



PROVINCE OF ALBERTA

**OFFICE OF THE
ETHICS COMMISSIONER**

ANNUAL REPORT 1997-98

June 22, 1998

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, 1997 to March 31, 1998.

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 thank the Legislative Assembly and its Standing Committee on Legislative Offices for my re-appointment as Ethics Commissioner. I appreciate the opportunity to continue to serve Alberta in this role.

My re-appointment occurred reasonably close to the general election that was held in March. A general election brings change to the Legislature and consequently increased activity for my office. I am grateful to the Speaker of the Legislative Assembly for allowing me to speak at an orientation session for new Members to provide an overview of Members' obligations under the *Conflicts of Interest Act*.

Several new Members took the initiative of meeting with me very early in the disclosure process, often with the Member's spouse in attendance as well. The eagerness with which compliance was met was appreciated and possibly an indication that the *Conflicts Act* is now viewed as a normal or expected standard of conduct to be met.

As mentioned in my report last year, the *Conflicts of Interest Act* amendments were proposed to the Legislature during the 1997 Spring Session. Members did debate the amendments but chose not to proceed with the legislation during the 1997 session. I met with Justice officials during adjournment of the Legislature to discuss the proposed Bill.

The new Code may result in a slight reduction in the number of requests for advice I

Certain changes were made to the proposed amendments and a Bill to amend the Act was introduced in January 1998. I am pleased that the government put forward a number of changes recommended by my office and I look forward to the final decision of the Legislature.

During the 1997 Spring Session, the Minister of Justice and Attorney General announced that the Government had reviewed the recommendation of the *Conflicts of Interest Act* Review Panel regarding lobbyists registration and had decided against accepting that recommendation at this time. I indicated my support for the recommendation in last year's annual report and am disappointed with the decision; however, it is my hope that the Government remains open to the concept and that the recommendation could be reviewed in the future.

The Government has also indicated that no amendment will be made to the *Conflicts of Interest Act* with respect to the name of this office. I had proposed a name change to "Conflicts of Interest Commissioner" but accept that Members may be more comfortable with the title "Ethics Commissioner."

The Public Service Commissioner consulted my office in reviewing a draft revision of the *Code of Conduct and Ethics for the Public Service*. I compliment the Personnel Administration Office for the work that went into the revised Code and believe that it will serve as a very useful reference guide for public servants. receive each year. Under the new Code, senior officials can obtain an initial ruling on conflict of

interests issues from the designated source within government. My involvement would come in those cases where there was disagreement with the initial ruling.

Regarding the day-to-day operations of my office, I am especially pleased that there has been no staff turnover with respect to legal counsel or administrative support. I am grateful for the quality of support that I receive and that I believe the public and Members receive from my staff.

In the next fiscal year, it is expected that certain financial and human resource functions will move from the Legislative Assembly Office to the Office of the Information and Privacy Commissioner (my other role). I am confident that my staff will be able to handle the additional responsibilities.

While the Office of the Ethics Commissioner returned a small amount of money to the Provincial Treasury, a small supplementary estimate was requested to cover performance bonuses.

DISCLOSURE STATEMENTS

In order to accommodate disclosure for new Members, I decided to switch reporting dates for Members and senior officials. Members will now file private disclosure statements effective April 15 (moved from July 1) and senior officials will file effective August 1 (moved from April 1).

Our revised private disclosure forms were used for the first time in this reporting year and were extremely well-received. Returning

Members and senior officials expressed strong support for the revised forms, indicating that the forms were much simpler and required less time for completion.

From my perspective, the revised forms allowed me to focus on the changes in a Member's or senior official's situation from the previous year and consequently the forms were more time efficient for myself as well.

I am still not satisfied with the compliance with filing deadlines. While there was greater compliance from Members in this reporting year, senior officials were not as responsive. Fortunately, I did not have to report any specific official and did receive documentation from all designated officials.

I will watch the situation in 1998/99 carefully and assess whether the timing of the reporting during the summer months is a factor or whether other factors are involved.

It is my intention to take a strong stance regarding filing deadlines in 1998/99. The legislation dealing with MLAs and the directive dealing with senior officials leaves consideration of an extension solely with the Commissioner. In my view, transparency and accountability are factors that weigh heavily towards limited use of extensions.

