Office of the
Integrity Commissioner

Legend for decision origin
I – Integrity Commissioner
C – Conflict of Interest Commissioner
M – Ministry
P – Public Body

CASE SUMMARIES: CONFLICT OF INTEREST – IN-SERVICE

The anonymized summaries in this document are from selected decisions of Ethics Executives. They are provided to promote consistency in the interpretation and application of the conflict of interest and political activity rules.

The summaries below focus on the in-service Conflict of Interest Rules in sections 3 to 13 of O.Reg. 381/07 of the *Public Service of Ontario Act, 2006*.

Selecting a Speaker for an Event (I01-25/26)

O. Reg. 381/07 s. 6

- Preferential Treatment
- Conflict of Interest

An Ethics Executive requested direction with respect to retaining a public speaker for an event that her agency was organizing. When selecting a speaker, the Ethics Executive considered an individual that she knew well through a family friend. She asked if there would be a conflict of interest if her organization retained this individual as the speaker at this event.

The Commissioner considered the matter under section 6 of the Rules, which requires that a public servant not give preferential treatment to anyone in the course of their work and that they also take steps to avoid creating the appearance that preferential treatment is being given.

In order to avoid giving preferential treatment, the Commissioner directed that the selection of a speaker for this event should be undertaken by another staff member. The Commissioner further directed that the selection process should follow a clear and transparent process, which may include identifying multiple individuals and companies that provide similar services, obtaining quotes and using objective criteria to make the decision. The Commissioner also indicated that the process should be well documented.

Delegating the Role of an Ethics Executive (I02-25/26)

PSOA

- Conflict of Interest
- Delegation

An Ethics Executive asked if it was possible for him to delegate to his general counsel the ability to approve or refuse routine matters under the Act, following direction that he provided in similar cases.

The Commissioner advised that the Act centralizes decision-making with the Ethics Executive. The Ethics Executive can have help and can establish a system where staff receive and analyze conflict of interest submissions from public servants in order to draft responses for the Ethics Executive's approval. Ultimately, however, it is the Ethics Executive who must make the final decision and issue the direction to the public servant. That responsibility cannot be delegated.

Role of an Ethics Executive (I01-24/25)

PSOA, s. 65(4)

- Board Member
- Conflict of Interest

An Ethics Executive asked whether he had the ability to determine a conflict of interest if a member of his board did not declare it?

In response to his question, the Commissioner drew the Ethics Executive's attention to subsection 65(4) of the Act, which reads:

> Inquiries
>
> (4) The ethics executive may make such inquiries as he or she considers appropriate in response to a request, a notification or where the ethics executive has concerns that a conflict of interest rule has been or is about to be contravened by a public servant or former public servant.

Additionally, subsection 65(5) establishes that an Ethics Executive shall make a determination with respect to any matter brought to the Ethics Executive's attention about the application of the Conflict of Interest Rules or a matter that is the subject of an inquiry under subsection 65(4).

Accordingly, the Commissioner advised the Ethics Executive that after reviewing a matter, he may determine that a member is in a conflict of interest even if the member does not declare it. The

Ethics Executive was also told that he has the sole authority to make determinations that there is a conflict of interest or potential conflict of interest and can issue directions that he considers appropriate to address the conflict of interest or potential conflict of interest.

Speaker at a Conference (I02-24/25)

O. Reg. 381/07 s. 6

- Preferential Treatment
- Invitation

An Ethics Executive of a public body was invited to speak on a panel at an upcoming international conference. Organizers of the conference informed her that they normally waive the conference registration fee for speakers. The organization does not have any dealings with the public body.

Based on the information provided, the Commissioner determined that the Rules did not prevent the Ethics Executive from having her conference fee waived, given that she would be a speaker at this conference, that registration fees for speakers are generally waived and that the organization hosting the conference does not have dealings with her agency.

The Ethics Executive was also reminded of her obligations under section 6 of the Rules, which prohibits her from providing preferential treatment, or creating the appearance that she is providing preferential treatment, to a person or entity. To that end, she was told that it was important for her to abide by her obligations under this section in the event that the organization in question had any future dealings with her public body.

Multiple Appointments with the Crown (I01-22/23)

- Public Body
- Chair
- Conflict of Interest
- Multiple Appointments

A chair of a public body sought the Commissioner's determination about the possibility of remaining in his role while also serving part-time on the board of another public body.

First, the Commissioner noted that there is no prohibition in the Act or the Rules on an individual being appointed to multiple positions. However, the Commissioner was also of the opinion that it was necessary to consider whether there were any conflicts between the two roles.

Upon review of the information provided, primarily that the two public bodies fell under the jurisdiction of different ministries and that there were no direct intersections, the Commissioner determined that there were no conflict of interest concerns. However, in order to avoid any potential conflicts, the Commissioner directed the chair to recuse himself if any intersections arose in the future.

Personal Engagement of a Service Provider (I01-21/22)

O. Reg. 381/07 s. 3 & 6

- Vendor
- Procurement

A public body engaged the services of a vendor. An appointee requested a determination as to whether he can personally hire that same vendor.

The Rules require public servants not to use their employment by the Crown to directly or indirectly benefit them or give preferential treatment to any person when carrying out their duties to the Crown, and to take steps to avoid creating the appearance that such treatment is being given. The public body had a longstanding professional relationship with the vendor, and as such, the Commissioner determined that there was a risk that the vendor would appear to receive preferential treatment from the appointee or, more broadly, from the public body. There was also the possibility of the perception that the appointee was receiving a benefit. The Commissioner determined that the appointee should not hire the vendor.

Outside Employment (I02-21/22)

O. Reg. 381/07 s. 8

An employee of a public body asked her Ethics Executive for a determination on whether she could operate an outside business related to the work of the public body. The Ethics Executive referred the matter to the Commissioner.

After interviews with the employee as well as senior officials at the public body, the Commissioner determined that the employee could operate the business. He provided several requirements to assist the employee in complying with the Rules, including that she:

- Review the Rules and provide written confirmation of this review and written disclosure of any new potential conflict of interest to her Ethics Executive on an annual basis;
- Provide written confirmation to the public body not to undertake services that would compete with its business;

- Not hire any employees of the public body;
- Not use any confidential information she obtained in her role with the public body in the course of operating her business;
- Not use any of the public body's equipment or resources for the business; and,
- Inform her Ethics Executive if she hired any vendors that also did work for the public body so that the Ethics Executive could assess any potential conflict of interest.

The Ethics Executive was also directed to inform all public body employees that the Commissioner had made a determination in the matter and had provided directions to address potential conflict of interest concerns.

Previous Employment (I01-20/21)

O. Reg. 381/07 s. 6

- Vendor
- Procurement

An Ethics Executive referred a question to the Integrity Commissioner about a newly hired senior employee of a public body. The individual was previously employed with an organization that provides services to the public body. The employee had been involved in the preparation of responses to requests for proposals (RFPs) and had negotiated agreements with the public body on behalf of the organization. The Ethics Executive confirmed that there would continue to be frequent intersections between the public body and the organization.

The Commissioner determined that there was a risk that the organization would appear to receive preferential treatment from either the employee or the public body more broadly but recognized that this risk diminishes as time passes. He suggested that for 12 months the employee be cautious about participating in discussions and decisions that could be seen to benefit the organization exclusively. The Commissioner clarified that the employee could participate in broader discussions and decisions related to the service the organization provides, and he directed the employee to take the following steps:

- Disclose the former employment relationship, on the record, at the beginning of any meetings where matters related to the organization, or its business are discussed or decided.
- For a one-year period, the employee should recuse themself from discussions and decision-making related to any new RFPs in which the organization may participate. The employee could, however, participate once an agreement was reached with the successful vendor.

Interaction with Service Providers (I02-20/21)

O. Reg. 381/07 s. 3, 6 & 8

- Vendor
- Customer

The chair of a public body requested advice from the Integrity Commissioner about an appointee's involvement in matters involving a service provider to the public body. The service provider was a major customer of the appointee's business.

The Commissioner assessed how the Conflict of Interest Rules apply to public servants' activities, with particular focus on the Rules related to benefit, preferential treatment and outside activities. His approach was to consider the potential for intersections between the public servant's role as an appointee and their professional or personal activities. In this matter he agreed with the chair that there were some conflict of interest concerns, and he suggested that they could be mitigated by implementing the following strategies:

- Have the appointee recuse himself from discussions and decision-making related to the service provider and the public body;
- Remind the appointee not to use or disclose any confidential information obtained through his duties on the public body's board;
- Remind the appointee that he cannot provide individuals connected to his business, including the service provider, with assistance in dealing with the public body, other than assistance that he would ordinarily provide to anyone as an appointee; and,
- Have the appointee seek advice from his Ethics Executive before participating in public body discussions or decision-making that may be related to his business or its customers.

Volunteer Activity (I01-19/20)

- Public Body
- Commissioner
- Conflict of Interest
- Preferential Treatment
- Outside Activities

The chair of a public body was involved in several organizations, one of which was a non-profit organization that advocated to the public body and represented its 29 members provincially and nationally. The chair sat on its board of directors and indicated that she would recuse herself from matters related to the public body and the organization.

