



PROVINCE OF ALBERTA

**OFFICE OF THE
ETHICS COMMISSIONER**

ANNUAL REPORT 1993-94

April 12, 1994

Hon. Stanley S. Schumacher, Q.C.
Speaker of the Legislative Assembly
325 Legislature Building
Edmonton, Alberta
T5K 2B6

Dear Mr. Speaker:

It is my honour and pleasure to submit to you the second Annual Report of the Office of the Ethics Commissioner, covering the period from April 1, 1993 to March 31, 1994.

This report is submitted pursuant to section 44(1) of the *Conflicts of Interest Act*, Chapter C-22.1 of the 1991 Statutes of Alberta.

Yours very truly,

Robert C. Clark
Ethics Commissioner

ETHICS COMMISSIONER'S REMARKS

In 1993/94, the Office of the Ethics Commissioner completed its first year of operation under the fully-proclaimed *Conflicts of Interest Act*. It was a year of challenges for this office as we worked toward fulfilling our mandate to assist Members and senior officials in understanding their obligations under the legislation or directive and in providing the public with disclosure information relating to Members of the Legislative Assembly.

I wish to express my appreciation to Members and senior officials for their cooperation in completing the disclosure process. The requirement to file detailed information on one's income, assets, liabilities, and financial interests, was met with varying degrees of enthusiasm by individual Members and senior officials. The documents were, however, all completed and were filed, for the most part, within the deadlines set out in the legislation and Ministerial directive. We expect that with experience, Members and senior officials will be able to complete the forms in future years within the specified time limit.

In our meetings to discuss the detailed, confidential disclosure statements, we reviewed the background of how this office came to be established, the obligations on the individual, and the individual's personal

situation.

We discussed the Report of the Review Panel headed by Chief Judge Ed Wachowich, which presented the Government of Alberta with proposed conflicts legislation. We noted their strong recommendation that the office be used to provide advice whenever a Member or public official believed a potential conflict existed.

The title "Office of the Ethics Commissioner" has resulted in some confusion as a perception exists that this office will investigate "ethics" issues. The Review Panel, in its report, suggested the title, which was adopted by the Assembly in passing the *Conflicts of Interest Act*. The Review Panel wrote:

We think that that individual should be called the "Ethics Commissioner" to emphasize that his or her overriding function is to promote adherence to high standards of ethics in government.

In providing advice and recommendations to Members, we are attempting to meet that objective identified by the Review Panel.

Based on our first year's experience and on our discussions with those individuals required to file disclosures with us, we do believe that the following quotation from *Essentials of Government Ethics*, edited by Peter Madsen, Ph.D., and Jay M. Shafritz, Ph.D., accurately

reflects the present-day attitude and actions of Alberta's MLAs and senior officials.

... Ultimately, the assurance of high standards of ethical behavior depends upon the people who aspire to and gain public office, and more particularly upon the system of values they have internalized. ... A guiding rule ... of subsequent official decisions should be that propounded many years ago by Thomas Jefferson:

Whenever you are to do a thing, though it can never be known but to yourself, ask yourself how you would act were all the world looking at you, and act accordingly.

We were and are impressed with the awareness that the majority of Members and senior officials have regarding conflict of interest issues.

As readers of this report will note on page 14 which shows our statistics for the year 1993/94, a growing number of individuals have contacted this office to seek advice and recommendations under section 41 of the Act.

Section 41 allows a Member to contact this office and outline in complete detail a particular situation affecting that Member. Based on the information supplied, the Member is provided with advice and recommendations as to whether a conflict of interest is involved. If a potential conflict is

involved, the Member is provided with alternatives to avoid the conflict. The provisions of section 41 also apply to senior officials as outlined in the Ministerial directive provided to those officials. We have included commentaries on some of the advice provided later in this report.

We do strongly urge Members and senior officials to make full use of section 41. If the individual concerned provides complete information and acts on the advice and recommendations of this office, no further action can be taken against that Member or official at a later time. This office assumes all responsibility for inaccurate advice.

