

AMO's Submission to Standing Committee on Social Policy

On

Bill 68, *Modernizing Municipal Legislation Act*

April 4, 2017

Members of the Standing Committee on Social Policy

AMO's membership includes 425 municipal governments from all parts of the province. This lets us tap the knowledge of municipal lawyers, clerk-administrators and chief administrators who helped us review this Bill – its policy intent and workability. This front-line talent is crucial to helping you 'get it right' as you review this legislation.

Today, I will speak mainly to the new integrity commissioner (IC) regime because it is where our concerns are most concentrated.

A list of our amendments is contained in Appendix A. I do need to say that there are many helpful clarifying provisions. We are not commenting on those, but in our short time will focus on critically needed changes.

Let me give you some important context.

While most people live in 65 municipal governments, there are 379 municipal governments with less than 50,000 populations, of which 190 have fewer than 5,000 populations. Some these governments are at great distances from urban centres.

When the Province passes one-size fits all legislation, you have to remember that the capacity to implement is far from the same. For those 190 very small municipal governments, their administrative support falls on two to six full time staff. They have to administer the *Municipal Act* and hundreds of other statutes and regulations and more are coming, such as a new asset management planning regulation. More

and more unfunded mandates put increasing pressure on property taxes, the core municipal financing tool.

Did you know that for almost 50% of Ontario's municipal governments, a 1% property tax increase raises less than \$50,000.00? The "pile-on" of unfunded new mandates means increased taxation or a reduction in services or less capital investment in infrastructure.

The capacity of municipal governments is not endless. A mandatory IC will be challenging financially, not to mention access to qualified people and the Act's administrative requirements. There is not much solace in the ability to share an IC or assign the functions of an IC. Large urban governments have similar concerns.

Chart 1: Population Classes in the Province of Ontario	No. of Municipalities
0-250	11
251-500	21
501-1,000	48
1,001-2,000	36
2,001-5,000	74
5,001-10,000	81
10,001-15,000	40
15,001-25,000	40
25,001-50,000	28
50,001-100,000	31
100,001-500,000	24
500,000+	10
*Source: Financial Information Return Schedule 80	

Chart 2: Average number of Municipal Administrative Staff		Admin.	
Population Classes	No.	FT	PT
↓			
0-250	11	1.2	0.7
251-500	21	2.0	0.8
501-1,000	48	4.0	1.2
1,001-2,000	36	4.4	1.0
2,001-5,000	74	5.9	0.9
5,001-10,000	81	9.3	2.0
10,001-15,000	40	11.8	2.7
15,001-25,000	40	21.6	5.2
25,001-50,000	28	35.9	5.9
50,001-100,000	31	58.9	7.7
100,001-500,000	24	170.3	34.3
500,000+	10	853.3	79.5
*Source: Financial Information Return Schedule 80			

Let me be blunt – much of the proposed regime came out of several local circumstances, including Justice Cunningham’s report. We understand that it can be hard for you to deviate from such reports. Yet we know what happens when one situation bears on everyone else – you get a rash of unintended consequences.

Municipal governments are not averse to transparency and accountability. In fact, if one truly examines the practices of public access and outreach, municipal governments are by far the leaders compared to any legislature or other public sector bodies.

Let’s quickly look at your own *Members’ Integrity Act*. (For ease of referral, a copy is in Appendix B.)

Only a member of the Assembly can complain to the provincial integrity commissioner. Yet for municipal governments, Bill 68 says “any person” can. Literally, that means anyone in the world! How reasonable is that? How would any treasurer even try to prepare a budget proposal for this? You might say the likelihood of an IC finding merit in a complaint made by someone living somewhere across the province is small and not attract costs. How wrong you would be. Any complaint means IC action – to open a file, do a preliminary examination of the merits, and to close the file with a finding of no merit. I can tell you from local experience that this level of work is about \$2500.00. Any person outside of a municipality could exploit the system at the expense of that municipality’s ratepayers.

Please replace “any person” with “municipal ratepayers, people living and working in the municipality, and anyone doing business with the municipal government”.

Another point of comparison, your own Act is sensitive to provincial elections by suspending an inquiry when a writ is issued. There is no similar approach in this Bill. I do not think any of you would deny the political gain that could be had by the mere suggestion of a complaint being made. In fact, your Act goes even further to say that the provincial IC shall suspend an inquiry if a member whose conduct is concerned resigns his or her seat. Neither of these are in Bill 68 and they should.

The proposed new municipal IC regime is multi-faceted and untested. That is why we are recommending that the IC regime’s application to local boards be deleted or at the very least not proclaimed until tested on municipal elected officials. We need to evaluate its workability before it is sprung on the thousands of community members who volunteer on local boards. In fact, if

an IC regime applies only to members of council, then it would solve a flaw in the Bill as to which IC would have jurisdiction in the case of a joint local board. It would also allow the reduction of the 180 days within which an IC must complete an inquiry.

Another problematic provision is that integrity commissioners will be able to investigate based on 'own initiative'. In other words, if no one complains, the IC can initiate this is on top an IC's authority to educate, advise members and investigate and rule on complaints. This 'own initiative' is very broad and unfettered authority and will confound the complaint based integrity systems.

Our recommendation is to delete this authority. You could replace it with a provision that should an IC see patterns in conduct that s/he must be granted any request to address council about these matters.

We also believe it is wise to include in the Act, for the public's clear understanding, that an IC has the authority to find a complaint frivolous, vexatious or not made in good faith, or that there are insufficient grounds for an inquiry. While an IC can make this finding, it should be set out in the Bill as it is in your Act as well as other pieces of legislation such as the *Planning Act*.

I also want to comment that implementation of the IC regime even with the requested changes is not something that can occur in months. For many, sharing of an IC or finding ways to assign IC functions will take effort, involving consultation and negotiation of service agreements, not to mention finding an IC with the necessary qualifications. Based on the close meeting investigator experience, the IC regime should not take effect before January 2019.

There are other proposed changes in Bill 68 that we fully support. For example, the definition of a "meeting". I would observe that the need for this definition was a direct consequence of the varying definitions of a "meeting" held by different closed meeting investigators. We can only hope that the IC regime, with different practitioners appointed as ICs does not generate its own set of issues when it is operationalized.

Time does not permit me to go through all of our proposed changes. I strongly encourage you to make the time to do so.

Let me conclude with a general statement – the greater the prescription and more there is a one-size fits all approach placed on municipal governments, the less responsive they can be to their community's needs. The simple fact is

- Ontario's 444 municipal governments are diverse and that diversity can change over time. That is why the *Municipal Act, 2005* embraced flexibility - by moving to broader authority, spheres of jurisdiction and natural person powers.

