



PROVINCE OF ALBERTA

**OFFICE OF THE
ETHICS COMMISSIONER**

ANNUAL REPORT 1998-99

July 5, 1999

Hon. Kenneth R. Kowalski
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 Annual Report of the Office of the Ethics Commissioner, covering the period from April 1, 1998 to March 31, 1999.

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

Readers of this annual report will note that 1998/99 has been remarkably quiet. I did not conduct any investigation of an alleged breach of the *Conflicts of Interest Act* by any Member.

The inactivity in this area may suggest several things. The most positive view of the situation would be that Alberta's politicians are highly ethical individuals and there have been no requests for investigations because there has simply been no need for investigations. I do personally believe Albertans are represented by honourable Members.

I do not believe that the low number of investigation requests indicates that the public believes (or fears) that the Act is so flawed or the investigation process so limited that an investigation is useless. I have not received any such message from the public and would argue against any such claims. In any event, requests for investigation in Alberta have tended to come from elected Members themselves and not from the public. Members are aware of my mandate and therefore tend to seek investigations only where they believe I have the power to investigate.

The Act does limit what constitutes a "conflict of interest" and that may influence a decision on whether or not an investigation is requested. I have tended to expect an allegation of conflict of interest to be accompanied by a certain amount of evidence and not simply

media accounts of a Member's activities. I hasten to note that the requests I have received to date from Members of the Assembly have been accompanied by supporting documentation obtained through mechanisms such as research through publicly available documentation and from freedom of information requests. I expect that practice to continue.

Another possible interpretation of the low number of requests may be that my past investigation reports have served to narrow "conflict of interest" issues to areas where "private interests" are more clearly identified and are involved.

Whatever the reason for the low number of requests, my office has continued to stress the importance of "preventive" actions by Members and has continued to focus on assisting Members by giving them advice prior to actions being taken by the Members. Members continue to use the services of this office in that regard and I firmly believe that is our most important work.

My office keeps a small library of publications, magazine articles, and newspaper clippings on issues of interest in the field of ethics, lobbyist registration, and campaign finance and disclosure. I am impressed by the actions taken by public and private sector organizations to deal with and control corruption, influence peddling, and other unethical behaviours. I am also disappointed by the extent to which it exists and how

widespread it is throughout the world. The low incidence of such activities in Alberta reinforces my belief that we are well-served by our public servants and that public service is indeed an honourable profession in Alberta.

An interesting concept was discussed at the annual conference of the Council on Governmental Ethics Laws in Seattle in September 1998. Ethics offices in Washington State have joined with ethics agencies in the private sector to discuss issues of mutual interest and concern. I find it interesting that the public and private sector share many common concerns, including the appropriateness of receiving gifts from vendors or interest groups. I watch with interest what appears to be a growing number of private sector agencies that deal with ethics issues and the response from corporations to ethics situations. I believe we can learn from each other and am willing to make my office and its resources available to any person or group that may wish to discuss ethics issues.

The Legislature passed amendments to the *Conflicts of Interest Act* during the fall sitting of the Legislature in 1998. Certain of those amendments addressed recommendations from the *Conflict of Interest Act* Review Panel and other amendments were government-initiated or were recommended through my office. The amendments include the following:

- The Act, when the amendments are proclaimed, will contain a preamble that

comments on the integrity and impartiality of public office.

- Members will be able to seek reimbursement for costs associated with complying with the disclosure or blind trust requirements of the Act. A process has been set in place for dealing with those claims.
- The Leader of the Opposition will face the same restrictions as do members of Executive Council regarding outside employment and the prohibition of owning publicly-traded securities.
- More detailed reporting will be required of withdrawals by Members from meetings where Members' private interests are involved.
- The Commissioner will be able to re-open an investigation where "new evidence" is provided that might, on its face, change the original findings.
- The section dealing with contracts with the government has been clarified.
- A review of the Act must occur every five years.

I fully support the practice of periodic reviews of legislation. Societal changes and expectations ought to be considered from time to time and changes made accordingly. I believe this is particularly important in the field of ethics legislation.

