



PROVINCE OF ALBERTA

**OFFICE OF THE
ETHICS COMMISSIONER

ANNUAL REPORT 1994-95**

May 2, 1995

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 Annual Report of the Office of the Ethics Commissioner, covering the period from April 1, 1994 to March 31, 1995.

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

If I might use one word to describe the past year, it would be "trust."

There has been a noticeable relaxation generally in the meetings this office holds with Members and senior officials. I noticed members of both groups have approached our annual meetings as opportunities to discuss their work and their concerns. It is encouraging to see how Members and senior officials are taking proactive roles in conflicts issues and the enthusiasm they have for the work they do.

A further sign of trust in my office has been in the number of questions I receive from individuals who are not covered by the Cabinet directive for senior officials. Although these individuals acknowledge they are not required to seek the approval of this office for their actions, they have indicated they appreciate having a "sounding board" and express appreciation for the unofficial advice given.

The questions asked of me by the general public have also increased. The questions asked now are based on a better understanding of what this office does.

Many callers prefer to remain anonymous and unless they are requesting an investigation, we do not require the callers to identify themselves. Some callers have questioned whether we have call display features which

could identify them and we assure them we do not. In order to encourage people to seek information from us about potential conflict of interest questions and to maintain the public's trust, we will not subscribe to such telephone features.

I also believe Members have taken actions in the past year which will go a long way in restoring the public's trust in elected officials. I offer two examples to demonstrate the proactive approach being taken.

When the Liberal Party of Alberta announced its leadership convention, I met with the Acting Leader of the Liberal Party at her request. We discussed the separation of public and political roles. The Acting Leader then prepared and distributed to her caucus guidelines for appropriate behaviour during the campaign period. We had several discussions during the campaign on various issues, and I was satisfied that every effort was taken to ensure that public money was not spent to further political goals.

My second example relates to a subject I discuss with each Member during our annual meetings. Members are required to disclose to me any fees, gifts, or benefits they have received during the year with a value over \$200. In my meeting with the Premier, he advised me of his direction to his Cabinet and caucus colleagues to encourage groups in the constituencies to make donations to local charities rather than to offer

the Premier a gift for attending a function in the constituency.

The examples set by the Leaders of the two parties represented in the Alberta Legislature reflect what people expect from their elected officials -- awareness of the expenditure of public monies for appropriate purposes and the satisfaction of serving the public without additional "rewards."

The small office I have discussed in previous annual reports continues. The small staff has, I believe, been a factor in elected and senior officials developing their trust in our ability to keep matters confidential. I believe the size also allows us to remain flexible, open to change where needed, and accessible. I would again like to express my thanks to Frank Work, Senior Parliamentary Counsel, and the law firm of deVillars Jones for the valuable legal assistance provided to the office.

My office has again expended less than the estimates listed on page 15 of this report. In keeping with our commitment to fiscal responsibility, we have requested a reduction in our budget estimates for 1995/96.

DISCLOSURE STATEMENTS

The designated senior officials were sent disclosure forms for completion effective April 1, 1994. Since we are not required to meet with all senior officials each year, we met with all

departmental deputies and with certain other senior officials where we believed an organization was undergoing some significant changes. We also met with all senior officials who were appointed to their positions during the past year.

We are pleased with the positive acceptance of and support for this office by Alberta's senior officials. Our meetings with these individuals allowed us to gain an overview with respect to the nature of changes occurring within the Alberta public service and any potential conflict situations which might arise as a result of those changes. The meetings also allowed senior officials to seek general advice on issues arising within their departments.

Members' disclosure statements were filed during the summer months in 1994. Meetings are required with all Members, and their spouses if appropriate, and those meetings were held as statements were filed, and all meetings were concluded by late October. The filing of the public disclosure statements was delayed by this office until the Liberal Party leadership campaign concluded.

We must acknowledge the cooperation of the Whips in each caucus. Their assistance has ensured that Members are aware of the deadline for filing and that Members meet that obligation. Members themselves have been very cooperative in arranging meetings to review their disclosure documents.

Many Members use the annual meeting as an opportunity to raise conflict of interest questions or concerns with this office. Through general conversations, we also note potential areas of concern and discuss alternative courses of action with the Members so that actual conflicts can be avoided.