Appendix A

AMO's Proposed Amendments to Bill 68, *Modernizing Ontario's Municipal Legislation Act*

Proposed Changes to Bill 68	Bill's Section
<i>Integrity Commissioner (IC) Regime</i>	
<p>1. The Bill proposes that “any person” can make a complaint to an IC about a member with respect to the municipal code of conduct or MCIA. “Any person” is undefined and therefore limitless. It is well beyond the province’s <i>Members’ Integrity Act</i>, which says only MPPs can complain to its IC. A more reasonable scope for municipal governments would be those living, working or doing business with the municipal government. Without some scope, it is practically impossible to budget for this, let alone convince its property taxpayers that they foot the bill for non-residents or those not doing business in the municipality.</p>	<ul style="list-style-type: none"> • Replace “any person” with “the municipality’s ratepayers, people living and working in the municipality and anyone doing business with the municipal government.” • (S. 223.4.1 (2) (pg. 9 of Bill 68) and S. 8 (1) of MCIA (pg. 55).
<p>2. Regarding the mandatory IC complaints process for Codes and MCIA, limit its application to only elected members of a council. The proposed mandatory IC regime significantly broadens the current legislation, adds some complexity and is untested. There are 1000s of board across Ontario, and simply educating them on the new process will be time consuming and resource intensive. We are already hearing that the proposed new IC regime is dampening the willingness of community members to volunteer to sit on local boards, which would be a very unfortunate consequence. The application of the IC regime to only elected officials does not preclude the requirement to have a code of conduct for local boards.</p>	<ul style="list-style-type: none"> • Delete “local boards” from the IC’s mandatory jurisdiction for codes of conduct and MCIA. <p>Failing a deletion, at least delay the application to local boards until the IC regime has been tested and reviewed before applied to local boards. For clarity purposes, the Commencement sections should be amended to ensure that implementation can be phased.</p>

<p>3. The ability to apply penalties is a serious authority. Does the Bill permit a council to give the function of assigning penalties to an IC or must that function rest with council? The province needs to clarify this as currently some ICs have this function assigned.</p>	<ul style="list-style-type: none"> • Amend S. 223.3.2 of MA (pg. 9) and S. 9 (1) of MCIA (pg. 57) to clarify the government's intent as to whether penalties can be assigned by council as a function of an IC.
<p>4. If the IC regime continues to apply to local boards, there is a challenge with joint local board involving multiple jurisdictions. What IC would have jurisdiction of a joint local board? If an IC regime is limited to council members, it solves the problem. If not, there must be an amendment to clarify how these situations are to be handled.</p>	<ul style="list-style-type: none"> • S. 223.3.2 (pg. 9) needs to be make it clear how joint local boards are to be handled within the IC regime.
<p>5. Do not give ICs the ability to conduct an inquiry on the Commissioner's "own initiative" about whether a member of council (or of a local board) has contravened section 5, 5.1 or 5.2 of the MCIA. This power is too broad, and would bring into question or present a conflict with the ability for ICs to provide advice in the first place. As an alternative, provide that an IC who requests appearance before council must have that request granted. This would give ICs the opportunity to provide councils with comments on performance and execution of codes and MCIA. If the 'own initiative" is deleted, then there is no need for a 180-day period to complete in inquiry based on a complaint.</p>	<ul style="list-style-type: none"> • Amend S. 223.4. (pg. 9) by deleting 223.4.1 (1) (b) to clarify that the Commissioner cannot conduct an inquiry on his/her "own initiative" and the related changes (e.g., giving notice, holding a public meeting and reduce the 180 day to complete an investigation). • Add a provision to confirm that where an IC asks to speak to council, that the request must be accommodated.

<p>6. Given that every municipal government somehow must have the services of an IC, there should be confidence in the regime. Therefore, ICs should be provided with indemnification/ immunity. While this may affect municipal insurance slightly, it will add to the veracity of the proposed system.</p>	<ul style="list-style-type: none"> • Amend S. 233.5 by clarifying that an IC is indemnified by the municipal government. The provincial <i>Members' Integrity Act</i> says, "<u>Immunity Section 25</u>. No proceeding shall be commenced against the Commissioner or an employee in his or her office for any act done or omitted in good faith in the execution or intended execution of the Commissioner's or employee's duties under this Act or any other Act. 1998, c. 27, s. 1 (2)," and "<u>Section 26</u>. Neither the Commissioner nor an employee of his or her office is a competent or compellable witness in a civil proceeding outside the Assembly in connection with anything done under this Act or any other Act. 1994, c. 38, s. 26; 1998, c. 27, s. 1 (3)."
<p>7. ICs in the government's proposed regime hold similar characteristics to 'officers of the provincial legislature' i.e., arms-length, provides advice (upon which a member can be challenged), must undertake investigative processes when s/he receives a complaint and to report publicly.</p>	<ul style="list-style-type: none"> • Amend S.223.3 (1) of MA to add the matters in 223.13 (1) of the Act as relates to a municipal ombudsman i.e., matters related to independence and impartiality; confidentiality with respect to IC investigation activities; and the credibility of the investigative process.
<p>8. Interestingly, unlike the <i>Members' Integrity Act</i>, this Bill does not provide any assurance when a member was acting in accordance with the Commissioner's recommendations, having disclosed all the relevant facts to the Commissioner in advance.</p>	<ul style="list-style-type: none"> • Amend Bill 68 to give the same assurances that MPPs have under <i>Members' Integrity Act</i> section 31 (7). It says that if a member disclosed all relevant facts to the provincial IC who then gave advice on all those facts cannot be found to contravene the Act.

<p>9. Just as we have seen with the Closed Meeting investigator regime, having a myriad of different ICs can create its own challenges. (See Rec. # 15) There needs to be member and public confidence in the IC regime and the investigative process.</p>	<ul style="list-style-type: none"> • Provide a regulatory authority or at the very least a guideline that would bring some consistency to the IC investigative process by describing its nature and relationship to natural justice principles.
<p>10. Provide language to define the expectations of complainants under MCIA to ensure they are also acting with true intentions. Legislation can mirror in many ways the principles that apply to 'members' (pg. 54 of the Bill) such as the importance of integrity, independence and accountability in making a complaint, that in making a complaint, awareness that it is serious action and is not a frivolous or vexatious action and that complainant must comply with the provisions of the Act. There should also be a duty of confidentiality by a complainant from the lodging of the complaint until the investigation by the IC is completed.</p>	<ul style="list-style-type: none"> • Amend MA and MCIA to add principles that apply to Complainants that reflect elements such as integrity, independence in making the complaint and confidentiality.
<p>11. Provide clearer authority for the IC to refuse to conduct an investigation where there are no grounds or insufficient grounds. This needs to be clearly stated in the Act and in a similar manner as the <i>Members' Integrity Act</i>.</p>	<ul style="list-style-type: none"> • Amend Section 223.4.1 of the MA and Section 8 of the MCIA to add: "If the Commissioner is of the opinion that the referral of a matter to him or her is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an inquiry, the Commissioner shall not conduct an inquiry and shall state the reasons for not doing so in the report."