We have also included in this report mention of requests for investigations where this office has no jurisdiction. As stated earlier, there has been some confusion in the public's mind concerning the role of this office, partially because of our title. Additionally, the Act has only been fully in force since March 1, 1993, and its contents are not widely known. Many of the requests for investigations are dealt with by simply supplying interested citizens with information on what obligations exist on Members or senior officials. We further intend to produce other publications which will provide information on conflicts of interest matters for Members, senior officials, and other

interested individuals and organizations.

This office opened on April 1, 1992, with myself as Ethics Commissioner and with Karen South serving as the full-time administrator of the office. Approval was given in 1993/94 by the Standing Committee on Legislative Offices to include wage funds in our budget to provide for part-time clerical work. We continue to rely on Frank Work, Senior Parliamentary Counsel, for general advice and on David P. Jones, Q.C., as outside counsel for specific conflict of interest questions. We believe the operations of this office, including the confidentiality required in providing assistance to Members and senior officials, are best handled by a small staff.

Page 16 of this report contains a summary of budget submissions by this office. Of the \$204,171 originally requested by this office in 1992/93, we actually expended \$169,366.91. We reduced our estimates for 1993/94 to \$196,955 and have once again expended less than requested. Our budget submission for 1994/95 for \$173,252 reflects our continued efforts to operate as efficiently and effectively as possible at public expense.

The following sections outline the activities of the office during the past year.

DISCLOSURE STATEMENTS

The *Conflicts of Interest Act* came into force on March 1, 1993.

Private disclosure statements were provided to all Members for completion by April 30, 1993. The Legislative Assembly was advised on May 4, 1993, that this office had received disclosure statements from the 81 Members then in the Assembly (there were two vacancies at that time). On May 18, the writ was issued for a general election to be held on June 15, 1993. The disclosure process for MLAs was therefore set aside until after the general election.

A memorandum dated February 1, 1993, from the Hon. Richard S. Fowler, then Minister of Justice and Attorney General, directed that senior officials would begin to file disclosure statements with the Office of the Ethics Commissioner on a date determined by this office. The date of implementation was set as April 1, 1993. The number of individuals filing has varied throughout the year; at the time of writing this report, 87 positions have been designated as senior official positions.

During the months of June and July, meetings were held to review the disclosure statements filed by senior officials. During the meetings, the obligations on senior officials as contained in the Minister's memorandum were

discussed and individual concerns were dealt with at the meetings or by correspondence immediately following the meetings. No public disclosure statements are prepared for these officials.

Following the June 15 election, the 34 returning Members were advised that they would not be required to submit a second set of private disclosure statements. Meetings were arranged for those MLAs to attend at our office to review and update the disclosure statements filed with us prior to the election.

The 49 new Members were provided with disclosure forms and all 49 forms were received by mid-September.

All 83 Members met with this office by mid-October. Each Member was provided with a copy of his or her draft public disclosure statement for review. The final public disclosure statements were filed with the Office of the Clerk of the Legislative Assembly on October 29, 1993.

INVESTIGATIONS

This office received 27 requests for investigation in 1993-94. Three investigations were conducted during the year.

Case 1: Allegation involving Ken Rostad, Member for Camrose

On April 21, 1993, this office received a request for an investigation from Gary Dickson, Member of the Legislative Assembly for Calgary-Buffalo, regarding a letter of reference written by Ken Rostad, Member for Camrose, on behalf of a constituent who had been found guilty of a criminal offence.

Mr. Dickson argued that the *Conflicts of Interest Act* imposed a broad obligation on former Ministers (Mr. Rostad had been the Attorney General until December 15, 1992) not to influence matters over which they had significant dealings prior to leaving the Executive Council.

Mr. Rostad presented information that he had known the constituent for a number of years; that he wrote the letter on personal stationery in a personal capacity; that he provided the letter to the convicted individual for whatever use that person wished to make of it; and he addressed the letter "To the court" generally.