Some changes were made to the private disclosure statements to make the disclosure process easier. Continual review of the forms will take place to ensure that the forms are easy to complete, provide adequate information for review purposes, and also to ensure that the information sought does not violate any provisions in the *Freedom of Information and Protection of Privacy Act*.

Members of the media requested in the Fall of 1993 that we consider making the public disclosure documents available on diskettes. In filing the public disclosure statements with the Office of the Clerk of the Legislative Assembly in November 1994, we advised the media, through a news release, that the documents would be available in WordPerfect 6.0. We understand that media representatives did request copies of the documents in that format. It must be stressed, however, that Members occasionally update their statements during the year and therefore the printed copies filed in the Clerk's Office contain the most up-to-date information.

INVESTIGATIONS

From the calls and letters received by this office, it appears that the general public has an increased awareness of the existence of this office and its mandate. The number of investigations conducted is again quite low; however, I believe the number of investigations conducted should be low since I believe a proactive office is of greater benefit to senior officials, Members, and the general public.

I have a concern with members of the media seeking "quick responses" to allegations they pose to me. I can only respond to a specific allegation if this office is asked to conduct an investigation. A request must be in writing and the request cannot be anonymous. After an investigation, I would report whether in fact the Member is in breach of the Conflicts Act.

The following information summarizes the reports on investigations conducted this fiscal year. Copies of the complete reports may be obtained from my office.

Case 1: Allegation involving Hon. Mike Cardinal, Minister of Family and Social Services, and Alice Hanson, Member for Edmonton-Highlands-Beverly

The Minister of Family and Social Services requested an investigation into the release of confidential information relating to a social services file. The Minister claimed he provided the Opposition critic with information in order to assist her in her role and that she then made the information available to another member of her caucus.

Ms Hanson claimed the Minister provided the information to her in an effort to avoid questioning in the House later that day. When she reviewed the material, she was alarmed to see the name of the social services recipient. Media reports on the matter had never named the individual. Ms Hanson believed that the personal information should have been severed before she received the material.

This matter was reviewed under section 4 of the *Conflicts of Interest Act* which deals with the use of insider information. In order for a Member to be in breach of that section, the Member must use or communicate information not available to the public that was gained by the Member in the course of carrying out the Member's office or powers to further or seek to further a private interest.

While this matter did deal with information not available publicly and it was gained by both Members in the course of carrying out their duties, I found no private interest was involved.

It was noted that this matter was reviewed solely under the Conflicts Act as this office has

no authority to review the *Child Welfare Act*. It was also noted that if the *Freedom of Information and Protection of Privacy Act* was in force, the matter might have more appropriately been reviewed by that Commissioner.

Case 2: Allegation involving Kenneth R. Kowalski, Member for Barrhead-Westlock
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On the Member's resignation from Cabinet, an announcement was made that he would be appointed to chair the Alberta Energy and Utilities Board. The Acting Leader of the Opposition requested an investigation into the matter as section 29 of the Conflicts Act restricts dealings with government by former Ministers for a six-month period after leaving Executive Council.

An investigation was commenced but prior to the report being finalized, a decision was made to rescind the proposed appointment.

Because of the questions raised and considered during the investigation, I decided to provide some general advice and recommendations in my letter to the Speaker of the Legislative Assembly advising the House that I had ceased my investigation.

I advised the House that in the future, I would consider the following actions as "significant official dealings" under section 29:

1. Even though a Minister may not personally have dealings with an agency, person, or

entity, he or she may direct staff within the department to take certain actions. That direction by the Minister will be considered

2. Regular and routine contact between a department and an agency, person, or entity will be considered a strong indication of official dealings.
3. A department's regular input into policy in a specific area will normally be considered significant official dealings.
4. The preparation and presentation of matters for Lieutenant Governor in Council approval will be considered significant official dealings. Those dealings need not be prescribed in law; it is sufficient for the purposes of section 29 that the practice is administratively required.

Case 3: Allegation involving Hon. Peter Trynchy, Minister of Transportation and Utilities

The Liberal Opposition, after questioning the Minister about highway paving contracts for several days during the Fall Session, sought an investigation into the paving of the Minister's own driveway. An allegation was made that the Minister might have received a benefit by underpaying for the work performed.

In the course of the investigation, it was determined that the price paid by the Minister was not unreasonable. The amount was higher than the prices paid by the Department for

by this office to be a significant official dealing by the Minister.

highway

paving and by local authorities in the Minister's constituency.

