



PROVINCE OF ALBERTA

**OFFICE OF THE
ETHICS COMMISSIONER**

ANNUAL REPORT 1992-93

April 27, 1993

Hon. Dr. David J. Carter, M.L.A.
Speaker of the Legislative Assembly
325 Legislature Building
Edmonton, Alberta
T5K 2B6

Dear Dr. Carter:

It is my honour and pleasure to submit to you the first Annual Report of the Office of the Ethics Commissioner, covering the period from April 1, 1992 to March 31, 1993.

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

I wish to express my appreciation to the Legislative Assembly and to the Select Standing Committee on Legislative Offices for the opportunity to serve as Alberta's first Ethics Commissioner.

The Act respecting conflict of interest, which was Bill 40, had a long gestation period from the time Royal Assent was given on June 25, 1991, to the commencement of this office on April 1, 1992, until the Order in Council effective March 1, 1993, which brought into force the entire *Conflicts of Interest Act* and its implications.

During debate on the Act, Members on all sides of the House expressed their strong support for the basic principles included in Alberta's conflict of interest legislation. The Attorney General, when leading off debate on Second Reading of the *Conflicts of Interest Act* in the Legislative Assembly on June 20, 1991, stated:

In introducing the Act, I have mixed feelings. There's a certain joy to bringing it in because I think there is an indication that the public and also the members want to have a code that would set out rules that we can operate under so that we as members and the public can be assured that we're keeping our duties that we have to the public through our being elected members separate from our private interests. The other side of the coin is that it's unfortunate that governing bodies, not just elected bodies in this House -- whether it's in the church or the schools or

whatever, there seems to be malaise where the public doesn't have the confidence that I think they should have in these people and in us as elected members. So it's with that juxtaposition that I stand to introduce the Bill.

Rev. William Roberts, New Democrat Member for Edmonton-Centre, commented:

We need to have this Bill before us to outline clearly what we are about in terms of our public duties and what we must not be about in terms of how our private interests may be furthered by information and powers and decision-making which we have access to as publicly-elected people.

In making his comments to the House, the late Sheldon Chumir, Liberal Member for Calgary-Buffalo, observed:

Let me hasten to add that, in my view, by standards in other parts of this country, indeed in the world, we rank very high in the quality of our lives and the honesty of our politicians, and it's indeed a pleasure to live and work in an atmosphere like this. I say that in the sense that our scandals pale by comparison to scandals in other parts of this nation and this world, and I hope that will continue to be the case. Nevertheless, we do have room for improvement. We have to move with the times.

The decision to locate this office in a location separate from but still easily accessible to the Legislature Building underscores the unique role that this office carries: that of

dealing with both the concerns of the Members of the Legislature and also being available to the general public at large to hear and deal with their concerns regarding this legislation. The challenge of reconciling the public duties and private interests of Members of the Alberta Legislative Assembly is a task which is as difficult as it is important in the continual process of building confidence in our system of democratic government.

My initial duty once the office was operational was to render assistance to Members in developing an understanding of Members' obligations under the Act. Considerable time was spent in pointing out potential areas of conflict and providing advice under section 41 of the Act. Considerable time was also spent in explaining to the various publics of this province that events that took place prior to the date of proclamation, March 1, 1993, would not be subject to investigation. This restriction is contained in section 46(1) which says

no proceeding may be commenced under this Act in respect of an alleged breach of this Act committed prior to the coming into force of Part 5

(Part 5 being that portion of the Act which deals with investigations into breaches).

One of the early challenges in our attempt to provide an understanding of the responsibilities

of this office was the emergence of a public perception that the title "Office of the Ethics Commissioner" implied a mandate broader than the real responsibility of administering the *Conflicts of Interest Act*. Now that the entire Act is in effect and soon after the filing by both Members and senior officials, this office will step up its activities to help the public understand the actual scope and responsibilities of this office.

The challenge of disclosure and particularly public disclosure is a sensitive issue which brings into focus the limit to which individual rights in our democratic society may be a part of the sacrifice that Members make for public service. I appreciate and understand the extent that Alberta's conflict of interest legislation allows this office to have discretion in dealing with issues of confidentiality for Members, their spouses and associates, and I will from time to time be seen as erring on the side of protecting the individual rights of Members.

I have been impressed by the earnest concerns expressed to me regarding confidentiality and believe that those concerns can best be guaranteed by having a very small staff within the office. At this time, the office is comprised of Karen South, formerly Clerk Assistant of the Legislature, as the Senior Administrator of the Office, and myself. The reliability of Karen South and her complete understanding of Members' needs for

confidentiality will, I trust, go some distance toward assuring Members that the Commission's files and any disclosures by the Members will remain confidential in secured files.