INVESTIGATIONS

Over the course of the past year, comments were made to me to the effect that the investigation process can result in considerable damage to the reputation of a Member even when no breach of the Act is found simply by virtue of the Member being under investigation.

An obvious response is that the public has a right to know that elected officials are acting in the public interest and not furthering private interests. Investigations are a mechanism whereby an independent review can be conducted and a public reporting of the results can take place.

I acknowledge, however, that the public may take greater note that an investigation was conducted than they do of the result. I believe that to be true of any type of investigation or review.

One option which exists in the current Conflicts Act is my ability to cease an investigation if I find that there are no or insufficient grounds to continue the investigation.

In that case, I must notify the person who made the allegation and the Member against whom the allegation was made that I am ceasing the investigation.

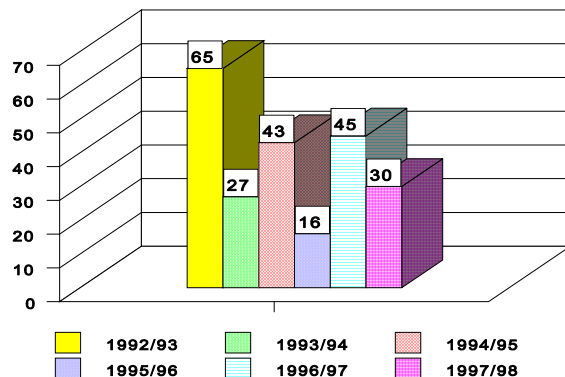
This is an option I will consider using with great caution as accountability and transparency are key elements of the responsibilities of all Legislature Officers.

For annual report purposes, in the event an investigation is "ceased," that request for

investigation would not be summarized as no report of an investigation would be made to the Legislature.

The number of requests for investigations in 1997/98 was low and the figures for investigations are shown in Figure 1.

The investigations for which reports were submitted to the Legislature are summarized below.



Case 1: Allegation involving the Honourable the Premier

As indicated in my 1996/97 annual report, this investigation was commenced prior to year end but was not completed as of March 31.

The allegation related to a document distributed during the general election campaign which contained information prepared by Alberta Treasury on cost estimates for programs and policies proposed by the Alberta Liberal Party.

The issue was whether this document furthered a private interest; namely, getting re-elected.

In my report I discussed whether seeking re-election is a “private interest.” An identifiable private interest must exist for a breach to occur

The Conflicts Act permits me to provide general advice to all Members and I chose to include advice as an attachment to this investigation report. In that advice, I commented on the need to separate government and political functions and the use of public resources during election campaigns. I concluded with comments on the need to preserve a neutral public service.

Case 2: Allegation involving the former Minister of Justice and Attorney General

The *Conflicts of Interest Act* contains certain obligations with respect to post-employment for former Ministers. An allegation was made to my office that Brian Evans, Q.C., the former Minister of Justice, was potentially in a conflict of interest relating to his employment with a law firm that had received monies from the Department of Justice while Mr. Evans was Minister.

In my investigation I found that the monies paid to the law firm related to their clients’ claims under the *Motor Vehicle Accident Claims Fund Act*. Additionally, evidence was provided to me that the Minister was at no time “directly or substantively” involved in any specific case in which the law firm acted for a claimant.

I concluded that the former Minister was not in breach of the Conflicts Act in accepting employment with the law firm.

OTHER INVESTIGATIONS REQUESTED

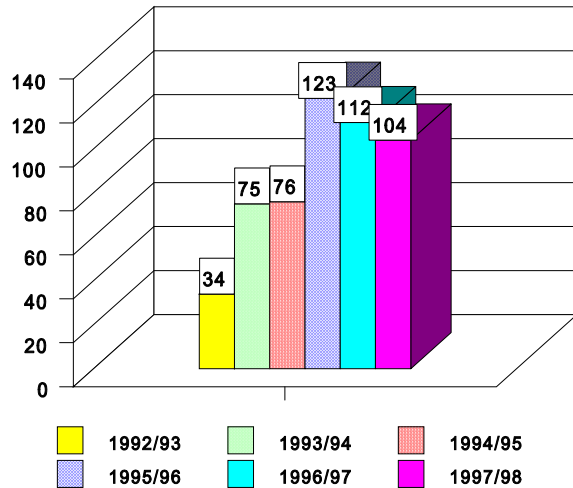
under the Act. I concluded that there was no private interest involved in this case.