The Commissioner determined that the chair was subject to the Conflict of Interest Rules under the Act, specifically to section 6 and section 8, which relate to preferential treatment and outside activities. The Commissioner's view was that the chair would be unable to meet her fiduciary duty to act in the best interests in either organization, and the chair's role could be seen to influence advice given by the public body to the organization. The Commissioner further determined that the chair could not sit on the organization's board while also serving as the chair of the public body. The chair resigned from the organization.

Running for a Band Council (C01-18/19)

PSOA, s. 79; O. Reg. 381/07 s. 8.

- Conflict of Interest
- Political Activity
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking
- Political Activity - Specially Restricted Public Servants

An ethics executive sought advice about the PSOA to a specially-restricted public servant who was considering running for election to a band council in an indigenous community.

The political activity rules under the PSOA, apply to federal, provincial and municipal elections. In the past, the Commissioner interpreted the term "municipal election" to include elections for a school board trustee as these types of elections are governed by the Municipal Election Act, 1990. The Commissioner considered various processes by which band council elections could be held and concluded that seeking election to a band council did not, in it of itself, constitute political activity as defined in section 72 of the PSOA. As such the specially-restricted public servant was not prohibited under the political activity rules from seeking a position on a band council.

The conflict of interest rules related to outside activities set out in section 8 of O. Reg. 381/07 are more relevant to this situation. The Commissioner suggested the ethics executive consider (1) seeking a position on a band council and (2) serving on a band council as two distinct activities undertaken outside of a public servant's role. More specifically, the ethics executive should

consider the time commitments associated with both activities, whether these commitments would impact the public servant's role and if the impact could be minimized through recusals.

Invitation from an Entity (M01-17/18)

O. Reg. 381/07, s. 4.

- Conflict of Interest
- Ministry
- Accepting Gifts

A public servant was invited to an event by an entity. The value of the event exceeded $200.00. The entity had previously done work for the Crown in the area in which the public servant works. The entity does not currently have a contract with the Crown. But the entity might in future bid on work for the Crown.

Section 4 prohibits a public servant from accepting a gift from specified persons and entities if a reasonable person might conclude that the gift could influence the public servant when performing his or her duties for the Crown. The persons and entities include those that seek to do business with the Crown. A gift includes a benefit of any kind.

In the circumstances, the Ethics Executive directed the public servant to decline the invitation.

Operating a Small Business (M02-17/18)

O. Reg. 381/07, s. 3, 5, 6 & 8.

- Conflict of Interest
- Ministry
- Benefitting Self, Spouse or Children
- Disclosing Confidential Information
- Engaging in Business or Undertaking
- Giving Preferential Treatment

A public servant operated a small business outside of the public servant's employment with the Crown. The public servant was self-employed on a part-time basis. There was no nexus between the public servant's duties to the Crown and the public servant's small business. There was no

connection between the public servant's clients and the ministry in which the public servant works.

Section 3 prohibits a public servant from using or attempting to use their employment with the Crown to benefit themselves.

Section 5 prohibits a public servant from disclosing confidential information obtained during the course of their employment with the Crown except where the public servant is authorized to do so. A public servant is prohibited from using confidential information in a business or undertaking outside of their work for the Crown.

Section 6 prohibits a public servant, when performing their duties to the Crown, from giving preferential treatment to any person or entity. A public servant must endeavour to avoid creating the appearance that preferential treatment is being given. A public servant is also prohibited from offering assistance to a person or entity in dealing with the Crown other than assistance given in the ordinary course of the public servant's employment.

Section 8 prohibits a public servant from engaging in an outside business if the undertaking would interfere with the public servant's ability to perform their duties to the Crown or, if in connection with the undertaking, any person would derive an advantage from the public servant's employment as a public servant.

To ensure that the public servant does not use and is not seen as using the public servant's employment with the Crown to benefit themselves, the Ethics Executive directed the public servant not to use the public servant's employment with the Crown to market, promote or solicit clients for the small business. The Ethics Executive further reminded the public servant of the public servant's obligation to continue to comply with the conflict of interest rules, including the obligation: not to disclose or use any confidential information derived from the public servant's employment with the Crown; not to create the appearance that preferential treatment is being given to a person or entity that could benefit from it; not to offer assistance to a person or entity in dealing with the Crown other than assistance given in the ordinary course of the public servant's employment; not to allow the small business to interfere with the public servant's employment with the Crown; not to provide an advantage to any person as a result of the public servant's employment with the Crown; not to utilize government premises, equipment or supplies for the purposes of the small business.

Helping a Spouse's Business (M03-17/18)

O. Reg. 381/07, s. 8.

- Conflict of Interest
- Ministry
- Engaging in Business or Undertaking

A public servant wanted to work part-time in the business of the public servant's spouse. The outside employment would occur either on weekends, during vacation or when the public servant is on a leave of absence. There is no nexus between the public servant's position in the OPS and the outside employment.

Section 8 prohibits a public servant from engaging in an outside business if the undertaking would interfere with the public servant's ability to perform his or her duties to the Crown or if, in connection with the undertaking, any person would derive an advantage from the public servant's employment as a public servant.

To mitigate the risk of a conflict, the Ethics Executive directed the public servant: not to use his or her position with the Crown to attempt to secure any benefit for the spouse's business; not to use his or her position with the Crown to promote the spouse's business; not to seek preferential treatment by or privileged access to public servants when carrying out duties for the spouse's business; not to participate in any activity of the spouse's business involving the potential or actual provision of goods and services by the spouse's business to the Crown; and not to identify as an Ontario public servant or act in such a way as to give the impression that the public servant is representing the Crown, when carrying out duties for the spouse's business.

Attending a Conference (M04-17/18)

O. Reg. 381/07, s. 6.

- Conflict of Interest
- Ministry
- Giving Preferential Treatment

A public servant wanted to attend a conference. A friend of the public servant worked in a senior position for the organization hosting the conference. The public servant intended to pay the full conference fee and had no role in the conference other than as an attendee.

Section 6 of O. Reg. 381/07 prohibits a public servant, when performing his or her duties to the Crown, from giving preferential treatment to any person or entity. A public servant must endeavour to avoid creating the appearance that preferential treatment is being given. The Ethics Executive considered whether the public servant's attendance at the conference would create the appearance of preferential treatment either to the friend or the friend's employer.

The Ethics Executive was satisfied there was a legitimate business rationale for the public servant to attend the conference in issue.

The Ethics Executive reminded the public servant that the public servant must endeavour to avoid creating the appearance that the public servant was giving preferential treatment to the organization or anyone affiliated with the organization.

Access to Confidential Information (M05-17/18)

O. Reg. 381/07, s. 5 & 8.

- Conflict of Interest
- Ministry
- Disclosing Confidential Information
- Engaging in Business or Undertaking

A public servant's duties to the Crown might potentially gave the public servant access to confidential information regarding either (1) the outside entity on which the public servant sits as a member of the board of directors or (2) the employer of a family member.

Section 5 of O. Reg. 381/07 prohibits both the disclosure and use of confidential information.

Section 8 of O. Reg. 381/07 prohibits a public servant from engaging in outside activity if, in connection with the employment or activity, any person would derive an advantage from the public servant's employment.

To mitigate the risk of a potential or perceived conflict under either the rule that prohibits the disclosure or use of confidential information and/or the rule that prohibits a public servant from engaging in an outside activity if any person would derive an advantage from the public servant's employment, the Ethics Executive directed the public servant to discuss in advance with the relevant manager any work that may involve either of the two organizations in question so that the manager could either restrict the public servant's access to confidential information or assign the public servant other work.

Selling Things to Other Public Servants (M06-17/18)

O. Reg. 381/07, s. 3, 6 & 8.

- Conflict of Interest
- Ministry
- Benefitting Self
- Spouse or Children
- Engaging in Business or Undertaking
- Giving Preferential Treatment

A public servant had a part-time side business selling consumer products. All sales took place outside of regular work hours. The public servant's customers included other public servants. The public servant's duties to the Crown included, on occasion, an oversight role in respect of other public servants.

Subsection 3(1) of the Conflict of Interest Rules prohibits a public servant from using or attempting to use his or her employment by the Crown to directly or indirectly benefit himself or herself.

Section 6 of O. Reg. 381/07 prohibits a public servant, when performing his or her duties to the Crown, from giving preferential treatment to any person or entity. A public servant must also endeavor to avoid creating the appearance that preferential treatment is being given.

Paragraph 5 of Section 8 of O. Reg. 381/07 prohibits employment in an outside business if any person would derive an advantage from the public servant's employment as a public servant or if it would interfere with the public servant's ability to perform their duties.

The Ethics Executive determined that the public servant's side business had the potential to create a conflict of interest. To address the potential conflict of interest, the Ethics Executive directed the public servant not to use the public servant's employment by the Crown to market or promote the side business or solicit customers, and to recuse themself from oversight activity involving a public servant who is a customer of the side business or who, within the prior 12 months, had been a customer of the side business.