In our British parliamentary system, Members who are elected and officials who serve in senior capacities must have the trust, understanding and confidence of the public if they are to be allowed to fulfil the responsibilities of office in an efficient manner. This trust and confidence can be gained, retained, and maintained when senior public, elected, and appointed officials demonstrate the highest standard of ethical conduct not only in their public but also their private lives. Alberta, over the years, has been extremely well-served by committed elected and public servants. I confidently look forward to dealing with individuals who share these high ideals as we enter the first full year in the administration of this legislation.

BACKGROUND

Members of the Alberta Legislative Assembly were subject to a variety of conflict of interest rules prior to passage of the *Conflicts of Interest Act* in 1991. Many of those rules continue to apply. The Assembly's own Standing Orders require Members to refrain from voting on

matters in which they have direct pecuniary interests. The *Legislative Assembly Act* contains references to bribery of elected Members and also required Members to file returns with the Clerk of the Legislative Assembly showing direct associates of the Members (this requirement is now contained in the *Conflicts of Interest Act*). A report on payments made to Members' direct associates is tabled annually in the Legislature by the Provincial Treasurer. Cabinet Ministers have, since 1975, filed disclosure statements on certain holdings as a result of a directive by then-Premier Peter Lougheed. Additionally, the Select Special Standing Committee on Members' Services has passed Orders on such matters as use of constituency offices and travel bonus points. The *Criminal Code of Canada* also contains references to corrupt practices and prohibited fees.

On August 3, 1989, a Review Panel was established by Order-in-Council 425/89 "to review Alberta legislation and guidelines that relate to conflict of interest rules applicable to Members of the Executive Council, Members of the Legislative Assembly and senior public servants in Alberta." The Chairman, His Honour, Chief Judge E.R. Wachowich, and the two other panel members, Dr. Walter Buck and Mr. Frank King, reported the panel's findings to the Hon. Don R. Getty in 1990 and the report was tabled that year in the Alberta Legislature.

The Government responded to the report in 1991 by introducing Bill 40, the *Conflicts of Interest Act*. The Bill closely followed the draft legislation proposed by the Review Panel; however, the Bill dealt solely with Members of the Legislative Assembly. The Government advised the House that conflict of interest rules for senior officials would be handled separately. A directive was sent to senior officials on February 3, 1993, from the Minister of Justice and Attorney General, outlining disclosure requirements for senior officials.

Bill 40 received Royal Assent on June 25, 1991. Part 7 of the Act was proclaimed into force in order to allow the Legislature's Select Standing Committee on Legislative Offices to proceed to advertising, interviewing, selecting, and recommending a candidate for the position of Ethics Commissioner. This all-party Committee uses an open competition procedure to fill vacancies in all four Legislature Officers positions.

The Committee received 289 applications and established a short list in excess of 50 candidates. The full nine-Member, all-party Committee interviewed 10 finalists in February 1992 and unanimously agreed on its recommendation. Since the Assembly was not in session, pursuant to section 45 of the Act, the Committee made its recommendation to the Lieutenant Governor in Council. Order-in-Council 188/92 was signed March 12, 1992,

appointing the first Ethics Commissioner effective April 1, 1992. The Committee's report and its recommendation were unanimously agreed to by the Legislative Assembly on March 23, 1992. I took the oath of office on March 31.

ACTIVITIES IN 1992-93

The Office of the Ethics Commissioner was officially opened on April 1, 1992.

In order to create an awareness of the mandate of the Office, I met with various members of the media in the first month of my appointment. Public interest in this Office was strongest in the first month of operations. Many of the people contacting our office raised matters beyond the scope of the Act and, where possible, those individuals were directed to more appropriate sources for assistance. Other issues were raised which might have been reviewed in more detail had the Act been in force at the time the allegations were made. In each case, the Member against whom the allegation was made was advised of the allegation, and both the Member and the individual raising the issue were advised that no action would be taken. Statistics on the number of requests received by this office are shown on page 10 of this report.

Section 40(1) of the *Conflicts of Interest Act* states that "It is a function of the Ethics

Commissioner to promote the understanding by Members of their obligations” under the Act. Subsection (c) requires “continuing contact with party caucuses” as one method of promoting understanding. On April 14, Karen South and I met with the New Democrat caucus and on June 18, I met with the Progressive Conservative caucus. Informal discussions took place and Members raised a variety of questions on matters covered by the legislation. This type of informal discussion will be encouraged both at the request of individual caucuses and by this Office. A brochure on the Office has also been prepared and distributed.