I am pleased to report that my office has again returned a small percentage of its budget to the General Revenue of the province. Funds were spent on new computer equipment in this

reporting year and, fortunately, a smaller percentage was spent on professional or legal fees. During 1998/99, the Office of the Information and Privacy Commissioner assumed responsibility for all accounting and human resource functions for the Office of the Ethics Commissioner. Up until December 31, 1998, those services were provided by the Legislative Assembly Office and had been provided on our behalf since our office opened in April 1992. I wish to express my appreciation to the various staff members in that organization who have provided support to my office throughout the years. I also wish to thank the staff in my larger office who have ably assisted me in administrative matters over the past year. I wish to particularly thank Karen South for her dedication and support to the office and the Commissioner for the past seven years.

DISCLOSURE STATEMENTS

No major changes were made to the disclosure statements in the past year. We are continuing to review them to ensure that they do in fact meet the legislative requirements. We are concerned that, over time, the simplified forms may cause Members to "forget" the details contained in the initial disclosure and we are considering options to deal with that situation.

Under the amendments to the Act passed during this past year, Members will have to publicly disclose unpaid taxes, except property

taxes under the *Municipal Government Act* and school taxes under the *School Act*.

We revised the public disclosure forms in this reporting year in an effort to make them easier to read and to reduce the volume of paper.

I am still not satisfied with the degree of compliance with filing deadlines. The majority of Members comply within the stated time period but the assistance of the Leaders and Whips is still required in getting 100 percent compliance. My office has made every effort to assist Members with compliance, including the simplification of the forms, and therefore I continue to take a firm position with Members on filing deadlines.

Senior officials are also not complying with deadlines to the extent that I would like. I received documentation from all designated officials but was disappointed at the efforts it took to obtain compliance.

Some senior officials have raised questions concerning the extent of the disclosure and a review of their disclosure forms will take place in 1999.

INVESTIGATIONS

As noted in my opening comments, no investigations were conducted in the 1998/99 fiscal year.

My office received requests for investigations but those requests did not fall within my mandate or were dealt with by an

explanation of the Act and its application to the situations raised.

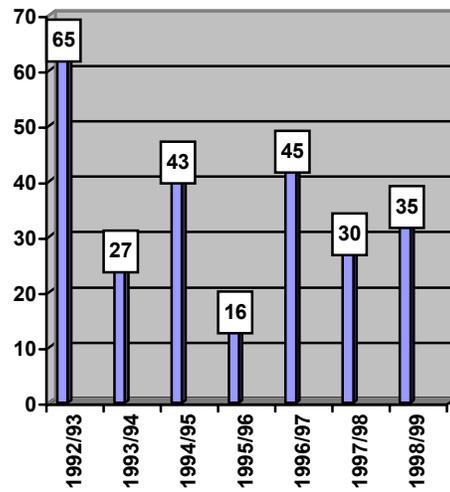
I still receive a number of calls concerning locally-elected officials or members of boards or agencies. Those concerns are passed on to the appropriate ministries, where possible.

A growing number of calls concern "unethical" behaviour of public servants. These calls may involve allegations of inappropriate "moonlighting" or questionable contract awards. My mandate does not extend to members of the public service, who are covered under the *Code of Ethics and Conduct for the Public Service of Alberta*. Callers with concerns in this area are referred to the Public Service Commissioner for an explanation of the process for dealing with complaints relating to issues covered by the Code.

The number of requests for investigations in 1998/99 is shown in Figure 1.

CASE COMMENTARIES

Under the Act, Members have the ability to contact my office for advice on specific situations. Where the Member has provided all relevant information and has acted on my advice, that Member is protected against any subsequent action where an allegation of a breach is raised. For that reason, I consider this

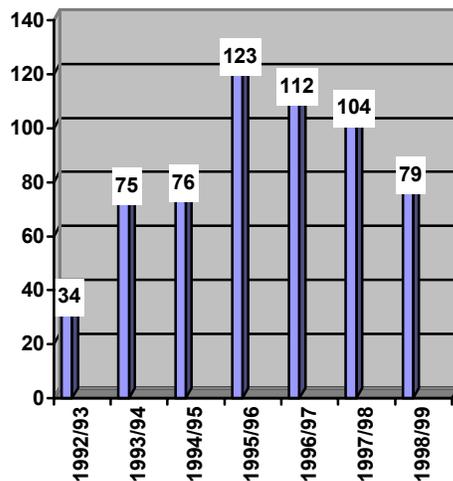


activity under the Act to be the most important function of my office.