Involved in a Steering Committee (P01-17/18)

O. Reg. 381/07, s. 5, 8 & 9.

- Conflict of Interest
- Public Body
- Disclosing Confidential Information
- Engaging in Business or Undertaking
- Participating in Decision-Making

The public servant was a board member of a public agency. In this capacity, she was involved in shaping the broader strategy for the public agency. She was invited to take part in a steering committee whose mandate was in the same general field as that of the public agency, though the two were not directly related. As a member of the steering committee, she might have been asked to comment on governance structures, funding models and system planning, among other things.

As a board member for the public agency, the public servant was privy to confidential information touching on governance issues, funding models, and system planning. Though there was no intersection between the public agency and the steering committee at the time, there was a potential for the two to overlap in the future, as they operate in the same general field. In such event, the public servant could potentially be involved in discussions or decision-making at one that could impact the other.

The public servant was reminded of her confidentiality obligations owed to the public agency, and advised to be careful not to reveal any such confidential information to the steering committee, particularly on the topic of the agency's strategy and planning. Additionally, she was advised to withdraw from any discussions and decision-making taking place at either the public agency or the steering committee that could impact the other. The public servant agreed to keep the Ethics Executive apprised of her work with the steering committee as it progressed, to ensure that any new conflicts could be addressed in a timely manner.

Helping with a Major Sporting Event (C01-16/17)

O. Reg. 381/07, s. 6 & 8.

- Conflict of Interest
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking

- Giving Preferential Treatment

The public servant was president and CEO of a public body, and as such, maintained a very senior and visible position. In his spare time, he was involved in certain athletic activities, including volunteering with a local organizing committee for a major sporting event that was planned to be held in Ontario. As part of these volunteer activities, he anticipated being asked to draw on his government relations experience and to assist with provincial grant applications.

A perceived or actual conflict could arise in the event that the public servant participated in any vendor selection processes on behalf of the organizing committee where the vendors could also provide goods or services to the public body. In addition, given the senior level held by the public servant at the public body, confusion could be created as to whether there is some sort of relationship between the organizing committee and the public body if he were to become a spokesperson for or be seen to be a public representative of the organizing committee. This could inadvertently be seen to be an endorsement of the sporting event, and result in a benefit to the organizing committee. Finally, using his existing government contacts and relationships to push forward applications for provincial grants could result in an advantage being conferred to the organizing committee.

The public servant was advised to refrain from participating in any vendor selections where the same vendors may have, or may make bids for, contracts with the public body. The public servant was also advised to avoid becoming the "face" of the organizing committee by limiting speaking on its behalf or taking on major promotional actions in support of it. Finally, the public servant was advised to avoid taking any personal action to persuade or otherwise connect with provincial-level decision-makers on behalf of the organizing committee.

Maintaining Research Activities (C02-16/17)

O. Reg. 381/07, s. 3, 6, 8 & 9.

- Conflict of Interest
- Conflict of Interest Commissioner
- Benefitting Self, Spouse or Children
- Engaging in Business or Undertaking
- Giving Preferential Treatment
- Participating in Decision-Making

The president and CEO of a public body continued to maintain certain research activities which predated his appointment to the public body. The research activities were housed at an

institution that received funding from the public body. In addition, part of the research activities had the potential to be commercialized and to have an impact on the field in which the public body operates.

As president and CEO, the public servant could potentially be involved at the public body in discussions and decision-making relating to funding for programs that could be impacted by the new technology. In addition, on a broader level, there might be a perception that he could influence decisions at the public body relating to funding for the institution that housed the research activities, which could ultimately benefit his own research.

The president and CEO agreed to continue to declare his interest in the new technology in the course of any conversations at the public body on the subject, and to withdraw from any decision-making that could impact either the commercialization or use of the new technology. In addition, the president and CEO agreed to continue declaring his relationship with the external institution, to withdraw from any decision-making that could impact the external institution, and to delegate any decision-making and signing authority for any funding or other agreements with the external institution.

Using Letterhead (M01-16/17)

O. Reg. 381/07, s. 8.

- Conflict of Interest
- Ministry
- Engaging in Business or Undertaking

An Ethics Executive was asked to respond to an inquiry from an MPP regarding the use of ministry letterhead by ministry staff when seeking charitable donations under the auspices of a government-wide charitable campaign.

The Ethics Executive confirmed that ministry letterhead should not be used when seeking charitable donations, notwithstanding the fact that requesting donations did not constitute a contract, commitment or obligation in any way. The Ethics Executive also indicated that the ministry would review its processes for running future charitable campaigns to ensure ministry letterhead would not be used.

Elected Mayor (M02-16/17)

PSOA, s. 77 & 79; O. Reg. 281/07, s. 8.

- Conflict of Interest
- Political Activity
- Ministry
- Engaging in Business or Undertaking
- Political Activity - All Other Public Servants

A public servant was elected mayor of a small town (fewer than 1,000) after serving as councillor. One year after their election, the public servant declared a potential conflict of interest to their Ethics Executive.

The public servant's mayoral duties were performed outside of normal business hours. The public servant worked in a technical position unrelated to their mayoral duties, so there did not appear to be any overlap between the public servant's duties and their municipal responsibilities. Nor was there any obvious conflict between the public servant's responsibilities and the interests of the Crown.

The Ethics Executive advised the public servant that they should have notified the Ethics Executive when first elected mayor, rather than one year later. However, the Ethics Executive also advised the public servant that provided their elected position was not so demanding of their time as to interfere with their duties as a public servant, serving as mayor did not raise a conflict that warranted termination. The public servant was also advised to recuse themselves in any situation where they might have to take a position contrary to the interests of the Crown or which might put them in conflict with the Crown.

Member of an Advisory Board (M04-16/17)

O. Reg. 381/07, s. 6 & 8.

- Conflict of Interest
- Ministry
- Engaging in Business or Undertaking
- Giving Preferential Treatment

A senior employee of a ministry sought advice as to whether they could serve as a member of an advisory council to a university-based centre with a mandate affecting the same stakeholder group as the employee's ministry. The public servant was involved in defining the government's policy and program priorities affecting the stakeholder group and in making funding decisions concerning its communities, programs and organizations.

The Ethics Executive concluded that some advisory council responsibilities could raise concerns under conflict of interest rules that prohibit preferential treatment or the deriving of advantage from one's position as a public servant.

The Ethics Executive advised the public servant not to participate in discussions concerning sources of centre funding or efforts to solicit provincial funding or to lobby the government in connection with the centre; not to use government premises, equipment or supplies for activities related to the centre; to communicate clearly that they did not participate in the advisory council on behalf of the crown and that any views expressed were personal and did not necessarily reflect those of the Crown; and to recuse themselves from involvement in any discussions or activities that could be construed to be in conflict with the employee's role as a public servant, and to notify the council of any such conflict.

Facilitating Courses for Professional Body (M05-16/17)

O. Reg. 381/07, s. 3, 6 & 8.

- Conflict of Interest
- Ministry
- Benefitting Self, Spouse or Children
- Engaging in Business or Undertaking
- Giving Preferential Treatment

A public servant was a member of a professional body. The professional body offered courses that were hosted by organizations for their in-house professionals. The public servant wanted to facilitate courses offered by the professional body. The public servant proposed to do so on the public servant's own time, using only materials prepared by the professional body.

Section 3 of O. Reg. 381/07 prohibits a public servant from using or attempting to use his or her employment by the Crown to benefit themselves. Section 8 prohibits a public servant from engaging in an outside business or undertaking if, in connection with the business or undertaking, any person would derive an advantage from the public servant's employment as a public servant. Section 9 prohibits a public servant from participating in decision-making by the Crown with

respect to a matter that the public servant is able to influence in the course of his or her duties if the public servant could benefit from the decision.

To mitigate any risk that the public servant could be seen to benefit from employment by the Crown, the Ethics Executive directed the public servant not to take any assignment where the Ontario government was the host organization if the public servant would be paid for the assignment. The Ethics Executive also directed the public servant not to promote the professional body's services within government and not to participate in decision-making as to what training courses professionals in the public servant's ministry should take. This direction was to mitigate both the risk the professional body could derive an advantage from the public servant's employment and the risk the public servant could be seen to benefit from decision-making by the Crown in which the public servant participates.

Operating a Small Business (M06-16/17)

O. Reg. 381/07, s. 3, 6 & 8.

- Conflict of Interest
- Ministry
- Benefitting Self, Spouse or Children
- Engaging in Business or Undertaking
- Giving Preferential Treatment

A public servant provided services to an internal client ministry. The public servant also operated a small business outside of employment by the Crown. The public servant used similar skills in employment by the Crown and in the outside business.

381/07 prohibits a public servant from using or attempting to use their employment by the Crown to benefit themselves (s. 3). Section 6 prohibits a public servant, when performing their duties to the Crown, from giving preferential treatment to any person or entity. A public servant must endeavor to avoid creating the appearance that preferential treatment is being given. A public servant is also prohibited from offering assistance to a person or entity in dealing with the Crown other than assistance given in the ordinary course of the public servant's employment. Section 8 prohibits a public servant from engaging in an outside business if the undertaking would interfere with the public servant's ability to perform his or her duties to the Crown or if, in connection with the undertaking, any person would derive an advantage from the public servant's employment as a public servant.