An immediate project for this Office was the creation of private disclosure forms to be completed by all Members of the Legislative Assembly on proclamation of the Act. While based on forms developed in other Canadian jurisdictions, several changes were made to either make the forms more readily understandable or to remove items which, in our discretion, would not necessarily be useful in determining a potential conflict of interest. Members, in informal meetings, provided some input into the content of the final forms.

Forms were also developed for the public disclosure statements, for the direct associates returns, and for blind trust arrangements. A checklist was created to assist Members in determining whether a person is a direct associate. With the assistance of a form from

the Office of the Assistant Deputy Registrar General in Ottawa, this Office, through Parliamentary Counsel, has developed a blind trust agreement form using plain language. The form may be used by members of Executive Council who wish to establish a blind trust as permitted under the Act.

An additional priority was the development of administrative and procedural systems in the Office and the creation of a resource base relating to conflicts of interest and the Alberta *Conflicts of Interest Act* specifically. Information has been developed to compare our legislation with other Canadian jurisdictions, and rulings made or advice offered in other jurisdictions have been recorded with our own decisions or recommendations. Material from several ethics agencies in the United States has been collected and relevant rulings and definitions have been noted.

During the first six months of operation, a number of meetings took place to discuss in detail the various sections of the Act. Detailed documents have been produced to summarize those discussions and should serve to answer most of the routine inquiries Members might raise with respect to their obligations under the

Act. We have arranged for outside legal counsel to be available as required. Meetings with legal counsel assist in bringing forward a wider range of responses to individual situations. While

The Select Standing Committee on Legislative Offices was advised at its August 12 meeting that this Office had been asked to consider the additional responsibility for maintaining disclosure statements to be completed by all Deputy Ministers and certain other Order-in-Council appointees. This Office worked closely with Government officials to develop the process to be used with respect to conflict of interest matters for senior officials. A letter was sent from the Minister of Justice and Attorney General on February 3, 1993, to all those senior officials affected advising them of the Cabinet decision regarding disclosure for senior officials. Senior officials have been advised that they are required to file private disclosure statements effective April 1, 1993.

Requests for information or advice were received from a number of individuals interested in seeking the nomination for candidacy in the next provincial election. This office encourages that communication and is willing to meet with any individual interested in seeking elected office or serving in a senior official capacity.

The establishment and development of relationships with other conflict commission offices has been of immense benefit to our

consistency in decisions is critical, the uniqueness of a situation has to be considered and our findings or advice and recommendations will be based on both factors.

office. On April 27, we travelled to Ottawa to meet with the Assistant Deputy Registrar General, Mr. Georges Tsai, who administers the federal *Conflict of Interest and Post-Employment Code for Public Office Holders*. We were extremely fortunate to arrive on the date that Mr. E.N. (Ted) Hughes, Q.C., Commissioner of Conflict of Interest for British Columbia, and the Hon. Alex MacIntosh, Q.C., Conflict of Interest Commissioner for Nova Scotia, were appearing before the Joint Committee of the House of Commons and the Senate on Conflict of Interest. We attended the committee meeting and were able to meet with our colleagues that afternoon. The following day we met with the Ontario Commission on Conflict of Interest in Toronto. The Hon. Greg Evans, Q.C., Commissioner, and his Executive Assistant, Lynn Harris, have been extremely helpful during the past year, both administratively and procedurally.

We have also had the pleasure of hosting colleagues in Edmonton. In May, we received a visit from the Hon. Alex MacIntosh and had an opportunity to discuss office operations and conflicts issues with him in a brief meeting. On January 18, we were pleased to host the newly-formed Conflict of Interest Commission from the

Northwest Territories. The Northwest Territories has chosen to establish a panel of five

The Canadian Conflict of Interest Network (CCOIN) was established just prior to the opening of this Office. CCOIN is an association of individuals who head organizations with a major mandate for administering conflict of interest rules in their jurisdictions. The association held its second meeting in conjunction with the annual Conference on Governmental Ethics Laws (COGEL) which was held in Toronto in September. Both Karen South and I attended both the COGEL and CCOIN meetings in Toronto. Since most commission offices here in Canada and also in the United States have small staffs, the ability to share information and advice is important and has already proven to be useful for us in Alberta.

I was also pleased to serve on a committee with Michael Kinney of Nebraska and Ruth Jones of Arizona to recommend sites for the 1991 annual meeting of COGEL. All discussions amongst the committee members were conducted by phone and facsimile machines.

PROCLAMATION

This Office had several discussions with the Government regarding proclamation of the

Commissioners led by Joel Fournier, Chief Commissioner.