In my report I noted that the Minister was not in breach of the Act as no benefit was received by him with respect to the price paid for the paving. I found it necessary to express my view that persons under investigation by this office owed this office the duty to be absolutely frank in their responses. I also stated that I did not believe it was appropriate for a Minister of the Crown to enter into a private contract with a business that was involved in significant contracts with the Minister's department.

INVESTIGATION REFERRED TO ANOTHER JURISDICTION

In October, the Premier requested that I investigate allegations involving the President of the Alberta Special Waste Management Corporation. In conversations with the Liberal Opposition, I raised the matter of a conflict of interest involving myself. Prior to my appointment as Ethics Commissioner, I served as Chairman of the Board of the Corporation and I had recommended the appointment of the President. The Liberal Members agreed that I

would be in conflict of interest in conducting the

I advised the Premier's Office by letter that I could not conduct the investigation and I recommended that the Premier consider asking another Conflict of Interest Commissioner to conduct an investigation. I recommended E.N. (Ted) Hughes, Q.C., the Commissioner in British Columbia. The Premier did ask Mr. Hughes to conduct the investigation, Mr. Hughes agreed, and the report of that investigation was released publicly by the Premier's Office in December.

OTHER INVESTIGATIONS REQUESTED

Occasionally we receive telephone calls from public servants who believe a conflict of interest situation exists in their organization (municipal or provincial). In the instances where this office might have the mandate to investigate the matter, the requirement that a request for an investigation must be in writing and cannot be anonymous has apparently deterred these individuals from pursuing their concerns as no official investigations followed from the initial telephone contacts.

In other calls or letters to this office, individuals have raised concerns over decisions made by Members or government generally. Whenever possible, those persons are directed to more appropriate offices for review of their concerns.

A continuing concern for some Albertans is

investigation.

the outside employment of private Members (those Members who do not serve as members of the Executive Council). Those constituents are advised that the *Conflicts of Interest Act* does not prohibit those Members from carrying out other employment. We do stress that Members are obliged to ensure that they do not use their public offices in any way to further their private interests.

CASE COMMENTARIES

The provision of advice and recommendations to Members and senior officials remains the number one priority of this office. Discussion of specific situations prior to actions being taken provides concerned individuals with options on how to approach the matter and reduces the potential for a conflict of interest arising.

In some instances, senior officials and Members are aware of potential conflicts and merely advise our office that a situation has arisen and that they have taken or will be taking a specific action to ensure that there is no conflict of interest. Those actions are noted on the individual's file.

In order to provide some guidance to all Member and senior officials, I have summarized by subject matter some of the advice and recommendations provided over the past year.

Since each situation often has a unique element, the commentaries should be used as guidance

Private Interests

A number of the requests for advice to my office this past year related to private interests of Members.

Members have once again gone beyond the actual requirements of the Conflicts Act and have taken actions to ensure that no appearance of conflict of interest exists when an immediate family member is involved in a decision of the Crown. The family members involved in the situations raised with me are not covered by the legislation and the Member would not be in breach of the Act if the Member took part in discussions and votes. The Members concerned, however, advised my office that the family member had an interest and that the Member would withdraw from any discussions. I commend those Members for acting within the spirit as well as the letter of the law.

Some Members did seek advice on whether a motion or Bill before the House would require them to withdraw. In more than one instance, the Members took the initiative themselves and withdrew. In other situations, this office provided general advice to both parties in the House or to the caucus Whip who raised the issue.

These situations provided some challenging

only.

questions for my office, including consideration of whether the matter had general application and

whether it involved a broad class of the public. I also expressed concerns about the need for the House to utilize the expertise of Members in specific fields to the fullest extent possible and that the conflicts legislation was not intended to prevent Members with specific interests from participating in all issues relating to their fields of expertise.

During the next fiscal year, I will review the issue of participation in debates more fully so that a consistent approach is taken to this particular obligation on Members.

Members also questioned whether they could receive payments from the Crown for additional duties on task forces or committees. The questions related to reimbursement of expense claims generally or other reimbursements for expenses actually incurred. In all instances, the reimbursement was approved under section 9 of the Act.