To ensure that the public servant did not use and would not be seen as using the public servant's employment with the Crown to benefit self, the Ethics Executive directed the public servant not to use the public servant's employment by the Crown to market, promote or solicit clients for the small business. To mitigate any risk that the public servant's small business would interfere with the public servant's ability to perform duties to the Crown, the Ethics Executive further directed the public servant not to carry on the outside activity during any time for which the public servant is being paid to provide services to the Crown and not to accept as clients of the small business any persons or entities who receive funding from the public servant's client ministry if there could be a nexus to the public servant's duties to the Crown.

Private Interests and Public Duties (M07-16/17)

O. Reg. 381/07, s. 3, 5, 6, 8 & 9.

- Conflict of Interest
- Ministry
- Benefitting Self, Spouse or Children
- Disclosing Confidential Information
- Engaging in Business or Undertaking
- Giving Preferential Treatment
- Participating in Decision-Making

A new public servant in a position dealing directly with farm and rural stakeholders, including the oversight of some transfer payment agreements with agricultural and food related organizations, declared that they and their family were very active in the agriculture and food sector/community outside of the employee's public service role. The declaration described the employee's personal involvement with a family farm business, their voluntary membership in an economic development and local food organization that had potential to seek public project funding, and the active involvement of immediate and extended family members in community and provincial rural organizations that would receive public funding.

In assessing the potential for conflict or the perception of a conflict the Ethics Executive considered the ability of the public servant to provide preferential treatment, approve public funding, and share confidential information. This assessment was conducted in the context of the employee's position and outside activities. Specifically considered was the public profile of the employee's role in dealing with stakeholders, the profile of family members, and the related nature of the public and private business activities.

The directions to the employee focused on separating the public service role from personal activities and avoiding the perception of preferential treatment by ensuring that public processes were utilized for farm business applications to government programs. Personal activities were to be conducted on personal time without the use of government resources. Approved leaves were required if activities were to occur during a normal work day. The duties and responsibilities of government employment were to take precedence.

The employee was also directed to avoid situations where they could be providing advice to family members in the course of their public service role. The employee was directed to advise their manager if this situation occurred and refer the family member as directed by the manager.

While participating with external organizations, the employee was to refrain from acting in such a way as to give the impression of representing the ministry or the Crown. The employee was directed not to participate in the development of applications, be signatory to applications and to recuse themselves from discussions in relation to applications to the government of Ontario (including agencies) for funding. Further, the employee was directed to advise the chairs of the organizations of their duties and obligations as a public servant as related to conflict of interest and in particular their inability to participate in discussions about public funding for the organization.

The employee was also reminded of the responsibility of all public servants not to use or disclose confidential information in the course of their public or private activities.

Real Estate on the Side (M08-16/17)

O. Reg. 381/07, s. 5, 6 & 8.

- Conflict of Interest
- Ministry
- Disclosing Confidential Information
- Engaging in Business or Undertaking
- Giving Preferential Treatment

A public servant who worked in a ministry division responsible for policy related to the Crown's realty holdings was undertaking the articling segment of the Ontario Real Estate Association (OREA) Salesperson Education Program and sought a conflict of interest determination. The public servant was a licenced sales person with the Real Estate Council of Ontario and an independent contractor with a real estate broker. The public servant's position (as Senior Policy Advisor) involved policy and program development, ministry consultation and advice and stakeholder

relations and committee work related to the government's realty portfolio under the administration and control of the minister.

There could be overlap between the public servant's duties to the Crown and the outside activity, where as part of the outside activity the public servant could be engaged in transactions that involve government realty. This could be in a situation where a client of the real estate broker wants to acquire government property. The applicable rules under O. Reg. 381/07 were those regarding confidential information, preferential treatment and engaging in business.

It was determined that the situation has the potential to create a conflict of interest. The public servant was provided with direction with respect to: not disclosing or using confidential information obtained in the course of employment; conducting the outside activity so it does not interfere with performance as a public servant; not using government premises, equipment or supplies in connection with outside employment; ensuring that no person derives an advantage from the public servant's employment as a public servant; and in the course of outside activity, not identifying as an Ontario public servant or acting in such a way as to give the impression that the public servant is representing the Crown. In the event that the public servant becomes aware of a potential or actual conflict, there was direction to abstain from any discussions on the issue or recuse oneself from the situation.

Part-Time Law Practice (M09-16/17)

O. Reg. 281/07, s. 3 & 8.

- Conflict of Interest
- Ministry
- Benefitting Self, Spouse or Children
- Engaging in Business or Undertaking

An employee working as a program advisor in the OPS wanted to open a part-time law practice that would be operated during non-OPS work hours. The employee initially sought the determination for a general law practice advising on matters that did not relate to the work performed for the ministry. The Ethics Executive determined that this did not create a conflict of interest provided that a number of conditions were adhered to, including that work for the law practice would not be done using government assets or during work hours and that no ministry information would be used in the law practice. The employee subsequently sought a determination as to whether it would be a conflict of interest for the law practice to provide legal advice and legal services in the same subject area as the employee's work for the ministry.

1. 3(1) of O. Reg. 381/07 – providing legal advice and legal services in the same subject area as the employee's work for the ministry could allow the employee to use his or her employment with the ministry to directly benefit himself or herself.

2. 8 para (2) of O. Reg. 381/07 – the operation of the law practice could interfere with the employee's ability to perform his or her work for the ministry, if ministry assets were used in connection with the law practice or if work for the law practice was performed during OPS work hours.

3. 8 para (5) of O. Reg. 381/07 – the operation of a law practice in an area directly related to the employee's work for the ministry could lead to the derivation of an advantage for both the employee and potential clients of the law practice because the employee's expertise gained from the work for the ministry would be used in the provision of legal advice and legal services.

The Ethics Executive determined that it would be a conflict of interest to operate a legal practice where legal advice and legal services were provided in the same subject areas as the subject of the work performed for the ministry. The employee was advised that it would not be a conflict of interest to operate a more general part-time legal practice that was not related to the employee's work for the ministry, provided that the original conditions described above were adhered to.

Part-Time Teaching (1) (M10-16/17)

O. Reg. 281/07, s. 8.

- Conflict of Interest
- Ministry
- Engaging in Business or Undertaking

A public servant requested a determination for a matter related to their part-time teaching activity. The teaching activity request had the potential to overlap with matters related to the public servant's work for the Crown.

The Ethics Executive determined that there was potential for a conflict between the public servant's duties and their part-time teaching activity. The Ethics Executive determined that the potential conflict could be mitigated provided the public servant refrained from associating their Crown role with their teaching role. The public servant was directed to provide an oral disclaimer at the beginning of the teaching activity to state all comments in the course were their personal opinion and not the ministry's. The public servant was also reminded of their duty and obligation not to disclose confidential information and not use government premises, resources or

equipment, including phone or e-mail, for their teaching activity. In addition to this, the public servant was reminded that their teaching activity should not interfere with their ability to perform their regular Crown duties. Finally, the public servant was directed to recuse themselves from any funding matters involving the provincial government.

Part-Time Teaching (2) (M11-16/17)

O. Reg. 381/07, s. 5, 6 & 8.

- Conflict of Interest
- Ministry
- Disclosing Confidential Information
- Engaging in Business or Undertaking
- Giving Preferential Treatment

A ministry employee disclosed their intent to undertake a temporary employment opportunity to teach a course at a college as an undertaking outside of their ministry duties. The topic and subject matter of the course was related to their ministry duties. The employee requested direction as to whether, as part of the course that they intended to teach, and with prior approval, they could gain access to, and use, internal ministry documents and examples from their ministry work experience for teaching purposes.

The Ethics Executive considered that the specific types of documents that the employee was seeking to use in connection with the course were publicly available on the internet, and as such, were not confidential and therefore not subject to the restrictions under section 5 of the rules. In view of section 8 of the rules, the Ethics Executive considered that the employee did not have regular and ongoing involvement in their ministry duties with the college, and that their employment with the college was limited to a few hours per week. However, the Ethics Executive considered that a concern could arise that the college, through the employee's ongoing employment with the ministry, may gain or appear to gain an advantage over other academic institutions in dealing with the government, including accessing government information, experts, or programs, including matters of employment or funding.

The Ethics Executive determined that in the external employment, the employee reserved the right to employ the skills and experience that they retained as a professional working in the field, including that which they gained through their ministry employment, to the extent that they complied with the conflict of interest rules and other specific directions. In particular, if the employee wished to use any ministry material that was not available to the public for teaching purposes, they were required to request permission from the Ethics Executive in order to do so.

Where speaking of specific ministry experiences in the external employment, the employee was required to refrain from disclosing any confidential information, or information that is otherwise unavailable to the public.