<p>12. Unlike the <i>Members' Integrity Act</i>, there is nothing in this Bill to deal with timing of an inquiry in terms of an election or resignation. Complaints can affect reputations. It is important that a pending complaint be completed before the nomination date and that new complaints be held until after the election. This would be in keeping with the province's Integrity Act.</p>	<ul style="list-style-type: none"> • Amend S.223.4.1 (11) of the MA and Section 8 of the MCIA to require any investigations to be completed before nomination date and investigations suspended during the nomination and election period in a similar manner that the "Members' Integrity Act" addresses these circumstances for MPPs.
<p>13. Given the role of ICs and the new regime, the Province must eliminate the ability to 'appeal' Codes of Conduct complaints to the Ontario Ombudsman where an IC has investigated a complaint or the time for bringing a complaint has expired. Under this new, mandatory IC regime, the IC should hold the 'last word' on a complaint unless as it provides, there is reason to apply to a judge. A multiple, complex complaint/investigation system with 'double oversight' will make it confusing for the public and others. The province's IC does not have an outside/federal IC review process.</p>	<ul style="list-style-type: none"> • Amend the Bill to remove oversight of the Ontario Ombudsman from the IC regime by deleting this provision from S. 14 (4.4) of the Ombudsman Act. (*)

<i>Other Municipal Act Changes:</i>	
<p>14. Reducing the timeframe between election day and the start of a council's term can reduce the lame duck period. Providing a range of dates within which the term begins would give new eager and often smaller municipal councils their mandate faster yet recognizes that some large jurisdictions may require longer. The timeframe for holding first meeting has not changed which gives flexibility in the scheduling of their meetings. Circumstances vary across ON and this should be respected by letting each determine by policy including the coordination of this in two-tier governments.</p>	<ul style="list-style-type: none"> • Amend S. 235 (pg. 12) to provide that each council has the policy authority to identify the start of a council's term provided it occurs between November 15 and December 1 of the election year.
<p>15. The definition of 'meeting' resolves issues emanating from previous applied definitions of different closed meeting investigators and better reflects the case law. The new exceptions for allowing a closed meeting also reflect the unintended consequences of the current legislation. Section 239 (h) has omitted the circumstances where information is supplied in confidence between municipal governments (e.g., joint acquisitions).</p>	<ul style="list-style-type: none"> • Amend 239 (2) (h) so the section would read, "information explicitly supplied in confidence to the municipality, or local board by Canada, a province or territory or a Crown agency of any of them or <u>between municipal governments.</u>" (pg. 12 of Bill 68).
<p>16. There are some required municipal tribunals. A Campaign Compliance Audit Committee must meet in public but should be permitted to adjourn or reserve its decision to deliberate in private as other tribunals do, i.e., Committees of Adjustment under the Planning Act. To achieve this, the Bill could either amend the Local Board definition to exclude administrative tribunals or add the tribunals to opening meeting exceptions.</p>	<ul style="list-style-type: none"> • Amend S. 88.36 of <i>Municipal Elections Act</i> to add: The Committee may adjourn the meeting or reserve its decision and S. 238 (1) definition of "local board" to exclude compliance audit committee and any other administrative tribunals appointed under statutes by Council or add a new section to closed meeting exceptions (239) to provide that administrative tribunals appointed under statutes by Council can deliberate in private.

<p>17. The Bill set ups prudent investor standard. We support this and want to see all municipal governments, not just cities have the ability to achieve better rates of return on monies it collects that are not required immediately. We are assured that all municipalities will have this ability.</p>	<ul style="list-style-type: none"> • Regulatory authority will need to reflect modern investment tools for policy implementation purposes.
<p>18. Bill 68 adds a new 'broad authority' related to "climate change". Yet it also requires municipal governments to have a policy statement on how it will protect and enhance tree canopy. It is well known that trees help sequester greenhouse gases and support climate change. Therefore, canopy is covered under the broad authority section and part of land use planning documents. Therefore, it is confusing as to why a separate stand-alone policy statement is necessary. What authority does a policy statement have and over what other municipal documents? In other words, what has paramountcy? For rural and northern communities, this requirement will be viewed as make-work.</p>	<ul style="list-style-type: none"> • Either delete S. 270 (7) (pg. 13) of the MA requiring councils to have a policy statement on "The manner in which the municipality will protect and enhance the tree canopy..." or provide clarity on what statutory policies/documents will have status.

Appendix B
Members' Integrity Act, 1994

S.O. 1994, CHAPTER 38

Consolidation Period: From June 1, 2011 to the [e-Laws currency date](#).

Last amendment: 2010, c. 5.

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Preamble

It is desirable to provide greater certainty in the reconciliation of the private interests and public duties of members of the Legislative Assembly, recognizing the following principles:

1. The Assembly as a whole can represent the people of Ontario most effectively if its members have experience and knowledge in relation to many aspects of life in Ontario and if they can continue to be active in their own communities, whether in business, in the practice of a profession or otherwise.
2. Members' duty to represent their constituents includes broadly representing their constituents' interests in the Assembly and to the Government of Ontario.
3. Members are expected to perform their duties of office and arrange their private affairs in a manner that promotes public confidence in the integrity of each member, maintains the Assembly's dignity and justifies the respect in which society holds the Assembly and its members.
4. Members are expected to act with integrity and impartiality that will bear the closest scrutiny.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1. In this Act,

“child” includes a person whom a member of the Assembly has demonstrated a settled intention to treat as a child of his or her family, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody; (“enfant”)

“Commissioner” and “Integrity Commissioner” mean the person appointed as Integrity Commissioner under section 23; (“commissaire”, “commissaire à l’intégrité”)

“family”, when used with reference to a person, means,

- (a) his or her spouse and minor children, and
- (b) any other adult who is related to the person or his or her spouse, shares a residence with the person and is primarily dependent on the person or spouse for financial support; (“famille”)

“private company” has the same meaning as in the *Securities Act*; (“compagnie fermée”)

“private interest” does not include an interest in a decision,

- (a) that is of general application,
- (b) that affects a member of the Assembly as one of a broad class of persons, or
- (c) that concerns the remuneration or benefits of a member or of an officer or employee of the Assembly; (“intérêt personnel”)

“Speaker” means the Speaker of the Assembly; (“président”)

“spouse” means a person who is the member's spouse within the meaning of Part III of the *Family Law Act*, but does not include a person from whom the member is separated, whether or not support obligations and family property have been dealt with by a separation agreement or court order. (“conjoint”) 1994, c. 38, s. 1; 1999, c. 6, s. 36 (1); 2005, c. 5, s. 40 (1, 2).

PROVISIONS APPLYING TO ALL MEMBERS OF THE ASSEMBLY

Conflict of interest

2. A member of the Assembly shall not make a decision or participate in making a decision in the execution of his or her office if the member knows or reasonably should know that in the making of the decision there is an opportunity to further the member's private interest or improperly to further another person's private interest. 1994, c. 38, s. 2.

Insider information

3. (1) A member of the Assembly shall not use information that is obtained in his or her capacity as a member and that is not available to the general public to further or seek to further the member's private interest or improperly to further or seek to further another person's private interest. 1994, c. 38, s. 3 (1).

