Activity - Specially Restricted Public Servants

A specially restricted public servant appointed to an adjudicative agency sought authorization to perform the following functions, for two candidates, during a federal election period:

1. Door-to-door canvassing;
2. Speaking to voters on the telephone;
3. Fundraising; and
4. Working on administrative matters in the campaign office.

These activities fall outside the forms of political activity permissible for specially restricted public servants under sections 89 and 90 of the *PSOA*. In some situations, the Commissioner may authorize specially restricted public servants to engage in political activity not otherwise permitted. Section 92(5) of the *PSOA* sets out the criteria for the Commissioner to consider when reviewing requests for such authorization. The political activity rules are intended to balance the neutrality of the public service with a public servant's ability to engage in political activity.

The Commissioner granted authorization to the public servant to work on administrative matters in a campaign office and to speak to voters on the phone on behalf of the candidates, provided that the public servant did not identify themselves or engage in the prohibited forms of political activity set out in section 88 of the *PSOA*. In granting authorization to engage in these political

activities, the Commissioner took into account the nature of the activities; the scope of discretion available to members of the adjudicative agency; and the jurisdiction of the agency.

The Commissioner did not authorize the public servant to engage in door-to-door canvassing or fundraising. The in-person interactions might enable members of the public to identify the public servant and conclude that they supported a particular party.

Comments to the Media During a Provincial Election (C03-11/12)

PSOA, s. 77 & 79.

- Political Activity
- Conflict of Interest Commissioner
- Political Activity - Specially Restricted Public Servants

The chair of a public body sought advice as to whether a specially restricted public servant was permitted to make certain specific comments to the media during a provincial election. The comments did not explicitly identify a candidate or political party, but expressed disapproval of the language used by politicians of a political party during the provincial election.

In assessing whether this activity constituted “political activity”, the Commissioner considered how a reasonably well-informed member of the public might view the activity. The comments in question could be considered political activity if they indicated support of or opposition to a political party, or if they could be related to the public servant’s duties. The comments criticized the language used by candidates of a political party rather than the position taken by a particular political party, but this distinction might not be apparent to a member of the public. The comments included the opinion that the language used by politicians had an effect on a subject matter dealt with by the public body. In this way, the comments came close to connecting the public servant’s duties with the policies and positions of a political party. However, since the comments did not explicitly identify a candidate or a political party, the Commissioner concluded that it was unlikely that, taken by themselves, the comments would constitute political activity. Nevertheless, the Commissioner recommended that the public servant be cautioned that, given the public body’s unique interaction with members of the public, such comments might cause a member of the public to question the political neutrality of the public servant and/or the public body.

Campaigning During Vacation (C05-11/12)

PSOA, s. 77 & 79.

- Political Activity
- Conflict of Interest Commissioner
- Political Activity - All Other Public Servants

An Ethics Executives sought advice about what limitations, if any, should be placed on a public servant who wished to (1) campaign for a candidate, or (2) work in the central campaign office for a political party. These activities were to take place during the public servant's vacation.

The proposed activities demonstrate support for a candidate or political party and are therefore considered "political activity". The individual was not a specially restricted public servant. As such, the public servant is permitted to engage in any form of political activity that is not specifically prohibited or restricted. Activities may be restricted on the basis that they could (1) interfere with performance of the public servant's duties, or (2) conflict with the interests of the Crown. The Commissioner considered the nature of the public servant's duties and the nature of the contemplated political activity. The public servant had only limited influence over other public servants and was not involved in decision-making. Furthermore, participation in either activity would not prevent the public servant from resuming their duties with the Crown. The Commissioner concluded that the public servant would not be prohibited from engaging in either of the activities while on vacation.