Involvement with Professional Association (M12-16/17)

O. Reg. 381/07, s. 5 & 9.

- Conflict of Interest
- Ministry
- Disclosing Confidential Information
- Participating in Decision-Making

An employee's manager disclosed the employee's ongoing involvement with a professional association as a function of her ministry duties. In the employee's involvement with the professional association, she sat as a vice-chair of a committee that dealt with subject matter relating to her ministry duties. Additionally, the committee's mandate included working with the provincial government, and providing input to policy makers.

The Ethics Executive determined that the employee's involvement with the committee was, in fact, a function of the employee's ministry duties, and therefore not subject to the more restrictive rules under section 8, which applies to external undertakings.

In view of section 5, the Ethics Executive considered that the professional association, and committee on which the employee sat, was concerned with a subject matter area that was related to her ministry duties, so the rules regarding the confidential information were highly relevant. In view of section 9, the Ethics Executive considered that given the mandate of the committee on which the employee sat, there was a potential for conflict of interest regarding participating in decision making by a body/group where the interests of the body/group could conflict with the interests of the Crown.

The Ethics Executive determined that the employee's involvement with the professional association, as a function of her ministry duties, and her role as vice-chair on a committee, was permissible provided that she complied with the conflict of interest rules and other specific directions. In particular, the employee was required to notify the committee and recuse herself from any decision making by the committee where, as a result a decision, she could benefit or the interests of the committee could conflict with the interests of the Crown.

Adjunct Faculty Positions (M13-16/17)

O. Reg. 381/07, s. 5, 8 & 9.

- Conflict of Interest
- Ministry
- Disclosing Confidential Information
- Engaging in Business or Undertaking
- Participating in Decision-Making

A number of scientific staff in the ministry disclosed to their Ethics Executive that they held adjunct faculty status at various academic institutions, as a function of their ministry duties. Some of these employees, in their ministry role, supported a ministry science grant funding program by reviewing applications which researchers from various academic institutions had submitted.

The Ethics Executive determined that the adjunct faculty appointments were, in fact, a function of the employees' ministry duties, and therefore not subject to the more restrictive rules under section 8, which applies to external undertakings. In view of section 5, the Ethics Executive considered that most of the employees' adjunct faculty roles were in a subject matter area that was related to their ministry duties, so the rules regarding the confidential information were highly relevant. In view of sections 6 and 9, the Ethics Executive considered that given the ministry role of some of the employees in reviewing grant funding applications from academic institutions as part of a ministry science grant program, there was a potential for conflict of interest regarding the provision of preferential treatment, and participating in decision making by the Crown where an employee could stand to benefit from the decision.

The Ethics Executive determined that the adjunct faculty appointments, as a function of the employees' ministry duties, were permissible provided that employees complied with the conflict of interest rules and other specific directions. In particular, the employees were restricted from participating in the review and/or assessment of any submissions to the ministry from the academic institution where they held an adjunct faculty position, in particular those relating to grant funding. The employees were also restricted from participating in the preparation of any submissions to the ministry on behalf of the academic institution where they held an adjunct faculty position, in particular those relating to grant funding.

Employment while on Salary Continuance (1) (M14-16/17)

O. Reg. 381/07, s. 5 & 9.

- Conflict of Interest
- Ministry
- Disclosing Confidential Information
- Participating in Decision-Making

A ministry employee in a "designated senior position" received an offer of employment from an organization that he had dealt with in his ministry role and which received ministry funding. The employee was eligible to retire, had left the workplace, and wished to accept the employment and commence the external employment while on salary continuance (active on payroll).

The ministry obtained legal advice that while on salary continuance, employees remain subject to the in-service conflict-of-interest rules, but are considered on a leave of absence and therefore the restriction on external full-time employment does not apply. However, the deputy minister was concerned about the perception that the employee might use or disclose confidential information while working for the organization (contrary to Sections 5(1) and 5(2) of the regulation) and that the employee might be involved in decision-making on behalf of the organization that could conflict with the interests of the Crown (contrary to section 9(3)) of the regulation.

The deputy minister determined that acceptance of the employment offer while actively employed created a potential conflict of interest, but permitted the activity after reassigning any work involving the external organization to another manager. The deputy provided direction to the employee regarding sharing of confidential information and the need to abstain from any discussions involving ministry funding. As well, the deputy advised the employee to obtain a post-service conflict-of-interest determination from the Public Service Commission before accepting the offer of employment.

Employment while on Salary Continuance (2) (M15-16/17)

O. Reg. 381/07, s. 5 & 8.

- Conflict of Interest
- Ministry
- Disclosing Confidential Information
- Engaging in Business or Undertaking

A public servant was retiring but would remain a public servant for ten months after their last day in the office. Their last position with the Ontario Public Service was as a manager in a branch responsible for providing contract advice and negotiations. This role involved negotiating contracts after the minister had made the decision to approve funding, resolving issues that arose after a contract had been signed, and supporting the design and implementation of business support programs. The public servant indicated interest in pursuing work in the areas of economic development and business support programs, and sought a determination regarding a possible in-service conflict of interest.

The public servant indicated that the work sought might be of a general nature, such as delivering presentations on Ontario's business support programs and processes, or editing or contributing to the development of business plans for potential applicants to transfer payment programs. It was also indicated that work might be sought from one of the ministry's financial due diligence providers, or from an economic development organization. While details regarding possible job opportunities were not provided, there could have been potential conflict given the public servant's role with the ministry.

It was determined that based on the information provided, a potential conflict of interest could arise. The public servant was given the following direction: that confidential information obtained in the course of OPS employment must not be disclosed; that no person should derive an advantage from the public servant's employment as a public servant in connection with the outside activity; that in the course of their outside activity, the public servant must not identify themself as an Ontario public servant or act in such a way as to give the impression that the public servant was representing the Crown. The public servant was also reminded that the Ethics Executive for former public servants who worked in a ministry is the Public Service Commission and that in the event that the outside employment opportunities should continue beyond the last day of service, the commission would have to make a determination regarding any post-service conflicts of interest.

Seasonal Pilot (M16-16/17)

O. Reg. 381/07, s. 6 & 8.

- Conflict of Interest
- Ministry
- Engaging in Business or Undertaking
- Giving Preferential Treatment

A seasonal pilot with recall rights requested a determination from the deputy minister about their plan to be a pilot for a private charter company on a part-time basis during his scheduled days off and on a full-time basis while on his seasonal hiatus from the ministry. While on hiatus, the employee's contract with the ministry had ended, but they had a continuing employment relationship with the ministry based on their recall rights.

As Ethics Executive, the deputy minister had two key concerns. The first involved the possibility that the employee's private flight hours could cause him to exceed Transport Canada flight hour restrictions and interfere with his ministry role, contrary to section 8(2) of the regulation which prohibits outside employment if it would interfere with a public servant's ability to perform their duties to the Crown. The second concern was that the private company might be contracted to the ministry for flight services, which could create the perception that the private company might receive preferential treatment contrary to section 6(2) of the regulation. The deputy was assured that the employee's flight hours would not interfere with his ministry duties, that he was not involved in procurement of flight services for the ministry and that the private carrier did not provide flight services to the ministry.

The deputy determined that the outside employment would not result in a conflict of interest, provided that the employee did not represent himself as a ministry employee, use ministry resources, share any confidential information, or allow the outside employment to interfere with his ministry duties.

Spouse is Head of Stakeholder Organization (M17-16/17)

O. Reg. 381/07, s. 3, 5 & 6.

- Conflict of Interest
- Ministry
- Benefitting Self, Spouse or Children
- Disclosing Confidential Information
- Giving Preferential Treatment

The declarant's spouse was the incoming head of an organization which was one of the ministry's main stakeholders. The declarant occupied a management position within the ministry, in a part of the ministry that did not normally interact with the organization, but that was involved in supporting initiatives in which the organization had an interest.

The declarant, as part of their public service role, would be aware of confidential information that would be of interest to the organization of which the declarant's spouse was to become the head.

The Ethics Executive determined that there was potential for a conflict between the declarant's public service duties and their spousal relationship. The declarant was directed to recuse themself from any matters in their public service role in which the organization in question was participating, and was reminded of the obligation not to disclose confidential information, provide preferential treatment or otherwise use employment with the Crown to benefit one's spouse.

Blogging on Issues of Interest (M18-16/17)

O. Reg. 381/07, s. 5 & 8.

- Conflict of Interest
- Ministry
- Disclosing Confidential Information
- Engaging in Business or Undertaking

The declarant maintained a personal blog for content related to issues of interest to their profession.

The subject matter of the declarant's blog had the potential to overlap with issues in respect of which the declarant's branch was engaged and the declarant could be asked to provide advice to the government in the future in their role as a public servant.

The Ethics Executive determined that there was potential for a conflict between the declarant's public service duties and their blog. The declarant was directed to refrain from blog posts about policy issues in which the declarant's branch was engaged or that would detract from the public's confidence in the objectivity and impartiality of the public service, and to avoid associating their public service employment with the blog. The declarant was also reminded of the obligations not to disclose confidential information and not to use government premises, equipment and supplies in relation to the outside activity.