Same

(2) A member shall not communicate information described in subsection (1) to another person if the member knows or reasonably should know that the information may be used for a purpose described in that subsection. 1994, c. 38, s. 3 (2).

Influence

4. A member of the Assembly shall not use his or her office to seek to influence a decision made or to be made by another person so as to further the member's private interest or improperly to further another person's private interest. 1994, c. 38, s. 4.

Activities on behalf of constituents

5. This Act does not prohibit the activities in which members of the Assembly normally engage on behalf of constituents in accordance with Ontario parliamentary convention. 1994, c. 38, s. 5.

Gifts

6. (1) A member of the Assembly shall not accept a fee, gift or personal benefit that is connected directly or indirectly with the performance of his or her duties of office. 1994, c. 38, s. 6 (1).

Non-application of subs. (1)

- (2) Subsection (1) does not apply to,
- (a) compensation authorized by law;
 - (b) a gift or personal benefit that is received as an incident of the protocol, customs or social obligations that normally accompany the responsibilities of office;
 - (c) a fee, gift or personal benefit that is given, directly or indirectly, by or on behalf of a political party, constituency association, candidate or leadership contestant registered under the *Election Finances Act*, including remuneration or financial assistance; or
 - (d) any other gift or personal benefit, if the Commissioner is of the opinion it is unlikely that receipt of the gift or benefit gives rise to a reasonable presumption that the gift or benefit was given in order to influence the member in the performance of his or her duties. 1994, c. 38, s. 6 (2); 2010, c. 5, s. 1 (1).

Disclosure

(3) Within 30 days after receiving a gift or personal benefit referred to in clause (2) (b) or (d) that exceeds \$200 in value, the member shall file with the Commissioner a disclosure statement in the form provided by the Commissioner, indicating the nature of the gift or benefit, its source and the circumstances under which it was given and accepted. 2010, c. 5, s. 1 (2).

Same

(4) Subsection (3) also applies to gifts and personal benefits referred to in clauses (2) (b) and (d) if the total value of what is received from one source in any 12-month period exceeds \$200. 1994, c. 38, s. 6 (4); 2010, c. 5, s. 1 (3).

(5) REPEALED: 2010, c. 5, s. 1 (4).

Government contracts with members

7. (1) No member of the Assembly shall knowingly be a party to a contract with the Government of Ontario under which the member receives a benefit. 1994, c. 38, s. 7 (1).

Partnerships, private companies

(2) No member shall have an interest in a partnership or in a private company that is a party to a contract with the Government of Ontario under which the partnership or company receives a benefit. 1994, c. 38, s. 7 (2).

Exception, existing contracts

(3) Subsections (1) and (2) do not apply to a contract that existed before the member's election to the Assembly, but they do apply to its renewal or extension. 1994, c. 38, s. 7 (3).

Exception, nature of interest

(4) Subsection (2) does not apply if the Commissioner is of the opinion that the interest is unlikely to affect the member's performance of his or her duties. 1994, c. 38, s. 7 (4).

Exception, management trust

(5) Subsection (2) does not apply if the member has entrusted his or her interest to one or more trustees on the following terms:

1. The provisions of the trust shall be approved by the Commissioner.
2. The trustees shall be persons who are at arm's length with the member and approved by the Commissioner.
3. The trustees shall not consult with the member with respect to managing the trust property, but may consult with the Commissioner.
4. Annually, the trustees shall give the Commissioner a written report stating the nature of the assets in the trust, the trust's net income for the preceding year and the trustees' fees, if any.
5. The trustees shall also give the member sufficient information to permit him or her to submit returns as required by the *Income Tax Act* (Canada) and shall give the same information to Revenue Canada.
6. The member is entitled to be reimbursed by the Commissioner for reasonable fees and disbursements actually paid for the establishment and administration of the trust, as approved by the Commissioner, but is responsible for any income tax liabilities that may result from the reimbursement. 1994, c. 38, s. 7 (5); 2010, c. 5, s. 2.

Exception, pensions

(6) Subsection (1) does not prohibit a member from receiving benefits under the *Legislative Assembly Retirement Allowances Act*, the *Public Service of Ontario Act, 2006*, the *Public Service Pension Act*, the *Teachers' Pension Act* or any other Act that provides for retirement benefits funded wholly or partly by the Government of Ontario. 1994, c. 38, s. 7 (6); 2006, c. 35, Sched. C, s. 65.

Inheritance

(7) Subsection (2) does not apply until the first anniversary of the acquisition if the interest in the partnership or private company was acquired by inheritance. 1994, c. 38, s. 7 (7).

Procedure on conflict of interest

8. A member of the Assembly who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Assembly or the Executive Council, or a committee of either of them, shall, if present at a meeting considering the matter,

- (a) disclose the general nature of the conflict of interest; and
- (b) withdraw from the meeting without voting or participating in consideration of the matter. 1994, c. 38, s. 8.

Rights preserved

9. Nothing in this Act prohibits a member of the Assembly who is not a member of the Executive Council from,

- (a) engaging in employment or in the practice of a profession;
- (b) receiving fees for providing professional services under the *Legal Aid Services Act, 1998*;
- (c) engaging in the management of a business carried on by a corporation;
- (d) carrying on a business through a partnership or sole proprietorship;
- (e) holding or trading in securities, stocks, futures and commodities;
- (f) holding shares or an interest in any corporation, partnership, syndicate, co-operative or similar commercial enterprise;
- (g) being a director or partner or holding an office, other than an office that a member may not hold under another Act. 1994, c. 38, s. 9; 1998, c. 26, s. 107.

PROVISIONS APPLYING TO MEMBERS AND FORMER MEMBERS OF THE EXECUTIVE COUNCIL

Outside activities

10. A member of the Executive Council shall not,

- (a) engage in employment or the practice of a profession; or
- (b) REPEALED: 2010, c. 5, s. 3.
- (c) hold an office or directorship, unless holding the office or directorship is one of the member's duties as a member of the Executive Council, or the office or directorship is in a social club, religious organization or political party. 1994, c. 38, s. 10; 2010, c. 5, s. 3.

Investments

11. (1) A member of the Executive Council shall not hold or trade in securities, stocks, futures or commodities. 1994, c. 38, s. 11 (1).

Exception

(2) Subsection (1) does not apply to assets and liabilities described in subsection 21 (4). 1994, c. 38, s. 11 (2).

Exception, trust on specified terms

(3) Subsection (1) does not apply if the member has entrusted the assets to one or more trustees on the following terms:

1. The provisions of the trust shall be approved by the Commissioner.
2. The trustees shall be persons who are at arm's length with the member and approved by the Commissioner.
3. The trustees shall not consult with the member with respect to managing the trust property, but may consult with the Commissioner.
4. At the end of each calendar year and at one or more intervals during the year, the trustees shall give the member a written report stating the value, but not the nature, of the assets in the trust. The year-end report shall also state the trust's net income for the preceding year and the trustees' fees, if any.
5. The trustees shall also give the member sufficient information to permit him or her to submit returns as required by the *Income Tax Act* (Canada) and shall give the same information to Revenue Canada.
6. The trustee shall give the Commissioner copies of all information and reports given to the member.
7. The trust shall provide that the member may, at any time, instruct the trustees to liquidate all or part of the trust and pay over the proceeds to the member subject to the Commissioner's approval.
8. The member is entitled to be reimbursed by the Commissioner for reasonable fees and disbursements actually paid for the establishment and administration of the trust, as approved by the Commissioner, but is responsible for any income tax liabilities that may result from the reimbursement. 1994, c. 38, s. 11 (3); 2010, c. 5, s. 4 (1-3).