Members of the general public who have contacted my office have tended to ask questions about the scope and nature of the conflicts legislation and then discussed in a general way their concerns about conflict of interest. This type of discussion has resulted in few actual allegations being made as most individuals decide that their concerns do not relate to a Member of the Legislative Assembly or they relate to actions which are not prohibited under the Act. For example, I continue to receive calls from Albertans with respect to the outside employment of Private Members (those Members who are not Cabinet Ministers). The callers usually are not alleging a conflict of interest, rather they are questioning whether such employment ought to occur.

A number of callers raised concerns about actions by locally-elected officials or the conduct of Board members. My office discusses the types of activities that are prohibited by most conflict of interest regimes. Callers are encouraged to discuss their concerns with the Department of Municipal Affairs with respect to local officials. Regarding Boards or agencies, it is suggested that callers may wish to consult their organization’s bylaws and internal Code of Conduct.

CASE COMMENTARIES

While the number of requests for advice is lower than it has been in the last two years, the



As in past years, the requests cover a wide variety of issues. What is most commendable is that Members tend to raise the issues themselves and usually prior to an activity or action taking place. The exception to that general comment is the receipt of gifts.

The following sections contain a brief general description of the types of issues that were raised in 1997/98.

Private Interests

Newly-elected Members sought clarification about their ability to conclude certain actions or activities commenced prior to the election being held, such as Board memberships for non-profit organizations.

Spouses of newly-elected Members raised questions about their employment or outside activities as they might relate to the Members' responsibilities under the Act.

Other Members questioned whether it was appropriate to provide support as the elected representative in the constituency in areas where

average number of requests remains close to two requests per week. The actual figures are shown in Figure 2.

the Member or Member's family had interests (such as schools, cultural communities, or charitable associations). In all instances, no "private interest" was identified.

Campaign Activities

A request for advice was received with respect to the Liberal leadership campaign. The Office of the Chief Electoral Officer was helpful in providing information relating to campaign contributions. Based on the information supplied by that office, certain general advice was offered to the Leader of the Liberal Party to share with his membership.

Constituency Work

The requests for advice under this section related, for the most part, to questions concerning whether a relative could be employed on a full- or part-time basis in a constituency office.

Under section 2 of the *Conflicts of Interest Act*, a Member may not take part in a decision that would further the private interests of a spouse or minor children or a private corporation controlled by them. Consequently, any persons covered by section 2 may not be employed in a

constituency office.

However, the Act does not apply to any other relative. Members are urged to contact the Legislative Assembly Office concerning policy or Members' Services Committee Orders on employing relatives other than those persons identified in the *Conflicts of Interest Act*.

The other requests for advice in this category related to concerns brought to a Member by his or her constituents or requests for letters of reference.

Members of the Executive Council

Following the general election in March, a new Cabinet was sworn in and questions were raised by new members of Executive Council with respect to outside interests or responsibilities.

Under the Act, a Minister cannot hold shares in a publicly-traded corporation and consequently some blind trusts were established. My approval was given to each trustee.

Another prohibition on Ministers relates to outside employment. Where Ministers had concerns with respect to their outside interests, those interests were considered in relationship to their public responsibilities and advice was given accordingly.

Outside Employment

Newly-elected Members raised questions concerning their ability to continue to practice in a given profession or to fulfill certain obligations commenced prior to the election.

In each case, the Member's responsibilities within the caucus were discussed (for example, the Member's role on a Standing Policy Committee or as a critic of certain departments) and appropriate actions were considered where potential conflict issues were identified. Such actions would include withdrawing from meetings where a private interest might exist and taking care to ensure that insider information or influence were not used.

Blind Trusts

As mentioned above, newly-appointed Ministers were advised that they would not be able to hold publicly-traded securities. In some cases, Ministers disposed of their interests and in other cases, blind trusts were established.

Discussions also occurred with respect to the requirement for a spouse to establish a blind trust. The Act does not deal with blind trusts for spouses and the establishment of those is left to the discretion of the Member and his or her spouse.