Event Planning (M20-16/17)

O. Reg. 381/07, s. 6.

- Conflict of Interest
- Ministry
- Giving Preferential Treatment

A public servant was the friend of a person employed in a senior role with an events organization. The public servant could be asked to approve the participation of other public servants in events hosted by the organization.

Section 6 of O. Reg. 381/07 prohibits a public servant, when performing his or her duties to the Crown, from giving preferential treatment to any person or entity. A public servant must endeavor to avoid creating the appearance that preferential treatment is being given.

To mitigate the risk that the public servant might be perceived to be giving preferential treatment to the events organization, the Ethics Executive directed the public servant to delegate to a peer within the ministry the public servant's authority to approve requests from other public servants to participate in events hosted by the organization.

Employment while on Leave (M21-16/17)

O. Reg. 381/07, s. 8.

- Conflict of Interest
- Ministry
- Engaging in Business or Undertaking

A public servant wanted to work for an outside entity during an unpaid leave of absence from employment with the Crown. The outside entity produced a tool that the public servant used to perform the public servant's duties for the Crown. The public servant did not participate in the Crown's decision to use the tool. The public servant did not have direct contact with the outside entity in the course of carrying out the public servant's duties for the Crown. As an employee of the outside entity, the public servant would not be assigned to the Crown's account.

Section 8 prohibits a public servant from engaging in an outside business or undertaking if, in connection with the business or undertaking, any person would derive an advantage from the public servant's employment as a public servant.

To mitigate a risk that the outside entity might derive, or be seen to derive, an advantage from the public servant's employment as a public servant, the Ethics Executive directed that the public servant, when carrying out duties for the outside entity, 1) not use the public servant's employment with the Crown to attempt to secure any benefit for the outside entity, 2) not seek preferential treatment by or preferential access to public servants, and 3) not identify themselves as a public servant or act such as to give the impression that they are representing the Crown. The Ethics Executive further directed the public servant to seek a new determination when the public

servant returns to duties for the Crown if there is any potential connection between the public servant's duties for the Crown and the outside entity. The Ethics Executive also confirmed that the determination did not authorize the leave of absence. That is a separate management decision.

Contracting on the Side (M22-16/17)

O. Reg. 381/07, s. 8.

- Conflict of Interest
- Ministry
- Engaging in Business or Undertaking

A ministry employee had been on a series of employment contracts and had provided administrative services to the ministry in between contracts. After being rehired, the employee requested permission to continue providing these services to the ministry through a private company.

The deputy minister determined that the provision of private administrative services would be a conflict of interest because the employee became aware of the opportunity through contacts made while on staff with the ministry, contrary to section 8(5) of the regulation which prohibits outside employment where anyone would benefit from a public servants employment as a public servant. As well, the situation would be unfair to other vendors, contrary to the Procurement Directive.

The deputy minister directed the employee to refrain from the outside activity.

Paralegal Services (M23-16/17)

O. Reg. 381/07, s. 6 & 8.

- Conflict of Interest
- Ministry
- Engaging in Business or Undertaking
- Giving Preferential Treatment

A public servant requested a determination to operate a private paralegal practice.

The public servant's paralegal activity had the potential to overlap with their regular duties to the Crown, specifically in the area of prospective paralegal clients receiving preferential treatment in the justice system due to the public servant's connection to the judiciary.

The Ethics Executive determined that there was a conflict between the public servant's regular duties to the Crown and their paralegal activity. The public servant was directed to cease and desist all their paralegal activities while they were working for the Crown. The Ethics Executive determined that this specific matter was deemed a conflict due to the fact that court staff are expected to be impartial and neutral in the administration of justice, while paralegals advocate on behalf of a party in the justice system. In addition to this, the Ethics Executive also determined that this matter was a conflict on the basis that the public servant's visible role in the administration of justice could conceivably give rise to a public perception that the public servant has favourable access to the judicial system, and is, therefore, in a position to provide preferential treatment to individuals for whom they work as a paralegal.

Legal Advice to Family Member (M24-16/17)

O. Reg. 381/07, s. 8.

- Conflict of Interest
- Ministry
- Engaging in Business or Undertaking

A public servant requested a determination to represent and provide legal advice to a family member.

The public servant's private activity had the potential to overlap with their duties to the Crown, specifically in the area of providing legal services to entities other than the Crown.

The Ethics Executive determined that there was a real conflict between the public servant's Crown duties and their request to provide legal services to a family member. The Ethics Executive determined that the potential for a conflict arose from the fact that the public servant in their outside activity as a legal advisor to a family member would be providing legal services to an entity other than the Crown. By providing legal services to family member, the public servant would necessarily be entering into a solicitor-client relationship and this would create the potential for conflicting duties of loyalty. In addition to this, the Ethics Executive determined that while there may not have been an overlap between the subject matter of the outside activity and the public servant's employment, there was the potential for it to give rise to the perception of Crown involvement in the advocacy of particular cases.

Long-Term Relationship (M25-16/17)

O. Reg. 381/07, s. 3 & 7.

- Conflict of Interest
- Ministry
- Giving Preferential Treatment
- Hiring Family Members

A ministry employee was in a long-term personal relationship with a staff member who was a direct report.

The relationship did not meet the criteria of a spousal relationship as set out in the regulation and therefore was not in contravention of the sections regarding benefiting self, spouse or children or hiring or supervising family members. However, the deputy minister was concerned about the perception that the direct report might receive preferential treatment from the manager, and that the relationship had developed long before the situation was brought to the deputy's attention.

The deputy minister determined that the situation represented a conflict of interest and directed that the supervisory functions for the direct report be assigned to another manager while the branch director reviewed options to address the situation. The director was directed to report back to the deputy on actions taken.

A Model of a Public Servant (P01-16/17)

O. Reg. 381/07, s. 8.

- Conflict of Interest
- Public Body
- Engaging in Business or Undertaking

A part-time employee of a public body, a customer-service representative, sought a determination as to whether they could accept an offer of employment outside of their employment with the public body. The public servant was a model and had been approached by a third party to audition for a part in a commercial being developed by the third party for the same public body. If selected, the individual would be financially compensated for being in the commercial.

In assessing whether the proposed arrangement could conflict with the public servant's duties to the public body, the Ethics Executive considered the nature of the functions regularly performed

by the public servant on behalf of the public body as a part-time customer-service representative, together with the short term nature of the proposed arrangement with the third party, and the fact that the individual had no involvement in the procurement process undertaken to select the third party service provider developing the commercial for the public body.

The Ethics Executive determined that this situation would not constitute a conflict of interest. The Ethics Executive granted permission to the individual to audition for and accept a role in the commercial provided that any auditions or modeling work on the project would be done on the public servant's own time and not interfere with their work schedule.

Benefiting Self, Part 1 (C04-15/16)

O. Reg. 381/07, s. 3, 6, and 9.

- Conflict of Interest
- Conflict of Interest Commissioner
- Benefitting Self, Spouse or Children
- Giving Preferential Treatment
- Participating in Decision-Making

A public body wanted to appoint a chair who was also a recipient of one of the public body's programs and had a business partner already on the board.

The public body thought it was acceptable for some board members to be program recipients, as such members provided the board with expertise. The public body was aware of the potential for conflict and had developed systems to minimize the impact of such conflict, including limiting the involvement of the board in operational matters related to programs, and requiring members to declare any potential conflicts for the record of every board meeting and recuse themselves from certain discussions and decisions.

The commissioner concluded that these measures could be applied to the new chair and additionally suggested that any potential conflict of interest or political activity matter relating to the chair's business partner be referred to the commissioner under section 65(6) of the PSOA.

Benefiting Self, Part 2 (C05-15/16)

O. Reg. 381/07, s. 3, 6 & 8.

- Conflict of Interest
- Conflict of Interest Commissioner
- Benefitting Self, Spouse or Children
- Engaging in Business or Undertaking
- Giving Preferential Treatment

After serving as a member of the board of a public body for twelve years, an individual, with the assistance of two lawyers, had published a citizen's guide to appearing before the public body. Recently, he was appointed chair of the same public body and was approached by the publisher to prepare a third edition of the guide.

Since the book was initially published long before the individual became chair, and during a period when he was not a public servant, it was the commissioner's view that s.3 of the Regulation (benefiting self, spouse or children) would not be contravened. The individual was not currently seeking to publish a guide for the first time while chair. For similar reasons, the commissioner believed the publication of the new edition was not a contravention of s. 8(5) of the Regulation. While the chair's association with the third edition as chair could hypothetically promote sales, the guide was initially published long before, and it was not the case that the individual was being sought out to promote sales of a new book.

The two lawyers who were assisting with research for the new edition sometimes practiced before the public body. To avoid the appearance of preferential treatment, the commissioner directed the individual to recuse himself from any hearing in which either of them appeared as parties.

Outside Activity (C06-15/16)

O. Reg. 381/07, s. 8.

- Conflict of Interest
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking

A senior public servant in a public body sought to become a member of a quasi-judicial committee of a municipality. The public servant intended to attend approximately one hearing per month from 10:00 am to 2:00 pm.