Limit on reimbursement

(4) Paragraph 8 of subsection (3) applies to a trust established for the purposes of this section before the day on which subsection 4 (4) of the *Members' Integrity Amendment Act, 2010* comes into force, but the member is entitled to reimbursement under that paragraph only for fees and disbursements paid on or after that day. 2010, c. 5, s. 4 (4).

Corporations, partnerships and sole proprietorships

12. (1) A member of the Executive Council shall not engage in the management of a business carried on by a corporation or carry on business through a partnership or sole proprietorship. 2010, c. 5, s. 5.

Exception, trust on specified terms

(2) Subsection (1) does not apply if the member has entrusted the business or his or her interest in the business to one or more trustees on the terms set out in paragraphs 1 to 8 of subsection 11 (3). 2010, c. 5, s. 5.

Transition, deemed compliance

(3) Every trust established for the purposes of this section that is in existence on the day on which section 5 of the *Members' Integrity Amendment Act, 2010* comes into force is deemed to comply with the terms referred to in subsection (2). 2010, c. 5, s. 5.

Consolidated Revenue Fund

12.1 All fees and disbursements payable by the Commissioner for the purposes of paragraph 6 of subsection 7 (5), paragraph 8 of subsection 11 (3) and subsection 12 (2) are a charge on and are payable out of the Consolidated Revenue Fund. 2010, c. 5, s. 6.

Approved exceptions

13. A member of the Executive Council may engage in an activity prohibited by section 10 or subsection 11 (1) or 12 (1) if the following conditions are met:

1. The member has disclosed all material facts to the Commissioner.
2. The Commissioner is satisfied that the activity, if carried on in the specified manner, will not create a conflict between the member's private interest and public duty.

3. The Commissioner has given the member his or her approval and has specified the manner in which the activity may be carried out.
4. The member carries the activity out in the specified manner. 1994, c. 38, s. 13; 2010, c. 5, s. 7.

Time for compliance

14. A person who becomes a member of the Executive Council shall comply with section 10 and subsections 11 (1) and 12 (1), or obtain the Commissioner's approval under section 13, within 60 days after the appointment. 1994, c. 38, s. 14.

Acquisition of land

15. (1) A member of the Executive Council shall not, directly or indirectly, acquire an interest in real property, except for residential or recreational use by,

- (a) the member;
- (b) a person who belongs to the member's family; or
- (c) any other person approved by the Commissioner. 2010, c. 5, s. 8.

Exceptions

- (2) Subsection (1) does not apply to,
 - (a) an interest in real property that the member inherits;
 - (b) a mortgage that is granted to the member as mortgagee, or an interest in real property that the member acquires by foreclosing on a mortgage; or
 - (c) an interest in real property that is acquired to be used as part of an existing farming operation. 1994, c. 38, s. 15 (2).

Procedure on conflict of interest

16. A member of the Executive Council who has reasonable grounds to believe that he or she has a conflict of interest in a matter requiring the member's decision shall ask the Premier or Deputy Premier to appoint another member of the Executive Council to perform the member's duties in the matter for the purpose of making the decision, and the member who is appointed may act in the matter for the period of time necessary for the purpose. 1994, c. 38, s. 16.

Restrictions applicable to Executive Council

17. (1) The Executive Council and its members shall not knowingly,
- (a) award or approve a contract with, or grant a benefit to, a former member of the Executive Council until 12 months have passed after the date he or she ceased to hold office;
 - (b) award or approve a contract with, or grant a benefit to, a former member of the Executive Council who has, during the 12 months after the date he or she ceased to hold office, made representations to the Government of Ontario in respect of the contract or benefit;
 - (c) award or approve a contract with, or grant a benefit to, a person on whose behalf a former member of the Executive Council has, during the 12 months after the date he or she ceased to hold office, made representations to the Government of Ontario in respect of the contract or benefit. 1994, c. 38, s. 17 (1).

Exception

(2) Clauses (1) (a) and (b) do not apply to contracts or benefits in respect of further duties in the service of the Crown. 1994, c. 38, s. 17 (2).

Same

(3) Subsection (1) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled. 1994, c. 38, s. 17 (3).

Restrictions applicable to former members

18. (1) A former member of the Executive Council shall not knowingly, during the 12 months after the date he or she ceased to hold office,
- (a) accept a contract or benefit that is awarded, approved or granted by the Executive Council, a member of the Executive Council or an employee of a ministry (other than an employee of an agency, board or commission);

- (b) make representations to the Government of Ontario on his or her own behalf or on another person's behalf with respect to such a contract or benefit;
- (c) accept a contract or benefit from any person who, during the 12 months before the date the former member ceased to hold office, received a contract or benefit from a ministry of which the former member was the Minister. 1994, c. 38, s. 18 (1); 2010, c. 5, s. 9 (1).

Exception

(2) Subsection (1) does not apply to contracts or benefits in respect of further duties in the service of the Crown. 1994, c. 38, s. 18 (2).

Same

(3) Subsection (1) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled. 1994, c. 38, s. 18 (3).

Ongoing transaction or negotiation

(4) A former member of the Executive Council shall not make representations to the Government of Ontario in relation to a transaction or negotiation to which the Government is a party and in which he or she was previously substantially involved as a member of the Executive Council, if the representation could result in the conferring of a benefit not of general application. 1994, c. 38, s. 18 (4); 2010, c. 5, s. 9 (2).

Offence

(5) A person who contravenes subsection (1) or (4) is guilty of an offence and liable, on conviction, to a fine of not more than \$50,000. 1994, c. 38, s. 18 (5).

Parliamentary assistants

19. Sections 10 to 18 do not apply to parliamentary assistants or to former parliamentary assistants, as the case may be. 1994, c. 38, s. 19.

DISCLOSURE

Private disclosure statement

20. (1) Every member of the Assembly shall file with the Commissioner a private disclosure statement, in the form provided by the Commissioner,

- (a) within 60 days of being elected; and
- (b) thereafter, once in every calendar year on the date established by the Commissioner. 1994, c. 38, s. 20 (1).