The Commissioner reminded the Ethics Executives that the public servant continued to be subject to both the political activity restrictions and conflict of interest rules set out in the *PSOA* while on vacation. The Commissioner also cautioned that the public servant should maintain a distinction between their role as public servant and their work on the campaign. More specifically, the public servant should not engage in the following:

1. Soliciting funds, including accepting funds while campaigning door to door;
2. Commenting publicly on the position or policy of a party or candidate as directly related to their public service duties;
3. Using government resources for political activity purposes, including premises, equipment, supplies or documents in their possession;
4. Associating their public service position with the political activity;
5. Using their employment as a public servant to benefit personally;
6. Using or disclosing any confidential information obtained through their public servant role; and

7. Offering assistance in their dealings with the provincial government to any persons or entities connected to the campaign, or creating the appearance of any form of preferential treatment.

Letter to the Editor of a Newspaper (C07-11/12)

PSOA, s. 77 & 79.

- Political Activity
- Conflict of Interest Commissioner
- Political Activity - Specially Restricted Public Servants

The chair of a public body sought advice from the commissioner as to whether the comments a specially restricted public servant made to the media via a letter to the editor of a newspaper might be considered a contravention of the political activity rules. The comments related to a federal government policy concerning a specific sector.

In assessing whether this activity constituted “political activity”, the Commissioner considered how a reasonably well-informed member of the public might view the activity. The Commissioner noted that while the comments did not explicitly discuss a substantive position taken by any federal government party, they did concern a sector affected by the mandate of the public body. The comments were also related to the decision-making duties of the public servant. However, the comments did not explicitly reflect the position of a specific political party. The Commissioner concluded that it was unlikely that, taken by themselves, the comments would constitute political activity. Nevertheless, the Commissioner recommended that the public servant be cautioned that, given the decision-making responsibilities of the public body and the public servant, such comments may cause members of the public to question the political neutrality of the public body and/or the public service in general.

Speak at an Annual Conference (C02-10/11)

PSOA, s. 74 & 79.

- Political Activity
- Conflict of Interest Commissioner
- Political Activity - All Other Public Servants

A public servant working in a public body was considering whether to speak at an annual conference, on a subject unrelated to their public service role, and sought a determination on whether it would be appropriate to do so. The purpose of the conference was to bring together

individuals and activists who share a political philosophy and to discuss strategies, ideas, and techniques with current and former political leaders.

In assessing whether this activity constitutes “political activity,” the commissioner considered how a reasonably well-informed member of the public might view the activity. Although the conference was not hosted by a political party, it was nonetheless aligned with a political philosophy and designed to encourage interactions with politicians who share that philosophy. Accordingly, the commissioner determined that attendance at the conference could be seen as an activity in support of a political party and therefore considered “political activity”. The individual was not in the category of public servants who are specially restricted for political activity purposes. Public servants who are not specially restricted are permitted to engage in a wide array of political activities under the *PSOA*, provided that, in doing so, they do not engage in any of the activities restricted by s. 79 or prohibited by s. 77 of the *PSOA*. Accordingly, the commissioner determined that the public servant was permitted to speak at the conference, provided that they did not engage in the activities listed in s. 79, such as soliciting funds on behalf of a political candidate or party.

Endorsement of a Candidate Without Consent (C04-10/11)

PSOA, s. 86 & 89.

- Political Activity
- Conflict of Interest Commissioner
- Political Activity - Specially Restricted Public Servants

The name of a specially restricted public servant working in a public body was included, without the public servant’s consent, on a list of individuals purported to endorse a candidate in a municipal election. That public servant’s personal email account was used to solicit funds for the same candidate. The public servant thereafter took steps to make it clear that they were neither endorsing nor soliciting funds for the candidate. As Ethics Executives, the commissioner was asked to provide a determination as to whether the public servant had contravened the political activity rules.