The commissioner had concerns about the activity because the committee could be dealing with matters relating to individuals associated with the public body. In order to minimize the potential interaction between the two roles, the Commissioner required the public servant to advise his Ethics Executive immediately if an individual who appeared before the committee became involved in a matter with the public body and prohibited the public servant from dealing with committee matters involving potential stakeholders of the public body. The Commissioner also directed the public servant to take a full vacation day when performing committee work that was scheduled to occur during the public servant's normal office hours, to ensure transparency.

Hanging my shingle, Part 1 (C01-14/15)

O. Reg. 381/07, s. 6, 8, 9.

- Conflict of Interest
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking
- Giving Preferential Treatment
- Participating in Decision-Making

A designated senior public servant in a public body was on a paid leave of absence. Following the expiration of the paid leave of absence, the public servant was due to retire. The public servant wished to work as an independent consultant while on the paid leave, building on her career as a public servant, and had been approached with specific opportunities.

The Commissioner determined that while on the paid leave of absence, the public servant could provide independent consulting services, in specific scenarios, but that the in-service conflict of interest rules continued to apply. The public servant's work as a consultant must not conflict with her duties to the Crown, and no person could derive an advantage, in connection with her consulting work, as a result of her employment with the public body. In addition, the public servant must not appear to give clients of the public body any preferential treatment. Specifically, the public servant should not participate in discussions or decisions with other entities with respect to clients of the public body.

The Commissioner reminded the public servant that on retirement, the post-service conflict of interest rules would apply, including the one-year restriction on lobbying and employment.

Family matters (C05-14/15)

O. Reg. 381/07, s. 3 & 6.

- Conflict of Interest
- Conflict of Interest Commissioner
- Benefitting Self, Spouse or Children
- Giving Preferential Treatment

The spouse of an Ethics Executive for a public body was the head of an organization that regularly had dealings with the public body. The Ethics Executive advised the Commissioner that in order to mitigate the risk of a conflict of interest, steps had been taken to shield the Ethics Executive from any conversations or emails within the public body regarding the organization, and that the appropriate individuals had been advised of the potential conflict.

The Commissioner confirmed that the Ethics Executive had acted appropriately and put in place an effective mitigation strategy.

Family Ties? (C04-13/14)

O. Reg. 381/07, s. 6 & 7.

- Conflict of Interest
- Conflict of Interest Commissioner
- Giving Preferential Treatment
- Hiring Family Members

A public servant's cousin was also his Ethics Executive. The Ethics Executive referred the matter to the Commissioner for a determination about how to minimize the potential conflicts of interest.

Section 7 of Ontario Regulation 381/07 sets out a list of persons public servants cannot supervise. Although cousins are not on the list of relationships in section 7, the Commissioner determined that there was potential for the Ethics Executive to give preferential treatment, or appear to give it, to her cousin. The potential for this kind of conflict can arise whenever there is an existing connection between the parties.

The Commissioner considered the potential for interactions between the public servant and his Ethics Executive in their day-to-day roles. The Commissioner concluded that the public servant and his Ethics Executive had a low potential for routine interactions. Although there was some

potential that they would be involved in non-routine interactions, the public servant could delegate these responsibilities.

The Commissioner directed the public servant to have no involvement in the operations of the Ethics Executive's office. He directed both the public servant and his cousin to make sure that any interactions between them were open and transparent.

Participant and Decision-Maker? (C05-13/14)

O. Reg. 381/07, s. 3 & 9.

- Conflict of Interest
- Conflict of Interest Commissioner
- Benefitting Self, Spouse or Children
- Participating in Decision-Making

The chair of a public body also benefitted from some of the programs which the public body regulates, funds, and oversees. Due to the unique nature of the public body, it could not function effectively without the experience and expertise of members like the chair. The chair asked the Commissioner for a determination about whether she could take part in making decisions about those programs in her capacity as chair.

The Commissioner determined that the chair risked contravening sections 3, 6 and 9 of the conflict of interest rules in Ontario Regulation 381/07. Although she might be allowed to act as both participant and decision-maker in some situations, each situation would need to be evaluated as it arose. The chair would need to recuse herself from participating in certain discussions or decisions relating to the programs in which she was also a participant. The Commissioner suggested that the chair consider two questions before taking part in the decision-making process about such programs:

1. How much could she influence decisions about the program if she took part in the decision-making process?
2. How likely is it that she would benefit from the decisions or from taking part in the decision-making process?

Decisions made by the board in relation to a single program participant, although infrequent, are influential in that they could set a precedent for agency operations which could benefit other recipients of that program. Therefore, there is a high risk of the chair contravening the conflict of interest rules should the chair participate in these types of discussions or decision-making.

The Commissioner cautioned that there was no clear line to show when the chair should not take part in making decisions about those programs. In each case the chair would have to consider the relationship between her actions and any potential benefit, and recuse herself accordingly.

Accepting All Applicants (C06-13/14)

O. Reg. 381/07, s. 3 & 6.

- Conflict of Interest
- Conflict of Interest Commissioner
- Benefitting Self, Spouse or Children
- Giving Preferential Treatment

An appointee to a public body wanted to apply for a job at the same public body. His Ethics Executive asked the Commissioner for advice about what steps the public body could take to minimize the potential for conflicts of interest.

The Commissioner confirmed that the conflict of interest rules do not bar the appointee from applying for jobs within the public body. However, if a public body hires an appointee, concerns may arise about whether the appointee received preferential treatment or used his appointee position to get the job.

In order to minimize the risk of preferential treatment being given, the Commissioner advised the Ethics Executive to take steps to:

1. Make sure that the job description does not favour the appointee,
2. Make sure that the job is open to other applicants, and
3. Do not assign staff who have had significant contact with the appointee to conduct the competition.

The Commissioner also noted the following:

1. Public bodies should not involve an appointee in discussions about a future opening if they might consider that person for the job.
2. An appointee who gets a job with a public body should not continue in the position of an appointee in that public body.

Worlds Colliding? (C07-13/14)

O. Reg. 381/07, s. 8 & 9.

- Conflict of Interest
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking
- Participating in Decision-Making

An appointee to the board of a public body was also on the board of another entity. Recently, the public body's mandate had changed and the two organizations would now have more contact than before. The chair of the public body asked the Commissioner for advice about whether the appointee could be reappointed to the public body when his present term expired.

The Commissioner advised that conflicts of interest could arise for the appointee because of his obligations to the public body and the other organization. The Commissioner suggested some ways to mitigate such conflicts such as having the appointee recuse himself from matters where both organizations had an interest. The Commissioner cautioned that if such matters arose often the appointee might not be able to make a useful contribution to the public body and may have to step down from one of the organizations.

Hiring a Municipal Councillor (C01-12/13)

PSOA, s. 72, 77 & 79; O. Reg. 381/07, s. 8.

- Conflict of Interest
- Political Activity
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking
- Political Activity - All Other Public Servants

An Ethics Executive of a public body sought the Commissioner's advice while considering hiring a municipal councillor as a public servant in an administrative role.

Although being a municipal councillor is considered political activity, it is possible for a municipal councillor to be hired as a public servant if they can avoid engaging in the specific types of political activities that are prohibited by section 77 or restricted by section 79.

If hired as a public servant, the municipal councillor would also have to ensure that any activities they engaged in as a municipal councillor were in compliance with the conflict of interest rules.

As the municipality was within the geographical area affected by the actions of the public body, the Commissioner concluded that there was potential for conflicts between the individual's roles as a municipal councillor and public servant. The Commissioner suggested that, if the individual were to be hired, the Ethics Executive should implement strategies to mitigate the potential for conflicts. For example, the Ethics Executive could restrict the individual's access to matters related to the municipality they represents and require the individual to refrain from participating in discussions or decision-making at the municipality on any issues relating to the public body.

Free Ticket (C02-12/13)

O. Reg. 381/07, s. 4.

- Conflict of Interest,
- Conflict of Interest Commissioner
- Accepting Gifts

A public servant sought a determination as to whether they would be permitted to accept a one-time free ticket from a stakeholder to an event aimed at gathering stakeholders and communities to share information. The cost of the ticket was greater than nominal value.

The Commissioner determined that while it was appropriate for the public servant to attend the stakeholder event, a reasonable person might conclude that the ticket was offered by the stakeholder in hope of furthering future business opportunities with the Crown. The Commissioner recommended that the public servant purchase the ticket and seek reimbursement for the expense in the usual way, in keeping with the government's policy of being open and transparent.

Prize of Greater than Nominal Value (C04-12/13)

O. Reg. 381/07, s. 4.

- Conflict of Interest
- Conflict of Interest Commissioner
- Accepting Gifts

An Ethics Executive sought advice as to whether a public servant would be permitted to keep a prize, of greater than nominal value, which they had won as a result of attending a conference on behalf of the Crown.

The Commissioner advised the Ethics Executive to consider whether the prize was meant to influence the public servant in the performance of their duties. The Commissioner was of the view that the organizers of the conference were not seeking to influence the public servant, given that the public servant's name was selected at random from a list of all conference attendees.