The report of this investigation was tabled in the Legislature by the Speaker on April 28, 1993. This office found that the Member had not breached the Act since he had not, as a Minister, had any supervisory or other authority with respect to judges. Letters of reference,

generally, it was determined, have become accepted examples of the activities in which Members normally engage on behalf of constituents as permitted in section 5 of the Act.

Certain recommendations were made to the Legislative Assembly for its consideration regarding the practice of providing letters of reference for constituents. As noted in the Case Commentaries section of this report, this office has subsequently provided advice to Members on an individual basis with respect to this issue.

Case 2: Allegation involving Hon. Kenneth R. Kowalski, Minister of Public Works, Supply and Services
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A letter dated May 11, 1993, was received by this office from Laurence Decore, Leader of the Liberal Opposition, alleging that the Minister had distributed to Members of his caucus only, budget information not publicly available.

This matter was set aside during the course of the general election campaign. Following the June 15 election, both Mr. Decore and Mr. Kowalski provided this office with information on this issue. It was also noted in our report, tabled in the House on August 26, 1993, that the Assembly itself dealt with the release of budget information prior to its distribution to all Members, and

the Speaker ruled on May 12, 1993, that a contempt of the Assembly had occurred.

The findings of this office were that the material released was not insider information as contemplated by the Act and that no private interest was furthered in this instance. We also received no information that public funds had been used for political purposes. No sanction was recommended as no breach of the Act occurred.

Case 3: Allegation involving Hon. Dianne Mirosh, Minister without Portfolio

Mrs. Mirosh requested an investigation into an alleged conflict of interest involving herself and the purchase of a portion of the government's shares in Syncrude Canada Ltd. by Murphy Oil, whose president was the Minister's brother.

Correspondence was received by this office showing that Mr. Pasychny (Mrs. Mirosh's brother) was not involved in the negotiations with the Alberta government. Cabinet Minutes also showed that Mrs. Mirosh absented herself from discussions as soon as she heard the name of the prospective buyer. Similar assurances

were provided that that Minister had removed herself from caucus discussions.

Mrs. Mirosch herself did not own shares in Murphy Oil and the obligations on the Minister under the *Conflicts of Interest Act* did not extend to the Minister's brother as he was not her direct associate as defined under the Act.

This office reported to the Assembly on October 28, 1993, that not only had the Minister acted appropriately, she had gone beyond what was required of her under the legislation.

OTHER INVESTIGATIONS REQUESTED

The office receives a number of requests for investigations involving matters beyond its jurisdiction. Whenever possible, we attempt to provide the caller or writer with the names, addresses, or phone numbers of other individuals or agencies who might be able to provide some assistance. Examples of the types of matters raised with us are problems or concerns with the legal or judicial system and local government issues.

Some people have contacted the office for further information about actions or activities of the Member who represents their constituency. In this regard, the most frequent questions relate to outside employment held by a private Member. We

explain the Act does not prohibit outside employment for Members other than Cabinet Ministers, but we also explain the obligations on Members to separate their private interests and public responsibilities.

Matters relating to Members' allowances or benefits programs are referred to the Office of the Clerk of the Legislative Assembly for response.

CASE COMMENTARIES

Under Sections 41 and 42 of the *Conflicts of Interest Act*, the Ethics Commissioner may provide advice and recommendations to Members. The same provisions applies to senior officials. The following section provides commentary on advice provided to Members and senior officials in 1993-94.

Post-Employment Restrictions

As the Legislature entered the fifth year of its mandate, several Members sought the advice of this office with respect to their obligations under the Act once they left the Legislative Assembly.

All Members involved were advised that the Act restricts post-employment opportunities for former Ministers only.

Changes made in the membership of Executive Council on December 15, 1992, resulted in several former Ministers completing their six-month “cooling-off” period while still serving as Members of the Assembly until the general election in June. Immediately following the election, those individuals had no obligations under the *Conflicts of Interest Act* regarding employment opportunities.