A specially restricted public servant may only engage in the forms of political activity specifically permitted in sections 89 and 90 of the *PSOA*. In order to assess whether the incidents described constituted political activity, the commissioner considered whether the public servant had control over the use of their name in either of these instances. The commissioner determined that the public servant did not seek to be included on the broadcasted list of supporters and that someone else had used the public servant’s personal email account inadvertently. Accordingly, the

commissioner determined that the public servant had not engaged in political activity and had taken steps to disassociate themselves from the incidents. In making this determination, the commissioner cautioned that, since the actions of others can make it appear that a public servant is engaging in prohibited forms of political activity, public servants should be vigilant about the unintended use of their names in support of any candidate.

Comment on and Attend Events Hosted by a Municipal Election Candidate (C01-09/10)

PSOA, s. 86 & 89.

- Political Activity
- Conflict of Interest Commissioner
- Political Activity - Specially Restricted Public Servants

A specially restricted chair of a public body wished to comment on and attend events hosted by a municipal election candidate with whom the chair had a past professional affiliation. As Ethics Executives, the commissioner was asked to provide advice about the application of the political activity rules to this circumstance.

The commissioner was of the view that commenting on a candidate is a form of political activity that is prohibited for specially restricted public servants. The commissioner acknowledged that the chair was permitted to make comments restricted to publicly known facts about past association with the candidate, but he advised the chair not to respond to any questions when doing so might be interpreted as expressing support for or opposition to the candidate.

The commissioner also cautioned that, although specially restricted public servants are permitted to attend municipal all-candidates meetings, speaking at events held in a candidate's honour might be viewed as an activity in support of a municipal candidate, which is not permitted.

Serve as a School Board Trustee (C03-09/10)

PSOA, s. 86, 89 & 90.

- Political Activity
- Conflict of Interest Commissioner
- Political Activity - Specially Restricted Public Servants

The chair of a public body sought the commissioner's advice as to whether an appointee, who is specially restricted for the purposes of political activity, may seek to serve as a school board trustee.

The commissioner was of the view that seeking to become a school board trustee is equivalent to seeking to become a candidate in a municipal election. Therefore, it constitutes a form of political activity. Since the term "municipal election" is not defined in the PSOA, the commissioner interpreted the term in a manner that is consistent with the Municipal Elections Act, 1996 and the Education Act, 1990.

A specially restricted public servant is not explicitly permitted to serve as a school board trustee under the PSOA. However, the chair, as the appointee's Ethics Executives, could authorize the appointee to be or seek to become a school board trustee if, in accordance with section 90 of the PSOA, these activities would not interfere with performance of the appointee's duties and would not conflict with the interests of the public body.

Spouse May Become a Candidate in a Future Federal Election (C05-09/10)

PSOA, s. 86, 90.

- Political Activity
- Conflict of Interest Commissioner
- Political Activity - Specially Restricted Public Servants

An Ethics Executives sought the commissioner's advice about the application of the political activity rules to a specially restricted public servant whose spouse may become a candidate in a future federal election.

The commissioner advised that the political activity rules apply to public servants prior to, during, and after an election period. A public servant's spouse, however, is not subject to those rules.

Nonetheless, the commissioner noted that the actions of a public servant's spouse as a political candidate could lead to a situation where the public servant would contravene the political activity restrictions. For example, a public servant whose name or photograph appears in campaign materials risks being seen to be supporting a candidate or political party. The risk could be mitigated if the spouse's campaign materials only referred to the public servant in general terms and not by name or with reference to their position in the Ontario government. The commissioner further advised that, although specially restricted public servants are allowed to attend all-candidates meetings, making other appearances with a candidate, including attending an election

night event, would put the public servant at risk of being seen to support a candidate or political party, thereby contravening the political activity restrictions.

President of a Federal Riding Association (C07-09/10)

PSOA, s. 77 & 79.

- Political Activity
- Conflict of Interest Commissioner
- Political Activity - All Other Public Servants

An Ethics Executives sought the commissioner's advice about the application of the political activity rules to a public servant who wished to be the president of a federal riding association.