Contracts with the Crown

Specific contracts with the Crown are prohibited under section 8 of the Act. Through past investigations, government departments have become more aware of the limitations placed on Members and their direct associates, which includes the Members' spouses.

It must be noted that the Act specifically refers to the Member and his or her direct associates and does not extend to corporations controlled by a direct associate or corporations in which a direct associate has an interest relating to contracts as set out in section 8.

Requests for advice under this section related primarily to dealings with Alberta Treasury Branches. Under the Act, a loan or mortgage in place prior to a Member being elected may continue until that loan or mortgage is to be renegotiated. No new loans may be arranged while a Member is a Member.

Direct Associates

As noted above, direct associates may not contract with the Crown but corporations controlled by them may do so. In such cases, Members are cautioned about their obligations to ensure that the Member is not using his or her office or powers to further any private interests as contemplated by the Act.

Questions were raised about the activities of a spouse as those activities related to a Member's or senior official's responsibilities and, again, general cautions were discussed based on the specific situation under review.

Fees, Gifts and Other Benefits

Members and senior officials continue to raise questions about the appropriateness of accepting tickets to public events such as concerts or sports. Each case is reviewed with respect to the intended recipient's

responsibilities and any potential relationship between the donor and those responsibilities.

The other area that generates a number of requests each year is the offer by organizations to pay a Member's or senior official's expenses to a conference. Again, we discuss with the official the relationship the official has with the organization making the offer and the benefits to the public of the official attending the conference.

Where there is a connection between the organization and the Member's public responsibilities, approval is not given to the Member. Where there is a relationship between the organization and the senior official's department, we advise against acceptance of the gift.

We provide advice only to senior officials as rules relating to the public service are covered under the *Code of Conduct and Ethics for the Public Service* and not by the directive covering senior officials.

Senior Officials

Most of the requests for advice from senior officials in 1997/98 came from newly-appointed officials and related either to gifts or a discussion of their past employment or interests as they related to the official's new position.

We received a number of "unofficial" requests for information from non-profit and public Boards seeking guidance on the establishment of a Code of Conduct for members. We were pleased to provide what assistance we could.

PROFESSIONAL ASSOCIATIONS

I was pleased to host the annual meeting of the Canadian Conflict of Interest Network (CCOIN) in Edmonton in September. To encourage my colleagues to attend the 1997 Conference of the Council on Governmental Ethics Laws (COGEL), CCOIN members met on the Sunday on which the COGEL conference commenced.

As several of the CCOIN members are new appointees, we met for dinner to get acquainted the evening before our annual meeting. The gathering also provided an opportunity for CCOIN members to meet the 1997 President of COGEL, David Freel from the Ohio Ethics Commission. Mr. Freel also gave a summary of COGEL's mandate and activities at an impromptu meeting at our office that evening.

CCOIN members gratefully accepted the kind offer of our colleague from Quebec, the Jurisconsult, Claude Bisson, to host the 1998 CCOIN meeting in Quebec City in October.

From September 14 to 17, Alberta hosted the 1997 COGEL Conference at the Fantasyland Hotel at West Edmonton Mall. The conference was jointly hosted by the Office of the Chief Electoral Officer and my offices as Ethics Commissioner and Information and Privacy Commissioner.

I will not provide highlights of that conference in this report as the conference agenda and report on the proceedings were detailed in our *Ethics Bulletins* Nos. 7 and 8.

Copies of those Bulletins are available at my office.

I would report that COGEL members' comments on evaluation forms submitted during and after the conference were very complimentary with respect to the organization of the conference and to the content of the sessions.

PUBLIC INFORMATION

The majority of requests for information received by my office relate to requests for copies of annual reports, brochures, or investigation reports.

In the past year, we received calls from other jurisdictions with respect to senior official disclosures and there was also some interest in our revised disclosure forms for Members.

Other callers asked for clarification of the mandate of the office and whether "cooling off" periods applied to private Members and senior officials.

Speaking Engagements

I continue to accept speaking engagements whenever requested. In the past year, I had a number of discussions with individuals from St. Stephens College about the establishment of an Ethics Centre. I support such initiatives.