Individuals who were Ministers on June 15 and who did not return to the Assembly ceased to have obligations under the Act as of December 30, 1993.

We would also note that at least two individuals have gone beyond the legislated requirements and continued to consult with this office although they were no longer required to do so.

Campaign Activities

General advice was provided to each Member on April 19, 1993, with respect to activities during election campaigns. In our advice, we focused on three basic principles:

1. Under no circumstances should publicly-funded offices be used for partisan political purposes. This recommendation includes the use of staff, equipment, supplies, or any other facilities to further a candidate’s campaign.

2. No campaign activity must occur in publicly-funded offices. This recommendation includes storing campaign materials, holding meetings to discuss the nomination or campaign, selling party memberships, and soliciting funds for a candidate.
3. Staff wishing to work full-time on campaigns should take a leave of absence, use accumulated vacation time, or take time off in lieu of overtime. No campaign activities should be conducted during normal working hours if the staff member declines to take time off from public service employment

Several questions were raised with our office during the campaign regarding commitments made by Members prior to the writ being issued. In each case, this office advised the Member that we saw no conflict in the Member fulfilling the commitment.

A Member sought the advice of this office with respect to certain material the Member routinely distributes to constituents and which the Member wished to distributed during the campaign. We determined that the material in question was of a non-partisan nature and simply provided information on the role of an MLA.

Other Members, retiring from the Legislative Assembly, discussed with this office the receipt by them of gifts from their

constituency associations in recognition of the Members' public service. Those Members were advised that such gifts did not meet the definition in section 7 of the Act and therefore the Members could accept and retain those gifts.

Constituency Work

New Members raised a number of questions concerning their constituency offices. Members in many cases were first referred to the Office of the Clerk of the Legislative Assembly regarding general guidelines for constituency offices.

Our office did consider the following matters relating to constituency offices.

In locating a constituency office near a private business interest of the Member, Members are advised to ensure that no public funds are used by the private interest.

Section 8 of the *Conflicts of Interest Act* does prohibit Members and their direct associates from entering into certain contracts with the Crown which involve an interest in land. Certain lease agreements were considered under this section.

Advice was also provided to Members -- particularly members of the Executive Council -- relating to advocacy assistance on behalf of constituents. Where matters relating to the ministry are involved, Ministers are

encouraged to provide constituents with information regarding appeal processes and, if the constituents request assistance, to refer the matter to a neighbouring caucus colleague.

As mentioned in the summary of Case 1 on page 5 of this report, this office made certain recommendations to the Assembly with respect to reference letters prepared by Members on behalf of constituents.

Following that report, we did provide advice to individual Members on this subject. We have suggested the following principles:

1. Use stationery appropriate to the situation. If the reference is personal, use personal letterhead. If responding as an MLA, use Legislature or constituency office letterhead. Only in specific and directly relevant circumstances should a Minister use Ministerial letterhead.
2. A reference should not be provided unless the individual or organization is well known to the Member and the Member knows that the person or organization is qualified for the position or approval being sought.
3. Additionally, the Member should be comfortable with the possibility of the public release of the letter.

With respect to letters of reference on matters involving the administration of justice, we have suggested Members contact our office prior to sending such letters.

Outside Employment

Several questions arose concerning outside employment held by private Members.

As noted in the section on investigations requested by the public, several individuals questioned the “ethics” and ability of Members to carry on outside employment. The Act does not prohibit private Members from continuing to carry on a business or profession. Ministers, however, may not do so unless they have the permission of this office.

In advising Members that they may continue to carry on outside employment, the Members concerned are always reminded of their obligations under the Act so that private interests are kept separate from public responsibilities.

A Member may arrange for the Member’s private business interests to be handled through a trust arrangement. Since the legislation allows only publicly-traded securities to be placed in a “blind” trust and private corporations are involved in this type of situation, a “blind” trust is not possible. In

such cases, the Member’s business interests would be disclosed in the public disclosure statement for that Member.