In previous matters, the commissioner had determined that membership in a riding association constitutes political activity under the *Act* (as outlined in case summaries 9, 12 and 13 of the 2007/08 annual report). In the commissioner's view, the president of a riding association would also engage in other activities in support of the political party and its candidates. At a minimum, the president would participate in selecting and endorsing a local candidate, raising money to support a candidate and the party, and developing the party's policies and platforms, all of which would also constitute political activity.

Although being president of a riding association is not a prohibited form of political activity, a public servant may be required, under certain circumstances, to take an unpaid leave of absence while holding that position. The commissioner advised the Ethics Executives to consider these circumstances and assess the extent to which they may be applicable. For example, the commissioner advised the Ethics Executives to consider whether the public servant, as a riding association president, could be required to (or choose to) comment on matters, addressed in the policies of a federal party or candidate, that are directly related to the public servant's duties with the Crown. If so, a leave of absence would be required.

Support a Person Before that Person is Officially Nominated (C02-08/09)

PSOA, s. 86 & 89.

- Political Activity
- Conflict of Interest Commissioner
- Political Activity - Specially Restricted Public Servants

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 they are 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.

Purchase Tickets and Attend Political Fundraisers (C04-08/09)

PSOA, s. 86 & 89.

- Political Activity
- Conflict of Interest Commissioner
- Political Activity - Specially Restricted Public Servants

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 with 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 themselves 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.

Serve on a Committee (C06-08/09)

PSOA, s. 77 & 79; O. Reg. 381/07, s. 8.

- Conflict of Interest
- Political Activity
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking
- Political Activity - All Other Public Servants

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 Executives, 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 they 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 their involvement in the proposed undertaking did not violate section 8:

- ensure that the time spent on committee activities did not interfere with their ability to perform their duties as a public servant; and
- refrain from using their 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 they were 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 their 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, they would have to ensure that their actions, including the comments made in any report, did not contravene the restrictions set out in section 77 or section 79(1)(c).

Report on Media Coverage of an Election (C13-08/09)

O. Reg. 381/07, s. 8; PSOA 77 & 79.

- Conflict of Interest
- Political Activity
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking
- Political Activity - All Other Public Servants

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 Executives, 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 they 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 their involvement in the proposed undertaking did not violate section 8:

- ensure that the time spent on committee activities did not interfere with their ability to perform their duties as a public servant; and
- refrain from using their 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 they were 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 their 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, they would have to ensure that their actions, including the comments made in any report, did not contravene the restrictions set out in section 77 or section 79(1)(c).

Post a Sign in Front of Their Residence (C02-07/08)

PSOA, s. 92.

- Political Activity
- Conflict of Interest Commissioner
- Political Activity - Specially Restricted Public Servants

A part-time member of an adjudicative agency applied to the commissioner for authorization to engage in political activity that is not otherwise permitted under the PSOA. Specifically, as a specially restricted public servant under section 85(2)9 of the PSOA, the member sought to post a sign in front of their residence in support of a political party/candidate during a provincial election period.

The commissioner first stated that the purpose of the political activity rules in Part V of the PSOA is to balance the need to preserve the integrity and neutrality of the public service with individuals' right to engage in political activity.

Under section 92(5), based on the nature of the political activity in question, the scope of discretion exercised by the member at the agency, and the visibility of the member's position, the

commissioner concluded that the member could not erect a sign as requested because it would conflict with the interests of the member's agency under section 92(4)(b) of the *PSOA*. Therefore, the commissioner declined to grant the requested authorization.

Continue as President of a Federal Riding Association (C04-07/08)

PSOA, s. 86, 89 & 92.

- Political Activity
- Conflict of Interest Commissioner
- Political Activity - Specially Restricted Public Servants

A part-time member of an adjudicative agency applied to the commissioner for authorization to engage in political activity that is not otherwise permitted under the *PSOA*. Specifically, as a specially restricted public servant under section 85(2)9 of the *PSOA*, the member sought authorization to continue as president of a federal riding association.