By far the most common request to my office is whether or not a Member can participate in debate on a specific issue, given the Member's own unique circumstances. In such circumstances, I consider both the Member's personal situation and the nature of the issue under consideration. Since the Act says that a "private interest" does not include a matter of general application, I always consider whom the legislation or issue affects. In most cases, the matter is one of general application and the Member is given advice that he or she may participate in the debate.

The following sections contain a brief general description of the types of issues that were raised in 1998/99.

Figure 2: Requests for Advice



Private Interests

As noted above, "private interests" do not include matters of general application. This provision allows Members who are teachers to debate education issues and farmers or ranchers to debate agricultural issues. The House is therefore not deprived of the personal experience and expertise of its Members. In rare circumstances, a Member's personal situation is such that he or she may benefit in a way that others may not. In those circumstances, the Member is advised to declare the private interest and withdraw from the proceedings.

The amendments to the Act passed in 1998 will require that my office receive written notification of a Member's withdrawal from a meeting as set out in section 2 as amended. Although the notifications will not be publicly disclosed, my office will have a better understanding of how often circumstances arise

requiring Members to withdraw from deliberations and I should be able to provide commentary on that aspect of the requirement to withdraw.

Campaign Activities

No requests for advice were raised this year with respect to the by-election in Edmonton-McClung. No candidates or potential candidates sought advice with respect to obligations or concerns under the *Conflicts of Interest Act*.

Constituency Work

The issue of hiring of family members or relatives continues to arise. This matter was discussed with the Speaker of the Legislative Assembly, as the Legislative Assembly Office handles contracts of employment in constituency offices. The Speaker and I agreed to keep each other informed of issues that may relate to or affect our respective mandates.

Members also raised questions about purchasing items out of a constituency budget from a person or company associated with the Member. I believe situations such as that ought to be avoided even where the Act does not expressly prohibit them.

Members of the Executive Council

Some members of Executive Council sought advice with respect to investment opportunities.

While Ministers are not allowed to hold publicly-traded securities, they are allowed to hold mutual funds and similar instruments.

Questions also arise, from time to time, on specific holdings by Ministers or the manner in which private corporations continue to operate while the Member is a member of Executive Council. Advice in those cases must be based on the nature of the activities, operations of government generally, and the Minister's specific responsibilities.

Outside Employment

Members sought advice with respect to volunteer or professional associations and, in all instances, approval was given for the activities. Where Members sought advice regarding employment opportunities, no concerns were raised since the Act does not prohibit private Members (non-Cabinet Ministers) from having outside employment. Those private Members were also reminded of their obligations under the Act.

Ministers are not allowed to have outside employment unless this office provides an approval. Typically approval is only sought when the Minister is a member of a profession and is required to perform at least a minimum amount of work in his or her profession in order to keep up an accreditation.

Blind Trusts

Newly-appointed senior officials sought

advice regarding blind trusts and sample forms were provided to those individuals. Trustees were approved where blind trusts were eventually established.

Under the new amendments to the Act, the Leader of the Official Opposition will no longer be able to hold publicly-traded securities and the blind trust provisions will apply to the holder of that position in the future.

Contracts with the Crown

Section 8 of the *Conflicts of Interest Act* deals with contracts with the Crown. That section was amended during 1998 and the amendments should help to clarify what has been a difficult section to interpret.

Members continue to be prohibited from obtaining new loans from Alberta Treasury Branches and Agriculture Financial Services Corporation. However, renewal of loans may occur with my approval where I believe the provisions are fair and reasonable in the circumstances and after considering the other conditions as set out in section 8.

Direct Associates

Members must not further the private interests of their direct associates. In this regard, my advice to Members is to tread very carefully where private corporations controlled by either the Member or the Member's spouse are involved. Where the Member controls the

private corporation, the Member's obligations under the Act are clear. Where the Member's spouse controls the private corporation, the specifics of the Member's actions or the matter for which advice is sought must be carefully considered to determine whether a breach of the Act may be involved.

For example, the Act limits a Member's actions where those actions might further a private interest of a Member's direct associates. Under those circumstances, the situation may limit the Member's actions as they relate to a spouse and the spouse's private corporation. However, the section dealing with contracts refers only to a contract between the Crown and a Member's direct associates and does not therefore include a spouse's private corporation.

Advice is therefore dependent on the situation and the exact relationship between the Member and the person or entity whose interests might be furthered.