Several Members also discussed with this office their obligations with respect to past employment or private interests and their current obligations relating to those interests. Where the interest had ended, no obligations remained on the Member; however, if the interest continued (for example, through pension payments), Members were reminded of their obligations under the Act.

Blind Trusts

Several Members have chosen to establish blind trusts. The Act requires that this office approve the Member’s trustee and in all cases, approval has been given to the Members concerned.

As noted previously, only publicly-traded securities may be placed in a blind trust and trustees are limited in the financial instruments in which they can invest. In addition to questions from Members, we have also responded to questions raised by the trustees regarding their responsibilities under this legislation.

As mentioned in last year’s annual report, we obtained a copy of a trust agreement form from the Assistant Deputy Registrar General’s

office in Ottawa, which has been revised in plain language and applied to the Alberta legislation. Copies are made available to Members, senior officials, and trustees for guidance in establishing and managing the trust.

Contracts with the Crown

Section 8 of the Act required interpretive assistance from outside legal counsel.

During the election campaign and in discussions with new Members, questions arose regarding the ability of Members to deal with Alberta Treasury Branches. Candidates and Members were advised that no breach occurs if a contract exists at the time the Member is elected, but the contract may not be renewed or renegotiated while the Member is a Member.

During the disclosure process, Members discussed with our office various contracts they or their direct associates had with the Crown. Where the contracts were of a type prohibited under section 8(1)(a) to (e), Members were advised that the contracts could not be renewed while the Member was a Member.

Where the contracts discussed did not fall within the types set out in (a) to (e), we considered the contracts under subsection (f) and considered whether there was any preference

given to the Member or whether special benefits were made available to the Member which were not available to others. No conflict situations were identified in the types of contracts discussed.

Because of the difficulties encountered in interpreting this section, we will be recommending certain amendments to section 8.

Direct Associates

Members of the Assembly have been filing Direct Associates Returns at least since 1983 under the *Legislative Assembly Act*. The provisions under that Act were transferred to the *Conflicts of Interest Act* and came into force on March 1, 1993.

A considerable amount of time was spent obtaining clarification from legal counsel on the meaning of section 1(5) and working with Members to ensure that the list of direct associates was complete and accurate.

The Treasury Department identified several inconsistencies between reports filed under the *Legislative Assembly Act* and those reports filed under the *Conflicts of Interest Act*. Since many of the Members concerned left the Legislative Assembly in June, it took several months to contact the Members and resolve the discrepancies.

Because many of the obligations on Members under the Act include actions taken

by direct associates, we have considered and have taken additional time on this issue. The yearly review of Members' statements will no doubt assist in keeping these returns up-to-date.

Fees, Gifts and Other Benefits

Section 7 of the Act sets out the obligations with respect to fees, gifts, and other benefits for Members. We would point out that senior officials do not report fees, gifts, and other benefits to this office. In that respect, senior officials are governed by the Code of Conduct for all public employees.

One Member reported a gift received which was considerably in excess of the \$200 limit set out in the legislation. Since that Member had certain public responsibilities relating to the industry in which the gift giver was involved, the Member was advised that the gift could not be retained. The gift was donated to charity.

Members have also disclosed complimentary memberships and passes offered to them. As a general rule, if a complimentary membership provides a Member with facilities at which the Member may meet with constituents or interest groups or if the pass assists the Member in carrying out the Member's MLA responsibilities, permission to accept the membership or pass is

questions under this section very carefully usually given. It is noted that Members are required to pay all food and beverage costs incurred at meetings held at the facilities covered by the complimentary membership.

In providing the above advice to Members, we have noted to the Members concerned that use of complimentary passes for recreational or sporting facilities is not appropriate.

Senior Officials

This office has also provided advice to those individuals identified as senior officials within the Alberta public service.

The re-organization within government departments and agencies resulted in some potential conflicts of interest being identified. In each case, the senior official involved moved immediately to ensure that no actual conflict occurred.