The commissioner first stated that the purpose of the political activity rules in Part V of the *PSOA* is to balance the need to preserve the integrity and neutrality of the public service with individuals' right to engage in political activity.

The commissioner made a preliminary finding that acting as president of a riding association is political activity that is not permitted under Part V of the *PSOA*. As an interim measure, the commissioner stated that the member should recuse themselves from hearing any matters while the commissioner gathered more information about the member's agency and position with the riding association and determined whether an authorization was appropriate.

After receiving the commissioner's letter, the member advised the commissioner that they had decided to resign from the position of president of the riding association. Accordingly, the commissioner decided that it was not necessary to determine whether an authorization should be granted.

Canvass Door-To-Door, Distribute Flyers and Attend Polling Stations as a Scrutineer (C06-07/08)

PSOA, s. 86, 89 & 92.

- Political Activity
- Conflict of Interest Commissioner
- Political Activity - Specially Restricted Public Servants

A part-time member of an adjudicative agency applied to the commissioner for authorization to engage in political activity that is not otherwise permitted under the PSOA. Specifically, as a specially restricted public servant under section 85(2)9 of the PSOA, the member sought to do the following during a provincial election period:

- canvass door-to-door for a specific candidate/party;
- distribute flyers door-to-door on behalf of the candidate/party; and
- attend polling stations as a scrutineer to determine who from the electoral district had not voted and relay this information to party headquarters so that the non-voting individuals could be contacted.

The commissioner first stated that the purpose of the political activity rules in Part V of the PSOA is to balance the need to preserve the integrity and neutrality of the public service with individuals' right to engage in political activity.

Under section 92(5), based on the nature of the political activity in question, the scope of discretion exercised by the member at the agency, and the visibility of the member's position, the commissioner concluded that the member's proposed activities would conflict with the interests of their agency under section 92(4)(b) of the PSOA.

Accordingly, the commissioner declined to grant the authorization requested by the member.

Act as a Member of the National Executive of a Federal Political Party (C08-07/08)

PSOA, s. 87, 89 & 92

- Political Activity
- Conflict of Interest Commissioner
- Political Activity - Specially Restricted Public Servants

A part-time member of an adjudicative agency applied to the commissioner for authorization to engage in political activity that is not otherwise permitted under the PSOA. Specifically, as a specially restricted public servant under section 85(2)9 of the PSOA, the member sought authorization to, among other things, act as a member of the national executive of a federal political party, and as a campaign manager for a particular member of parliament.

The commissioner first stated that the purpose of the political activity rules in Part V of the *PSOA* is to balance the need to preserve the integrity and neutrality of the public service with individuals' right to engage in political activity.

The commissioner stated that the *PSOA* clearly permits specially restricted public servants to be a member of a political party (section 89(1)(c)). However, the commissioner also stated that the legislative permission to be a member of a political party does not grant the right to be involved in all activities available to members of the party.

The commissioner concluded that the member's proposed activities would conflict with the interests of their agency under section 92(4)(b) of the *PSOA*. The commissioner based his decision on the following factors as described in section 92(5) of the *PSOA*:

- the member's proposed political activities would put them at the heart of partisan politics and clearly would identify them not only as an active supporter of a particular political candidate/party, but also as a person responsible for the management of the party and as someone with an active role in the development and direction of the party
- the member has broad discretion in their position with the agency, and the public could reasonably perceive their discretionary decisions to be influenced by political considerations
- the member's position with the agency makes them visible to the public.

The commissioner further stated that the member's proposed activities are not time-limited, or limited to a particular policy issue or political function, and that the proposed activities are of a high-profile nature. For these reasons, the commissioner concluded that neither restrictions on the proposed political activity nor a leave of absence from the agency would be viable options for addressing the conflict concerns.

Accordingly, the commissioner declined to grant the authorization requested by the member.

Later, the member informed the commissioner that they had accepted a senior position with the party, not contemplated in the request for authorization, and as a result had decided to resign their position with the agency.