Fees, Gifts and other Benefits

The typical request for advice this year regarding "gifts" related to receipt of a ticket for a political fundraiser. Approval was given in all cases and the receipt of the ticket was noted on the Member's public disclosure form.

Another fairly common request for advice arises from an offer of air passage on corporate aircraft. It is my practice to advise against acceptance of such offers unless there is agreement for the province to reimburse the

corporation for the cost of the flight. I express similar concerns over offers of hotel accommodations or upgrades to accommodations where the offer comes from an entity that is regulated by or has a contract with a department or agency over which or with which the Member has public responsibilities.

Senior Officials

Under the Code of Conduct, as recently revised, senior officials are to receive advice from Executive Council on issues under the Code. Although my office has a more limited role under the Code, I am still available to senior officials to discuss broader issues of "ethics" or conflict of interest.

We continue to receive a number of "unofficial" requests for information from non-profit and public Boards seeking guidance on conflict of interest. A common question to my office is "what is a conflict of interest?" We are pleased to provide a range of materials from our library to assist those agencies or individuals in developing their own definition of "conflict of interest."

PROFESSIONAL ASSOCIATIONS

I attended the annual meeting of the Canadian Conflict of Interest Network (CCOIN) in Quebec City in October. The meeting allows me to hear from my colleagues across the

country on recent legislative updates in their jurisdictions as well as matters they have had to consider. I greatly value their advice and support. The 1999 meeting of the association will be held in Victoria.

In December, I was contacted by the Legislative Assembly of the Northwest Territories as a result of a public inquiry conducted by that jurisdiction's Conflict of Interest Commissioner. That jurisdiction was contemplating a review of its conflict of interest legislation in a similar fashion to the review conducted in Alberta. We provided information on the process we used. In January, I was asked to Chair a three-member review panel to review the Northwest Territories legislation and I undertook that assignment after discussing the matter with the Chair of the Standing Committee on Legislative Offices. The motion passed by the NWT Legislature required our panel to report in mid-April 1999.

In September, I attended the conference of the Council on Governmental Ethics Laws (COGEL) in Seattle. During that conference, I was elected to the Steering Committee and was asked to chair the Awards Committee. Most of the Steering Committee's work is completed by telephone conference call, although a meeting will also be held in June in the 1999 host city of Providence, Rhode Island. The conference itself will be held in December.

PUBLIC INFORMATION

Callers often contact my office for an explanation of our mandate and advice or guidance on contacts for resolution of their particular problems or concerns.

We continue to receive requests for copies of the "Tupper Report" and for various investigation reports released in previous years.

My office is also pleased to note that our library was used by members of the public over the past year. We do try to keep current reports and legislation on hand from across Canada and the United States. We also follow current developments in the United Kingdom relating to conflicts of interest issues involving their House of Commons and House of Lords. That information is accessible to the public during our regular office hours and we are pleased to accommodate anyone interested in using that resource.

I am also pleased to advise that the Office of the Ethics Commissioner has an Internet presence. Through the efforts of the Office of the Ethics Counsellor in Ottawa, provincial jurisdictions have been included on the Federal website. We accepted their office to use that website because we did not believe we had sufficient resources or information to warrant a stand alone presence. All of our annual reports, investigation reports, and ethics bulletins have been placed on the website and we wish to thank Howard Wilson, Ethics Counsellor, and his staff for the tremendous job they did in converting the documents for the website.

Copies of the *Conflicts of Interest Act* for Alberta, the *Code of Ethics and Conduct for the Public Service of Alberta*, and selected portions of Alberta's *Municipal Government Act* may also be accessed through that website. The site is located at: strategis.ic.gc.ca/ethics_