Senior officials have been diligent in reporting changes to their private disclosure statements and in bringing our attention to changes in circumstances which may potentially relate to their public responsibilities.

Although this office has no authority to conduct an investigation into an alleged conflict of interest within a government department or agency, we were requested to

provide general comments to the President of the Alberta Research Council on the Council's internal code of conduct. Dr. Lorne Taylor, Chairman of the Research Council, filed in the Legislature a copy of our comments on the code.

PROFESSIONAL ASSOCIATIONS

I attended the annual conference of the Council on Governmental Ethics Laws (COGEL) held in St. Paul, Minnesota, from September 19 to 22. That conference brings together officials and staff who have responsibilities relating to ethics issues, election financing and campaigns, and lobbyist registration.

The annual meeting of CCOIN (the Canadian Conflict of Interest Network) was again held in conjunction with COGEL. CCOIN has added two new members during this past reporting year: Wayne Mitchell of Newfoundland, who also serves as the province's Chief Electoral Officer, and Derril McLeod, Q.C., in Saskatchewan, who will also serve as that province's Privacy Commissioner.

This office continues to exchange advice and information with our colleagues across the country through the year.

PUBLIC INFORMATION

Speaking Engagements

In order to promote public understanding of the obligations on Members of the Legislative Assembly and senior officials, I have accepted -- and will continue to accept -- speaking engagements whenever I believe an opportunity exists to let the public know more about this office and the responsibilities and obligations of MLAs and senior officials.

Since this office opened on April 1, 1992, I have accepted speaking engagements from the following groups or organizations:

1992/93

Financial Executives Institute
University of Lethbridge Senate
Grace United Church

1993/94

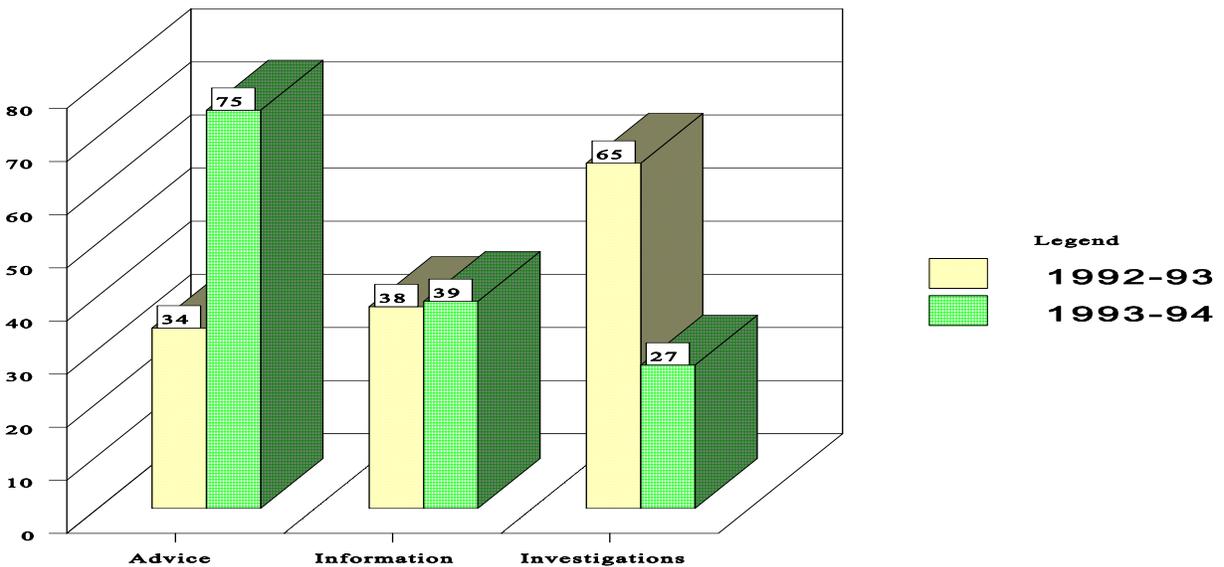
Forum for Young Albertans
Canadian Association of Municipal Administrators
Alberta Arbitration and Mediation Society
University of Alberta, senior class on public administration