I also considered requests relating to Members' pursuit of personal matters with respect to government programs. Members were cautioned to ensure that they did not use their offices to attempt to influence decisions and to ensure that any benefits which might be

applicable to their situation were not greater than those benefits applicable to other individuals similarly affected.

Campaign Activities

As mentioned in my opening remarks, I met with the Acting Leader of the Liberal Party during that party's leadership campaign. I was satisfied that Members were informed of the appropriate separation of public responsibilities from the pursuit of political goals and that the activities were being monitored. I received no allegations of inappropriate behaviour under the Conflicts Act by any Member during the campaign.

Constituency Work

Members again raised with me the appropriateness of submitting letters of reference to the Courts. In the two instances I reviewed, the Members had personal knowledge of the individuals and agreed to submit their letters on personal stationery without mention of their elected positions.

Constituency associations or offices also contacted my office to ensure that activities they were undertaking did not place the Member in any conflict. Advice was provided to those individuals to ensure that conflicts were avoided or that possible negative public perceptions were acknowledged.

Outside Employment

In addition to questions from the general public about the appropriateness of outside employment by Members, Members themselves raised questions about specific activities in which they were involved.

Where a Member is acting in a private capacity on behalf of a private citizen, it was recommended that constituent assistance on matters relating to government departments and involving the same private citizens, would be best handled by a caucus colleague so that the Member does not use or appear to use his or her office to influence decisions that will further his or her private interest.

Blind Trusts

Some members of the Executive Council discussed the establishment of blind trusts with me. The decision on whether to dispose of securities or establish a blind trust is up to the Member. Only members of the Executive Council are not permitted to hold securities unless approval to hold the securities is given by this office. Approval on the choice of a trustee was given to those Members establishing a blind trust.

Contracts with the Crown

The ability of Members to enter into certain contracts was also raised. The Conflicts Act prohibits Members and their direct associates from entering into certain contracts while the Member is a Member. Where a contract was permissible, the Member concerned was advised to ensure that the Member did not participate in related discussions, did not communicate insider information, and did not attempt to influence any decisions of the Crown.

Direct Associates

Because the obligations on Members includes actions taken by direct associates, members occasionally raise questions about something done or to be done by a direct associate. It is the Member's duty to ensure that his or her direct associates are aware of inappropriate actions.

The concerns raised with me dealt primarily with contracts with or payments from the Crown.

In the matters raised with me during this past year, Members immediately notified me of potential problems and took appropriate actions to deal with those situations.

Fees, Gifts and Other Benefits

A number of questions were asked about

complimentary passes provided to Members.

Where the pass was for a sporting facility, approval was not given.

Where corporate sponsorship is related to a "gift," I considered the relationship between the corporation and the Member and the Member's responsibilities. If there is a requirement or the potential for a Member to use his or her office on matters which might benefit the corporation, approval has been denied.

In one instance, a "gift" was not made to the Member but to a department of government. No person benefited personally from the "gift" and a response to the corporate donor was to be an official departmental response and not a personal endorsement from any individual. The "gift" in this instance did not fall within section 7 of the Act and my approval to accept it was not required and no disclosure was necessary.

Where the gift related to a social obligation or incident of protocol and exceeded \$200, the Member was advised that approval would be required to accept the gift and the gift would be disclosed on the Member's public disclosure statement, if the gift was accepted.

No requests for advice were received relating to receipt by Members of fees or other benefits.

Senior Officials

Many of the requests for advice for senior officials came from individuals who are serving the public but who are not designated senior officials. The Cabinet directive regarding conflict of interest guidelines does not apply to those individuals. That distinction was known to the individuals but the unofficial comments of this office were sought nonetheless.

Within the Alberta public service, senior officials sought general guidance on how to deal with such matters as post-employment. Because of the down- or right-sizing of government, certain activities presently performed by government will in the future be performed by the private sector. Discussions were held to consider how departments might deal with employees negotiating for employment and to what extent employees could begin to establish a private sector career prior to leaving the public service.

Post-employment provisions as they relate to senior officials were also discussed. It was pointed out that this subject is not dealt with in the guidelines for senior officials and is therefore not within the mandate of this office. Discussions focussed on steps the senior officials might take to reduce potential conflicts or the perception of conflicts between the time of the senior official's acceptance of other employment and his or her departure from public service.