Publications

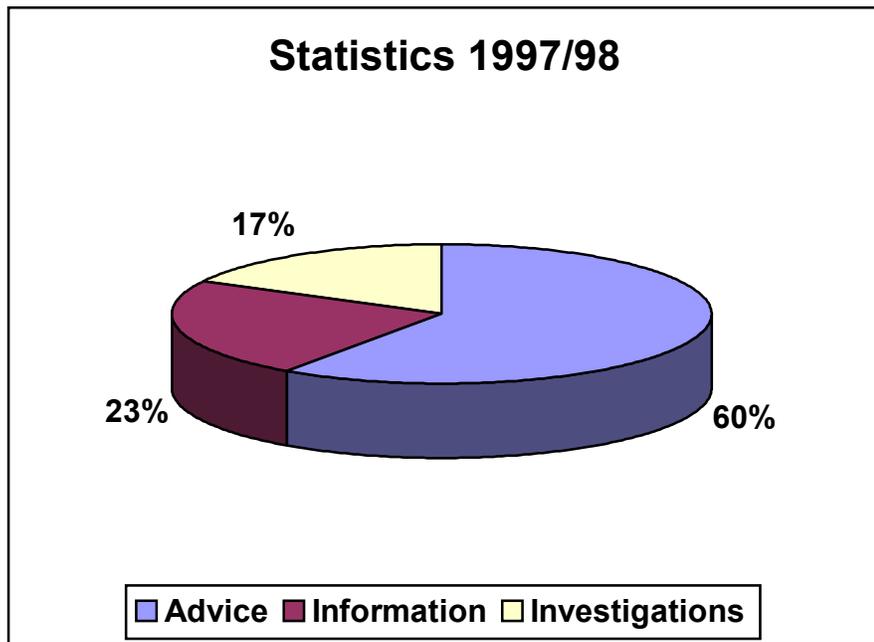
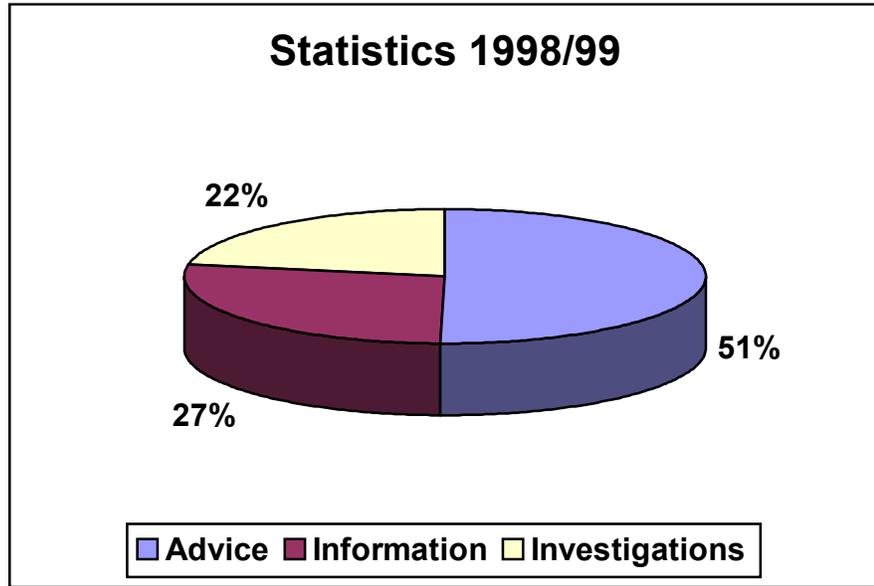
The following *Ethics Bulletins* were published in 1997/98.

April, No. 10	Advice
July, No. 11	Survey
October, No. 12	Survey Results

Based on the survey results, I decided that we would discontinue publication of the *Ethics Bulletin*. As noted in Issue No. 12, we will consider alternative mechanisms for communicating with Members.

COMPARATIVE STATISTICS

The pie charts below show the percentage of requests received by our office that dealt with information, investigations, or provision of advice.



BUDGET

	1995/96 Actual Expenditures	1996/97 Actual Expenditures	1997/98 Actual Expenditures	1998/99 Estimates
SALARIES, WAGES AND EMPLOYEE BENEFITS	\$114,110	\$111,041	\$117,937	\$134,982
Travel	\$ 11,724	\$ 9,927	\$ 3,509	\$ 14,000
Insurance	600	865	1,164	1,000
Freight and Postage	329	513	196	300
Rental of Property, Equipment & Goods	4,975	4,790	3,624	5,750
Telephone & Communications	1,488	1,024	767	2,000
Repair & Maintenance of Equipment	60	118	----	1,000
Professional, Technical & Labour Services	19,867	9,536	12,343	28,000
Data Processing	512	363	340	5,200
Hosting	324	368	717	500
Materials and Supplies	8,751	2,371	3,182	5,000
SUPPLIES AND SERVICES	\$ 48,630	\$ 29,875	\$ 25,842	\$ 62,750
TOTAL EXPENDITURE	\$162,740	\$140,916	\$ 143,779	\$197,732