Contents

- (2) The private disclosure statement shall,
 - (a) identify the assets and liabilities of the member and his or her spouse and minor children, and state the value of the assets and liabilities;
 - (b) state any income the member and his or her spouse and minor children have received during the preceding 12 months or are entitled to receive during the next 12 months, and indicate the source of the income;
 - (c) state all benefits the member, his or her spouse and minor children, and any private company in which any of them has an interest, have received during the preceding 12 months or are entitled to receive during the next 12 months as a result of a contract with the Government of Ontario, and describe the subject-matter and nature of the contract;
 - (d) if the private disclosure statement mentions a private company,
 - (i) include any information about the company's activities and sources of income that the member is able to obtain by making reasonable inquiries, and
 - (ii) state the names of any other companies that are its affiliates, as determined under subsections 1 (2) to (6) of the *Securities Act*;
 - (e) list all corporations and other organizations in which the member is an officer or director or has a similar position; and
 - (f) include any other information that the Commissioner requires. 1994, c. 38, s. 20 (2); 1999, c. 6, s. 36 (3); 2005, c. 5, s. 40 (4).

Meeting with Commissioner

(3) After filing the private disclosure statement, the member, and the member's spouse if available, shall meet with the Commissioner to ensure that adequate disclosure has been made and to obtain advice on the member's obligations under this Act. 1994, c. 38, s. 20 (3); 1999, c. 6, s. 36 (4); 2005, c. 5, s. 40 (5).

Statement of material change

(4) The member shall file a statement of material change with the Commissioner, in the form provided by the Commissioner, within 30 days after a change in the income, assets or liabilities of the member or his or her spouse and minor children or an event that causes a person to become or to cease to be a member of the member's family, if the change or event would reasonably be expected to have a significant effect on the information previously disclosed. 1994, c. 38, s. 20 (4); 1999, c. 6, s. 36 (5); 2005, c. 5, s. 40 (6).

Public disclosure statement

21. (1) After the meeting referred to in subsection 20 (3), the Commissioner shall prepare a public disclosure statement on the basis of the information provided by the member. 1994, c. 38, s. 21 (1).

Contents

- (2) The public disclosure statement shall,
- (a) state the source and nature, but not the value, of the income, assets and liabilities referred to in subsection 20 (2), except those that are described in subsection (4) of this section;
 - (b) list the names and addresses of all the persons who have an interest in those assets and liabilities;
 - (c) identify any contracts with the Government of Ontario referred to in the private disclosure statement, and describe their subject-matter and nature;
 - (d) list the names of any private companies mentioned in the private disclosure statement;
 - (d.1) list the names of any corporations or other organizations referred to in clause 20 (2) (e); and
 - (e) contain a statement of any gifts or benefits that have been disclosed to the Commissioner under subsection 6 (3). 1994, c. 38, s. 21 (2); 2010, c. 5, s. 10 (1).

Same

(3) In the case of a member of the Executive Council, the public disclosure statement shall also state whether the member has obtained the Commissioner's approval under section 13 for an activity that would otherwise be prohibited and, if the member has done so, shall,

- (a) describe the activity; and
- (b) in the case of a business activity, list the name and address of each person who has a 10 per cent or greater interest in the business, and describe the person's relationship to the member. 1994, c. 38, s. 21 (3).

Excluded private interests

- (4) The following assets, liabilities and sources of income shall not be shown in the public disclosure statement:
- 1. An asset or liability worth less than \$2,500.
 - 2. A source of income that yielded less than \$2,500 during the 12 months preceding the relevant date.
 - 3. Real property that the member or a person who belongs to his or her family uses primarily as a residence or for recreational purposes.
 - 4. Personal property that the member or a person who belongs to his or her family uses primarily for transportation, household, educational, recreational, social or aesthetic purposes.
 - 5. Cash on hand, or on deposit with a financial institution that is lawfully entitled to accept deposits.
 - 6. Fixed value securities issued or guaranteed by a government or by a government agency.
 - 7. A registered retirement savings plan that is not self-administered, or a registered home ownership savings plan.
 - 8. An interest in a pension plan, employee benefit plan, annuity or life insurance policy.
 - 9. An investment in an open-ended mutual fund that has broadly based investments not limited to one industry or one sector of the economy.
 - 10. A guaranteed investment certificate or similar financial instrument.

11. Any other asset, liability or source of income that the Commissioner approves as an excluded private interest. 1994, c. 38, s. 21 (4); 1999, c. 6, s. 36 (6); 2005, c. 5, s. 40 (7).

Information withheld

- (5) The Commissioner may withhold information from the public disclosure statement if, in his or her opinion,
- (a) the information is not relevant to the purpose of this Act; and
 - (b) a departure from the general principle of public disclosure is justified. 1994, c. 38, s. 21 (5).

Filing

(6) The Commissioner shall file the public disclosure statement with the Clerk of the Assembly. 1994, c. 38, s. 21 (6).

Public access

(7) The Commissioner shall make the public disclosure statement readily accessible to the public by ensuring that the public disclosure statement is published on the Internet and by any other means that the Commissioner considers appropriate. 2010, c. 5, s. 10 (2).

Copies

(8) The Clerk shall provide a copy of the public disclosure statement to any person who pays the fee fixed by the Clerk. 2010, c. 5, s. 10 (2).

Destruction of records

- 22.** (1) The Commissioner,
- (a) shall destroy every private disclosure statement in his or her possession, during the 12-month period that follows the 10th anniversary of the creation of the record; and
 - (b) may destroy any other record in his or her possession that relates to a member or former member of the Assembly, or to a person who belongs to his or her family, at any time after the 10th anniversary of the creation of the record. 2010, c. 5, s. 11.

Exception

(2) If an inquiry to which a record may relate is being conducted under this Act, or if the Commissioner is aware that a charge to which it may relate has been laid under the *Criminal Code* (Canada) against the member or former member or a person who belongs to his or her family, the record shall not be destroyed until the inquiry or the charge has been finally disposed of. 1994, c. 38, s. 22 (2); 1999, c. 6, s. 36 (8); 2005, c. 5, s. 40 (9).

INTEGRITY COMMISSIONER

Commissioner

23. (1) There shall be an Integrity Commissioner who is an officer of the Assembly. 1994, c. 38, s. 23 (1).

Appointment

(2) The Lieutenant Governor in Council shall appoint a person to the office of Integrity Commissioner on the address of the Assembly. 1994, c. 38, s. 23 (2).

Term of office

(3) The person appointed shall hold office for a term of five years and may be reappointed for a further term or terms. 1994, c. 38, s. 23 (3).

Same

(4) The person appointed continues to hold office after the expiry of the term until reappointed, or until a successor is appointed. 1994, c. 38, s. 23 (4).

Removal

(5) The person appointed may be removed for cause, before the expiry of the term of office, by the Lieutenant Governor in Council on the address of the Assembly. 1994, c. 38, s. 23 (5).

Acting Commissioner

- (6) The Lieutenant Governor in Council may appoint an acting Integrity Commissioner if,
- (a) the office of Integrity Commissioner becomes vacant during a session of the Assembly, but the Assembly does not make a recommendation under subsection (2) before the end of the session; or

(b) the office of Integrity Commissioner becomes vacant while the Assembly is not sitting. 1994, c. 38, s. 23 (6).