Publications

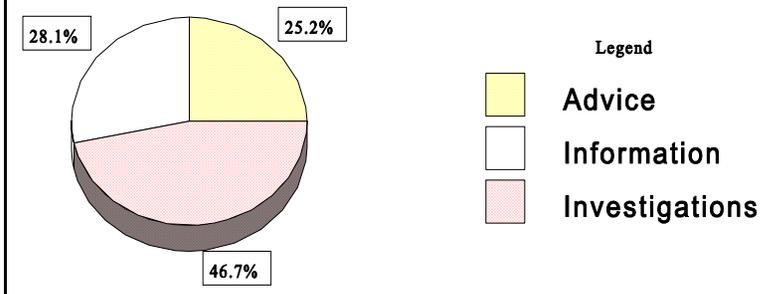
In the first year of our operations, we prepared a brochure summarizing the *Conflicts of Interest Act*. We are presently working on additional materials which will be made available to Members, senior officials, and the public.

STATISTICS

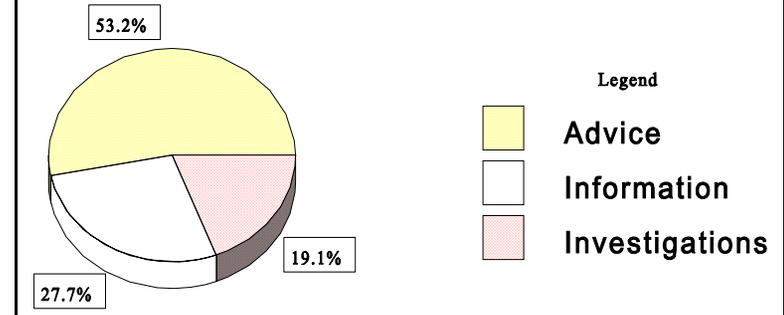
The figures in the following chart indicate that as individuals become more aware of the jurisdiction of the Office of the Ethics Commissioner, fewer requests for non-jurisdictional investigations are received. The figures also show that Members, candidates for public office, and senior officials are making use of this office to obtain advice and recommendations once potential conflicts of interest are identified.



Statistics 1992-93



Statistics 1993-94



NOTES:

Until proclamation of the *Conflicts of Interest Act* on March 1, 1993, the Office of the Ethics Commissioner was not able to conduct investigations under the Act. The Act does not permit investigations into allegations involving matters which occurred prior to proclamation.

Requests for advice have been received from and provided to Members of the Legislative Assembly, senior officials, and from individuals interested in seeking public office.

Requests for information come primarily from members of the public, government agencies, and other jurisdictions.

BUDGET

	1992/93 Estimate	1992/93 Actual Expenditures	1993/94 Estimate	1994/95 Estimate
SALARIES, WAGES AND EMPLOYEE BENEFITS	\$119,111	\$117,745.61	\$139,405	\$122,652
Travel	\$ 23,760	\$ 16,563.87	\$ 17,950	\$ 16,700
Insurance	500	0.0	500	500
Freight and Postage	900	158.13	550	400
Rental of Property, Equipment and Goods	7,200	5,154.49	4,800	5,000
Telephone and Communications	1,500	1,286.36	1,300	1,500
Repair and Maintenance of Equipment	700	0.0	700	600
Professional, Technical and Labour Services	23,000	6,855.50	23,500	21,000
Hosting	900	566.74	650	400
Materials and Supplies	8,000	4,957.21	5,500	3,000
SUPPLIES AND SERVICES	\$ 66,460	\$ 35,542.30	\$ 55,450	\$ 49,100
PURCHASE OF FIXED ASSETS	\$ 18,600	\$ 16,079.00	\$ 2,100	\$ 1,500
TOTAL EXPENDITURE	\$204,171	\$169,366.91	\$196,955	\$173,252