Another subject which is not dealt with in the

guidelines is "gifts." Senior officials are governed by the Code of Ethics and Conduct for the public service on that matter. Although I refer individuals to the Public Service Commissioner for interpretation of that Code, I did offer general comments on the appropriateness of the specific matters raised.

Outside employment by public servants and senior officials was also raised. In one instance, it was acknowledged that a conflict of interest would exist if certain outside employment occurred. In another situation, steps were taken to ensure that the senior official recognized the obligations on the official and that public and private interests were separated.

Although I continue my membership in the

PROFESSIONAL ASSOCIATIONS

Council on Governmental Ethics Laws (COGEL), there was no attendance at the annual conference by this office. The conference was scheduled for Honolulu, Hawaii in early December. Another Canadian delegate, who was a presenter in discussions at the conference, provided information to me on the conference proceedings.

I did attend the annual meeting of the Canadian Conflict of Interest Network in Ottawa

in October. The sharing of information and advice between my office and other Canadian Commissioners continues to be a valuable exchange.

Speaking Engagements

As indicated in last year's annual report, I undertake to accept speaking engagements which I believe will further the public's knowledge and understanding of the Office of the Ethics Commissioner.

The following speaking engagements were accepted in 1994/95:

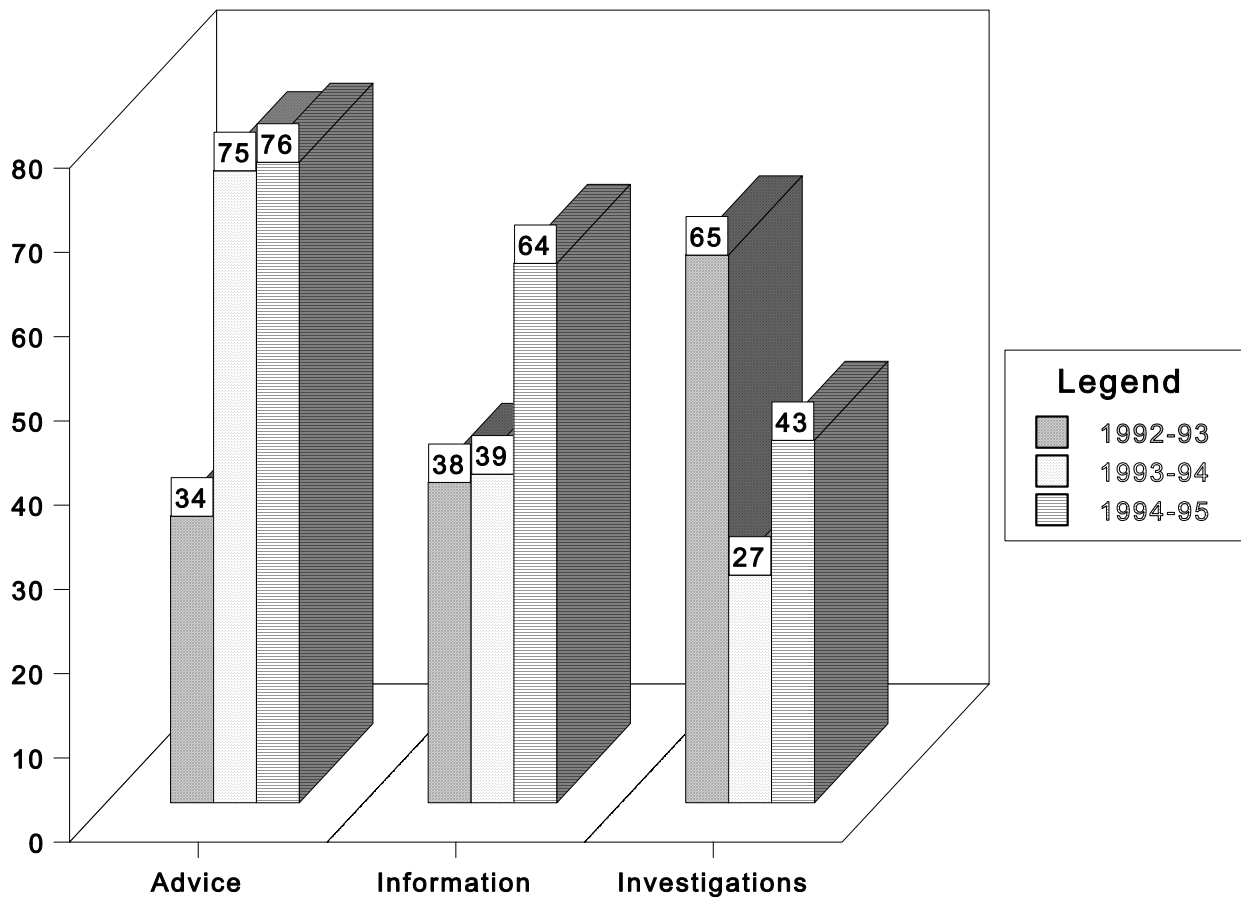
- Legislature Page Program, Orientation
- Forum for Young Albertans
- Career Day, Carstairs school
- Invited business and professional people, organized by Chevron Canada Resources
Rotary Club, Edmonton
- Invited business and professional people, organized by Page & Associates,
Management Counsel
- University of Calgary, School of Business
Management