Same

(7) The appointment of the acting Commissioner comes to an end when a new Integrity Commissioner is appointed under subsection (2). 1994, c. 38, s. 23 (7).

Same

(8) If the Integrity Commissioner is unable to act because of illness, the Lieutenant Governor in Council may appoint an acting Commissioner, whose appointment comes to an end when the Integrity Commissioner is again able to act or when the office becomes vacant. 1994, c. 38, s. 23 (8).

Salary

(9) The Commissioner shall be paid the remuneration and allowances that are fixed by the Lieutenant Governor in Council. 1994, c. 38, s. 23 (9).

Staff

(10) The employees who are necessary for the performance of the Commissioner's duties shall be members of the staff of the Office of the Assembly. 1994, c. 38, s. 23 (10).

Powers and duties

23.1 The Commissioner may exercise the powers and shall perform the duties assigned to him or her under this Act and any other Act. 1998, c. 27, s. 1 (1).

Annual report

24. (1) The Commissioner shall report annually on the affairs of the office to the Speaker, who shall cause the report to be laid before the Assembly. 1994, c. 38, s. 24 (1).

Contents

(2) The annual report may summarize advice given by the Commissioner, but shall not disclose confidential information or information that could identify a person concerned. 1994, c. 38, s. 24 (2).

Immunity

25. No proceeding shall be commenced against the Commissioner or an employee in his or her office for any act done or omitted in good faith in the execution or intended execution of the Commissioner's or employee's duties under this Act or any other Act. 1998, c. 27, s. 1 (2).

Testimony

26. Neither the Commissioner nor an employee of his or her office is a competent or compellable witness in a civil proceeding outside the Assembly in connection with anything done under this Act or any other Act. 1994, c. 38, s. 26; 1998, c. 27, s. 1 (3).

Extension of time

27. (1) A member of the Assembly whom this Act requires to do anything within a specified period of time may give the Commissioner a written request for an extension. 1994, c. 38, s. 27 (1).

Same

(2) The Commissioner may, by giving the member a written notice, extend the time by a specified number of days, as the Commissioner considers reasonable and consistent with the public interest. 1994, c. 38, s. 27 (2).

Same

(3) The Commissioner may impose on the extension such conditions as he or she considers just. 1994, c. 38, s. 27 (3).

Opinion and recommendations

28. (1) A member of the Assembly may request that the Commissioner give an opinion and recommendations on any matter respecting the member's obligations under this Act and under Ontario parliamentary convention. 1994, c. 38, s. 28 (1).

Inquiries

(2) The Commissioner may make such inquiries as he or she considers appropriate and shall provide the member with an opinion and recommendations. 1994, c. 38, s. 28 (2).

Confidentiality

(3) The Commissioner's opinion and recommendations are confidential, but may be released by the member or with the member's consent. 1994, c. 38, s. 28 (3).

Partial release by member

(3.1) Despite subsection (3), if the member releases only part of the opinion and recommendations, the Commissioner may release part or all of the opinion and recommendations without obtaining the member's consent. 2010, c. 5, s. 12 (1).

Writing

(4) The member's request, the Commissioner's opinion and recommendations and the member's consent, if any, shall be in writing. 1994, c. 38, s. 28 (4).

Application to former members of Executive Council

(5) This section continues to apply with necessary modifications to a former member of the Executive Council, even if he or she ceases to be a member of the Assembly. 2010, c. 5, s. 12 (2).

Confidentiality

29. (1) Information disclosed to the Commissioner under this Act is confidential and shall not be disclosed to any person, except,

- (a) by the member, or with his or her consent;
- (b) in a criminal proceeding, as required by law; or
- (c) otherwise in accordance with this Act. 1994, c. 38, s. 29 (1).

Freedom of Information and Protection of Privacy Act

(2) Subsection (1) prevails over the *Freedom of Information and Protection of Privacy Act*. 1994, c. 38, s. 29 (2).

ENFORCEMENT

Matter referred by member

30. (1) A member of the Assembly who has reasonable and probable grounds to believe that another member has contravened this Act or Ontario parliamentary convention may request that the Commissioner give an opinion as to the matter. 1994, c. 38, s. 30 (1).

Request

(2) The request shall be in writing and shall set out the grounds for the belief and the contravention alleged. 1994, c. 38, s. 30 (2).

Tabling

(3) The member making the request shall promptly give a copy of it to the Speaker, who shall cause the request to be laid before the Assembly if it is in session or, if not, within 10 days after the beginning of the next session. 1994, c. 38, s. 30 (3).

(4) REPEALED: 2010, c. 5, s. 13.

Matter referred by Executive Council

(5) The Executive Council may request that the Commissioner give an opinion as to whether a member of the Executive Council has contravened this Act or Ontario parliamentary convention. 1994, c. 38, s. 30 (5).

Inquiry by Assembly

(6) The Assembly and its committees shall not conduct an inquiry into a matter that has been referred to the Commissioner under subsection (1) or (4). 1994, c. 38, s. 30 (6).

Inquiry by Commissioner

31. (1) When a matter is referred to the Commissioner under section 30, the Commissioner may conduct an inquiry, after giving the member whose conduct is concerned reasonable notice. 1994, c. 38, s. 31 (1).

Same

(2) If the matter was referred by a member,

- (a) the Commissioner may elect to exercise the powers under sections 33 and 34 of the *Public Inquiries Act, 2009*, in which case those sections apply to the inquiry; and
- (b) the Commissioner shall report his or her opinion to the Speaker. 1994, c. 38, s. 31 (2); 2009, c. 33, Sched. 6, s. 66; 2010, c. 5, s. 14 (1).

Same

- (3) The Speaker shall,
 - (a) give a copy of the opinion to the member whose conduct is concerned and to the leader of each political party that is represented in the Assembly;
 - (b) give a copy of the opinion to the member who referred the matter; and
 - (c) cause the opinion to be laid before the Assembly if it is in session or, if not, within 10 days after the beginning of the next session. 1994, c. 38, s. 31 (3); 2010, c. 5, s. 14 (2).

Same

(4) If the matter was referred by the Executive Council, the Commissioner shall report his or her opinion to the Clerk of the Executive Council. 1994, c. 38, s. 31 (4).

Effect of election, resignation on matter referred by member

(4.1) The Commissioner shall suspend an inquiry respecting a matter referred by a member in the following circumstances:

- 1. The member whose conduct is concerned resigns his or her seat.
- 2. A writ is issued under the *Election Act* for a general election. 2010, c. 5, s. 14 (3).

Same

(4.2) If an inquiry is suspended under subsection (4.1) because the member whose conduct is concerned resigns his or her seat, the Commissioner shall continue the inquiry if, within 30 days after the date of the resignation, the former member or the member who referred the matter submits a written request to the Commissioner that the inquiry be continued. 2010, c. 5, s. 14 (3).

Same

(4.3) If an inquiry is suspended under subsection (4.1) because of the issuance of a writ, the Commissioner shall continue the inquiry if, within 30 days after polling day in the election, the member or former member whose conduct is concerned or the member who referred the matter submits a written request to the Commissioner that the inquiry be continued. 2010, c. 5, s. 14 (3).