Act as Treasurer for a Provincial Riding Association (C10-07/08)

PSOA, s. 86, 89 & 92

- Political Activity
- Conflict of Interest Commissioner
- Political Activity - Specially Restricted Public Servants

A part-time member of an adjudicative agency applied to the commissioner for authorization to engage in political activity that is not otherwise permitted under the *PSOA*. Specifically, as a

specially restricted public servant under section 85(2)9 of the PSOA, the member sought authorization to act as treasurer for a provincial riding association.

The commissioner first stated that the purpose of the political activity rules in Part V of the PSOA is to balance the need to preserve the integrity and neutrality of the public service with individuals' right to engage in political activity.

The commissioner stated that the PSOA clearly permits specially restricted public servants to be a member of a political party (section 89(1)(c)). However, the commissioner also stated that the legislative permission to be a member of a political party does not grant the right to be involved in all activities available to members of the party.

The commissioner concluded that the member's proposed activity would conflict with the interests of the member's agency under section 92(4)(b) of the PSOA, based on the following factors as described in section 92(5):

- the position of treasurer is part of the executive of the riding association, and this role would put them at the heart of partisan politics, and clearly would identify them as an active supporter of a particular political candidate/party
- the member has broad discretion in their position with the agency, and the public could reasonably perceive their discretionary decisions to be influenced by political considerations
- the member's position with the agency makes them visible to the public.

In addition, the commissioner considered the fact that the agency's proceedings take place throughout the province, including the geographic area of the riding association. The commissioner also noted that the agency's website identifies the member as being very actively involved in the community, including in boards and local service clubs, and that, as such, their political and other activities would be well known within the community.

Accordingly, the commissioner declined to grant the authorization requested by the member.

Publicly Endorse and Assist a Federal Candidate (C12-07/08)

PSOA, s. 86, 89 & 92

- Political Activity
- Conflict of Interest Commissioner
- Political Activity - Specially Restricted Public Servants

A part-time member of an adjudicative agency applied to the commissioner for authorization to engage in political activity that is not otherwise permitted under the PSOA. Specifically, as a specially restricted public servant under section 85(2)9 of the PSOA, the member sought authorization to publicly endorse and assist a particular federal candidate in an upcoming federal election.

The commissioner stated that the PSOA clearly permits specially restricted public servants to be a member of a political party (section 89(1)(c)). However, the commissioner also stated that the legislative permission to be a member of a political party does not grant the right to be involved in all activities available to members of the party.

The commissioner concluded that the member's proposed activities would conflict with the interests of their agency under section 92(4)(b) of the PSOA. The commissioner based his decision on the following factors as described in section 92(5) of the *PSOA*:

- the member's proposed political activities would put them at the heart of partisan politics and clearly would identify them as an active supporter of a particular political candidate;
- the member has broad discretion in their position with the agency, and the public could reasonably perceive their discretionary decisions to be influenced by political considerations; and
- the member's position with the agency makes them visible to the public.

The commissioner further stated that, in his view, the proposed political activity would publicly signal the member's political allegiance, which could affect the public's perception regarding their neutrality as a member of the agency.

Accordingly, the commissioner declined to grant the authorization requested by the member.

Member of a Local Riding Association (C14-07/08)

PSOA, s. 86, 89 & 92

- Political Activity
- Conflict of Interest Commissioner
- Political Activity - Specially Restricted Public Servants

An Ethics Executives with an adjudicative agency asked the commissioner for general advice about political activity and the agency's politically restricted public servants. In particular, the Ethics Executives asked the commissioner for guidance in deciding whether a part-time member of the

agency who wished to become a member of a local riding association would be required to apply to the commissioner for authorization under section 92 of the *PSOA*.

The commissioner advised that Ethics Executives that, in his view, membership in a riding association constitutes political activity under section 72 of the *PSOA*, and that whether or not undertaking the activities of a member of a riding association should be authorized under section 92 would have to be determined by the commissioner on a case-by-case basis.