Publications

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

April, No. 6 The Role of Alberta' Ethics Commissioner

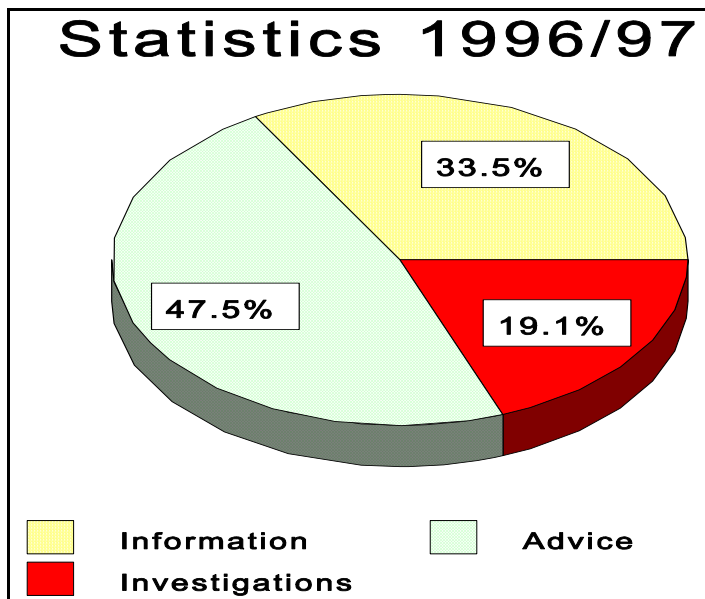
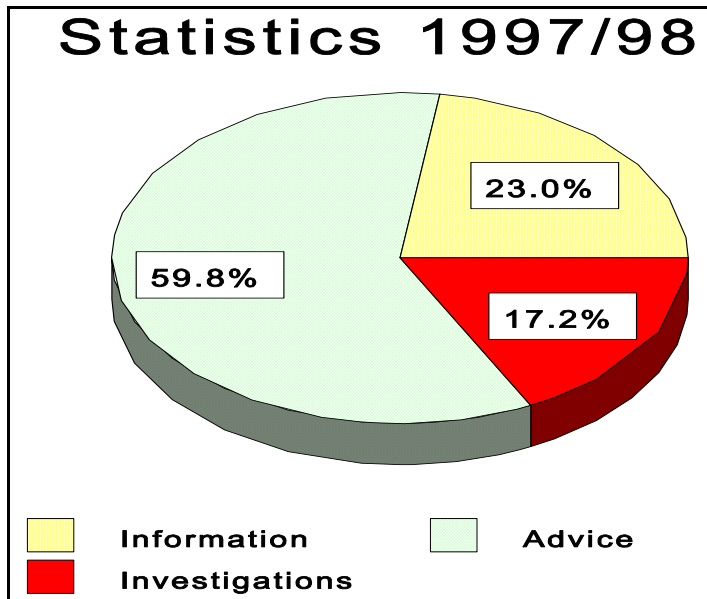
July, No. 7 1998 Conference of the Council on Governmental Ethics Laws (COGEL)

October, No. 8 Report on Alberta's hosting of the 1998 COGEL Conference

January, No. 9 Direct Associates

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

	1994/95 Actual Expenditures	1995/96 Actual Expenditures	1996/97 Actual Expenditures	1997/98 Estimate
SALARIES, WAGES AND EMPLOYEE BENEFITS	\$114,886	\$114,110	\$111,041	\$118,740
Travel	\$ 13,190	\$ 11,724	\$ 9,927	\$ 12,000
Insurance	0	600	865	1,000
Freight and Postage	149	329	513	300
Rental of Property, Equipment & Goods	4,612	4,975	4,790	5,750
Telephone & Communications	1,049	1,488	1,024	2,000
Repair & Maintenance of Equipment	465	60	118	300
Professional, Technical & Labour Services	14,354	19,867	9,536	23,000
Data Processing	27	512	363	500
Hosting	494	324	368	900
Materials and Supplies	2,202	8,751	2,371	4,000
SUPPLIES AND SERVICES	\$ 36,542	\$ 48,630	\$ 29,875	\$ 49,750
TOTAL EXPENDITURE	\$151,428	\$162,740	\$140,916	\$168,490