Same

(4.4) An inquiry shall not be continued under subsection (4.3) until after polling day in the election. 2010, c. 5, s. 14 (3).

Same

(4.5) If an inquiry is suspended under subsection (4.1) and is not continued under subsection (4.2) or (4.3), the Commissioner shall terminate the inquiry and shall give written notice of the termination to the member or former member whose conduct is concerned, the member who referred the matter and the Speaker. 2010, c. 5, s. 14 (3).

Effect of election, resignation on matter referred by Executive Council

(4.6) The Commissioner shall suspend an inquiry respecting a matter referred by the Executive Council if the member of the Executive Council whose conduct is concerned resigns his or her office. 2010, c. 5, s. 14 (3).

Same

(4.7) The Commissioner shall continue an inquiry suspended under subsection (4.6) if, within 30 days after the date of the resignation, the Executive Council submits a written request to the Commissioner that the inquiry be continued. 2010, c. 5, s. 14 (3).

Same

(4.8) The Commissioner shall terminate an inquiry respecting a matter referred by the Executive Council in the following circumstances:

- 1. An inquiry is suspended under subsection (4.6) and is not continued under subsection (4.7).
- 2. A writ is issued under the *Election Act* for a general election. 2010, c. 5, s. 14 (3).

Refusal to conduct inquiry

(5) If the Commissioner is of the opinion that the referral of a matter to him or her is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an inquiry, the Commissioner shall not conduct an inquiry and shall state the reasons for not doing so in the report. 1994, c. 38, s. 31 (5).

Member or former member not blameworthy

(6) If the Commissioner determines that there has been no contravention of this Act or of Ontario parliamentary convention, that a contravention occurred although the member or former member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgment made in good faith, the Commissioner shall so state in the report and shall recommend that no penalty be imposed. 1994, c. 38, s. 31 (6); 2010, c. 5, s. 14 (4).

Reliance on Commissioner's advice

(7) If the Commissioner determines that there was a contravention of this Act or of Ontario parliamentary convention but that the member or former member was acting in accordance with the Commissioner's recommendations and had, before receiving those recommendations, disclosed to the Commissioner in writing all the relevant facts that were known to the member or former member, the Commissioner shall so state in the report and the contravention is deemed not to have taken place. 2010, c. 5, s. 14 (5).

Police investigation or charge

32. If the Commissioner, when conducting an inquiry, discovers that the subject-matter of the inquiry is being investigated by police or that a charge has been laid, the Commissioner shall suspend the inquiry until the police investigation or charge has been finally disposed of, and shall report the suspension to the Speaker. 1994, c. 38, s. 32.

Procedure under another Act

32.1 If the Commissioner, when conducting an inquiry, discovers that the subject-matter of the inquiry is being dealt with in accordance with a procedure established under another Act, the Commissioner may suspend the inquiry until the matter has been finally disposed of under that Act, and shall report the suspension to the Speaker. 2010, c. 5, s. 15.

Reference to appropriate authorities

33. If the Commissioner, when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of any other Act or of the *Criminal Code* (Canada), the Commissioner shall immediately refer the matter to the appropriate authorities and suspend the inquiry until any resulting police investigation and charge have been finally disposed of, and shall report the suspension to the Speaker. 1994, c. 38, s. 33.

Recommendation re penalty

34. (1) Where the Commissioner conducts an inquiry under subsection 31 (1) or (2) and finds that the member has contravened any of sections 2 to 4, 6 to 8, 10 to 12 or 14 to 18, has failed to file a private disclosure statement or a statement of material change within the time provided by section 20, has failed to disclose relevant information in that statement or has contravened Ontario parliamentary convention, the Commissioner shall recommend in his or her report,

- (a) that no penalty be imposed;
- (b) that the member be reprimanded;
- (c) that the member's right to sit and vote in the Assembly be suspended for a specified period or until a condition imposed by the Commissioner is fulfilled; or
- (d) that the member's seat be declared vacant. 1994, c. 38, s. 34 (1).

Same, former member

(1.1) In the case of an inquiry respecting a matter referred by a member that is continued in accordance with subsection 31 (4.2) or (4.3) in respect of a former member, if the Commissioner finds a contravention or failure referred to in subsection (1), the Commissioner shall recommend in his or her report,

- (a) that no penalty be imposed; or
- (b) that the former member be reprimanded. 2010, c. 5, s. 16.

Duty of Assembly

(2) The Assembly shall consider and respond to the report within 30 days after the day the report is laid before it. 1994, c. 38, s. 34 (2).

Response

(3) If the Commissioner recommends that a penalty be imposed, the Assembly may approve the recommendation and order that the penalty be imposed, or may reject the recommendation, in which case no penalty shall be imposed. 1994, c. 38, s. 34 (3).

Power of Assembly

(4) Despite section 46 of the *Legislative Assembly Act*, the Assembly does not have power to inquire further into the contravention, to impose a penalty if the Commissioner recommended that none be imposed, or to impose a penalty other than the one recommended. 1994, c. 38, s. 34 (4).

Decision final

(5) The Assembly's decision is final and conclusive. 1994, c. 38, s. 34 (5).

Vacancy

(6) If the member's seat is declared vacant, section 25 of the *Legislative Assembly Act* applies, with necessary modifications. 1994, c. 38, s. 34 (6).

MISCELLANEOUS

Application of Act during writ period

35. This Act, other than sections 30 to 34, continues to apply with necessary modifications to a member of the Assembly during the period beginning with the issue of a writ under the *Election Act* for a general election and ending on polling day, if the member is or intends to be a candidate in the election. 2010, c. 5, s. 17.

Application of Act to related persons

36. (1) This Act applies with necessary modifications to every member of the Executive Council who is not a member of the Assembly as if he or she were a member of the Assembly, with the following exceptions:

1. Section 5, clauses 34 (1) (c) and (d) and subsection 34 (6) do not apply.
2. The reference to "within 60 days of being elected" in clause 20 (1) (a) shall be read as a reference to "within 60 days of being appointed to the Executive Council". 2010, c. 5, s. 17.

Same

(2) This Act applies with necessary modifications to every leader of a recognized party, as defined in subsection 62 (5) of the *Legislative Assembly Act*, who is not a member of the Assembly as if he or she were a member of the Assembly, with the following exceptions:

1. Sections 5, 8, 10 to 19 and 30 to 34 do not apply.
2. The reference to "within 60 days of being elected" in clause 20 (1) (a) shall be read as a reference to "within 60 days of being elected as the leader of a recognized party". 2010, c. 5, s. 17.

37., 38. OMITTED (AMENDS OR REPEALS OTHER ACTS). 1994, c. 38, ss. 37, 38.

39. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT). 1994, c. 38, s. 39.

40. OMITTED (ENACTS SHORT TITLE OF THIS ACT). 1994, c. 38, s. 40.

Français

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