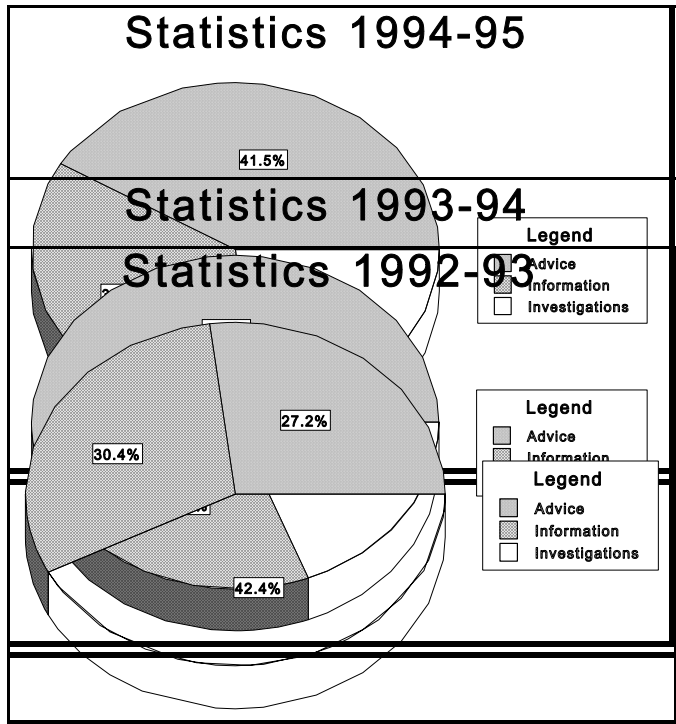
Publications

It was noted in last year's report that this office would produce further publications. A pamphlet has been prepared and I hope to distribute it in the next reporting year.

STATISTICS

As stated earlier, I am very encouraged by the use made of this office in the area of obtaining advice prior to actions being taken and the increased awareness of this office by the general public. The statistics below also include responses to questions outside my jurisdiction from various sources: part-time senior officials, people serving public roles but not within the Alberta public service, and within the Alberta public service below the senior official level. I am pleased to provide whatever assistance I can in these situations.





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 Actual Expenditures	1993/94 Actual Expenditures	1994/95 Estimate	1995/96 Estimate
SALARIES, WAGES AND EMPLOYEE BENEFITS	\$117,745.61	\$120,409.94	\$122,652	\$120,693
Travel	\$ 16,563.87	\$ 11,966.61	\$ 16,700	\$ 17,240
Insurance	0	0	500	1,000
Freight and Postage	158.13	179.51	400	300
Rental of Property, Equipment and Goods	5,154.49	5,335.96	5,000	5,000
Telephone and Communications	1,286.36	1,310.63	1,500	1,500
Repair and Maintenance of Equipment	0	0	600	600
Professional, Technical and Labour Services	6,855.50	16,366.61	21,000	21,000
Hosting	566.74	372.77	400	400
Materials and Supplies	4,957.21	2,581.14	3,000	4,500
SUPPLIES AND SERVICES	\$ 35,542.30	\$ 38,113.23	\$ 49,100	\$ 51,540
PURCHASE OF FIXED ASSETS	\$ 16,079.00	\$ 803.00	\$ 1,500	\$ 0
TOTAL EXPENDITURE	\$169,366.91	\$159,326.17	\$173,252	\$172,233