Conflicts of Interest Act. An earlier Order-in-Council was rescinded by Order-in-Council 77/93 on January 27, 1993, which announced the proclamation date as March 1, 1993. The total Act is now in force.

CASE SUMMARIES

Sections 41 and 42 of the *Conflicts of Interest Act* were in force when the Office was opened and provided authority for the provision of advice and recommendations to Members. Advice provided to Members since April 1, 1992, under section 41 is summarized below.

Members' Personal Situations

Several Members sought advice on specific financial situations and on matters contained in a blind trust or on blind trusts generally. Wherever potential conflicts existed, Members were advised on appropriate steps to take to remove themselves from a situation prior to a conflict arising.

A Member sought advice regarding a relative's financial interest in a matter which would be decided by a body on which the Member served. The Member was advised to

withdraw from participation and voting on the matter, to have the withdrawal recorded, and to

Members also raised questions concerning outside employment or activities. In these instances, a Member's obligation regarding use of insider information was reviewed, and where contracts were involved, the Members were advised to withdraw from discussions in the House or in committees when matters were raised which related to the contractual arrangements.

Two Members sought advice regarding payments received directly or indirectly from the Crown. In both cases, it was determined that the Members received no special benefits and did not receive a benefit not available to other members of the public. The Members involved were advised that no conflict of interest existed in these cases.

Constituent Service

Three issues were raised with respect to the use of constituency offices or work done on behalf of constituents. Each matter was reviewed to determine if it was an activity in which an MLA "normally engages on behalf of constituents" and, where applicable, if the Assembly's own Members' Services Orders covered the situation. While no investigations were conducted to determine in detail what actions were involved in these situations, certain

ensure that no insider information was passed to the relative.

cautions were expressed with respect to advocacy assistance on behalf of constituents and on the proper use of a constituency office.

Post-employment

Advice was provided to several members concerning post-employment. In one instance, the Member was advised that acceptance of employment with the Government of Alberta would not place the Member in a conflict of interest. It was our opinion that the legislation contemplates contracting with the Government from a position *outside* the Government and not from within it.

The obligations of former Ministers were communicated to all such individuals and several informal discussions took place.

Campaign Activities

Certain other issues were raised informally with respect to the Progressive Conservative Party leadership campaign. This Office was asked to provide advice and recommendations on activities during a leadership campaign.

Members' Allowances

As reported to the Legislative Assembly on April 30, 1992, this Office was asked by a number of private individuals to investigate the matter of the temporary residence allowance for Members. In my report to the Legislature, it was noted that this Office did not have the

Payments from Political Parties

Discussions were held with all three party Leaders and they were then advised that it was our recommendation that payments to the Leader from the party should be disclosed. It was noted that such payments are not "income" when the payments are intended as reimbursements for expenses incurred as Leader and the payments do not fit the definition of "fees, gifts or other benefits" as contained in section 7 of the Act. However, our recommendation was that it would be prudent to disclose the payments.

authority to conduct an investigation.

STATISTICS

REQUESTS RECEIVED BETWEEN APRIL 1, 1992 AND MARCH 31, 1993

Month	Request for Advice	Request for Information	Request for Investigations	Discussions on Disclosures*
April	3	2	30	0
May	7	6	10	5
June	3	1	2	9
July	2	3	1	2
August	0	2	3	3
September	1	3	0	6
October	0	3	2	1
November	1	2	1	0
December	1	1	3	2
January	1	1	3	1
February	9	1	1	5
March	6	13	7	3
TOTALS	34	38	63	37

* Figures in this column relate solely to meetings held with Members. Informal meetings or phone discussions are not included in these figures.

BUDGET

	1992-93 <u>Estimate</u>	1993-94 <u>Estimate</u>
SALARIES, WAGES AND EMPLOYEE BENEFITS	\$119,111	\$139,405
Travel	\$ 23,760	\$ 17,950
Insurance	500	500
Freight and Postage		900
550		
Rental of Property, Equipment & Goods	7,200	4,800
Telephone and Communications	1,500	1,300
Repair and Maintenance of Equipment	700	700
Professional, Technical & Labour Services	23,000	23,500
Hosting	900	650
Materials and Supplies	8,000	5,500
SUPPLIES AND SERVICES	\$ 66,460	\$ 55,450
PURCHASE OF FIXED ASSETS	\$ 18,600	\$
2,100		
TOTAL EXPENDITURE	\$204,171	\$196,955

It should be noted that actual expenditures for 1992-93 in the Supplies and Services category are expected to be significantly lower than the budgeted amount.