Gift as a Token of Appreciation (C05-12/13)

O. Reg. 381/07, s. 4.

- Conflict of Interest
- Conflict of Interest Commissioner
- Accepting Gifts

A public servant in a public body was presented with a gift as a token of appreciation for speaking at an event hosted by a private entity that neither does, nor seeks to do business with the Crown. Subsequent to accepting the gift, the public servant became aware that the gift had a greater than nominal value.

The Commissioner noted that while the private entity does not currently do business with the Crown, the public servant had received the gift in their public service capacity. Accordingly, the Commissioner determined that the public servant should not accept the gift personally, since public servants should not use their positions to benefit themselves. The public servant could accept the gift on behalf of the public body and display it in a public area of the public body's offices.

Provide a Letter of Reference (C06-12/13)

O. Reg. 381/07, s. 6.

- Conflict of Interest
- Conflict of Interest Commissioner
- Giving Preferential Treatment

The chair of a public body wished to provide a letter of reference in support of a friend who was applying for a position on the board of the same public body.

The Commissioner determined that providing a letter of reference could create the appearance of preferential treatment based on friendship with the chair. The Commissioner recommended that the chair not provide the letter of reference.

Past Employer Responding to Multiple Requests for Proposals (C07-12/13)

O. Reg. 381/07, s. 6.

- Conflict of Interest
- Conflict of Interest Commissioner
- Giving Preferential Treatment

A newly-appointed public servant at a public body sought a determination from the Commissioner as to whether any conflicts of interest arose from their past employer responding to multiple Requests for Proposals (RFPs) issued by the public body, and with which the public servant was involved at their past employer.

The Commissioner determined that there was a risk that the public servant would appear to be giving preferential treatment to their past employer, particularly given that the public servant knew the rationale and the individuals involved with the past employer's responses. To minimize this risk, the public servant volunteered to have no involvement with these RFPs until after the public body reached an agreement with the successful proponent. The Commissioner agreed with this approach.

Spouse's Future Volunteer Activities (C08-12/13)

O. Reg. 381/07, s. 6.

- Conflict of Interest
- Conflict of Interest Commissioner
- Giving Preferential Treatment

The chair of a public body sought a determination about whether their spouse's future volunteer activities at a private entity could lead to a conflict of interest, given that the private entity received funding from the public body. The chair's spouse had ceased the volunteer activities when the public body became involved in a matter involving the private entity.

In light of the spouse's ongoing interest in the private entity, the Commissioner determined that there was a potential for conflict if the chair were to participate in matters involving the entity. To

minimize potential conflicts, the chair was to avoid participating in discussions and decisions involving the private entity, unless the entity was one of a large group involved in the matter. In such cases, the Commissioner recommended that the Chair declare their spouse's role with the entity, and that the declaration be recorded in the minutes of discussion.

Part-Time Appointment (C09-12/13)

O. Reg. 381/07, s. 8 & 9.

- Conflict of Interest
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking
- Participating in Decision-Making

The Commissioner's advice was sought with respect to the proposed part-time appointment of an individual to a public body. There was concern about the potential for conflict of interest as the potential appointee had, through the course of their external employment, worked closely with and had provided services to the public body.

The Commissioner advised that the potential appointee's external employment could create conflicts of interest, but that these could be mitigated if the individual's activities were restricted at both the public body and the external employment. The Commissioner suggested that the proposed appointee not have any involvement at the public body in discussions, decision-making or providing input on matters related to their employer. Similarly, in the course of their employment, the proposed appointee would recuse themself from matters related to the public body.

The Commissioner suggested that the mitigation strategy be shared with the board and staff of the public body as well as with the employer and the general public. This would promote compliance and minimize the appearance that the proposed appointee's employer would receive preferential treatment from the public body.

Appointed to the Board of a Second Public Body (C10-12/13)

O. Reg. 381/07, s. 6 & 8.

- Conflict of Interest
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking

- Giving Preferential Treatment

The chair of a public body sought a determination on whether there was the potential for a conflict should they also be appointed to the board of a second public body. The second public body's objectives included soliciting money and property and entering into partnerships and agreements with the private sector or public bodies.

The Commissioner determined that there would be some potential for conflicts of interest arising from performing both roles. The Commissioner advised the chair that they should not recommend or influence a partnership with the second public body if appointed to its board. To ensure this, the Commissioner recommended that the chair recuse themself from discussions and decisions at both public bodies where they involved the other public body. Moreover, the Commissioner recommended that the public servant not solicit funds on behalf of the second public body from the public body that they chairs, its stakeholders, or the Government of Ontario.

Engaged by a Third Party (C11-12/13)

O. Reg. 381/07, s. 9.

- Conflict of Interest
- Conflict of Interest Commissioner
- Participating in Decision-Making

The chair of a public body sought advice about a board member whose private company had been engaged by a third party to provide consulting services with respect to various matters, some of which directly related to the mandate of the public body. It was expected that the third party would likely respond to an upcoming RFP to be issued by the public body. The board member had proactively ensured that their private company excluded them from matters related to that third party, including all discussions and decision-making surrounding the specific files relating to the mandate of the public body.

The Commissioner agreed with the steps already taken by the board member. To further mitigate the appearance that the third party might receive preferential treatment as a result of the board member's position at the public body, the Commissioner suggested that the board member also recuse themself from any discussions and decision-making at the public body related to the RFP or the third party. The Commissioner added that, as always in such cases, the recusals should be documented and communicated to all board members.

Expert Witness on Behalf of a Law Firm (C12-12/13)

O. Reg. 381/07, s. 5 & 8.

- Conflict of Interest
- Conflict of Interest Commissioner
- Disclosing Confidential Information
- Engaging in Business or Undertaking

The chair of a public body sought a determination as to whether they would be permitted to act as an expert witness on behalf of a law firm. The chair had been approached by the law firm because of his expertise in a specific field, and not because of their position with the public body.

Since there was some overlap between the field of expertise and the activities of the public body, the Commissioner determined that there was some potential for conflicts of interest if the chair acted as an expert witness. The Commissioner advised the chair to ensure that they did not use or disclose any confidential information in the course of giving expert testimony, and to state at the beginning of the testimony that they would not be testifying in they capacity as a public servant but rather in their capacity as an expert in the field. In addition, the Commissioner advised the chair to be careful not to make any statements or public comments known to be contrary to the policies of the Ontario government. The Commissioner suggested that the ministry responsible for the public body be made aware of the chair's intention to testify on the matter.

Purchase Licenses (C13-12/13)

O. Reg. 381/07, s. 3, 6.

- Conflict of Interest
- Conflict of Interest Commissioner
- Benefitting Self, Spouse or Children
- Giving Preferential Treatment

An Ethics Executive sought advice as to whether a class of public servant should be permitted to purchase licences to engage in activities governed by regulations that the class of public servant is responsible for enforcing.

In order to mitigate the risk that these public servants would be seen to be using their positions to directly benefit themselves, and to minimize the appearance that they were receiving preferential

treatment, the Commissioner suggested that the public servants only be permitted to purchase licenses that applied outside the specific geographical areas where they were responsible for enforcing the related regulations.

Payments from a Former Employer (C08-11/12)

O. Reg. 381/07, s. 3, 5, 9.

- Conflict of Interest
- Conflict of Interest Commissioner
- Benefitting Self, Spouse or Children
- Giving Preferential Treatment
- Participating in Decision-Making

The chair of an adjudicative public body was entitled to receive certain payments from a former employer for a period of twelve months. The former employer routinely represented clients before the public body. The chair sought a determination as to whether the payment arrangement raised any conflict of interest concerns.

Conflict of interest concerns can arise when the government interacts with a public servant's former employer or business associate. These concerns are heightened when a public servant has an ongoing financial relationship with the former employer. A member of the public may conclude that the public servant has an interest in preserving the financial interests of the former employer. In this instance, the payments to the chair were not contingent on the chair's providing any ongoing services to the former employer. However, the payments were dependent on the continued viability of the former employer's business. In light of this, the Commissioner determined that the ongoing payment arrangement created a potential for conflicts of interest.

The Commissioner suggested that the chair sever the ongoing financial relationship with the former employer to mitigate the potential for conflicts. Ultimately, the chair and former employer chose to restructure the financial arrangement as a one-time payment.

In addition, the chair agreed to recuse themself from any matters involving the former employer or its clients during the next 12-month period. Following this period, depending on the circumstances, the chair would be required to recuse themself from specific matters involving the former employer or its clients.

The Commissioner also reminded the chair to ensure that persons or entities with whom they had interacted in the past neither received, nor appeared to receive, preferential treatment.

Respond to a Request for Proposal (RFP) (C09-11/12)

O. Reg. 381/07, s. 8.

- Conflict of Interest
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking

The part-time chair of a public body sought a determination as to whether their private company was permitted to respond to a Request for Proposal (RFP) issued by the ministry that has oversight for the public body.

If the company proved to be the successful proponent, the public servant would likely be the project manager for the work. The Commissioner considered the potential for conflicts (1) during the RFP process and (2) in the event that the company became the successful proponent.

There was some potential for intersections between the public servant's role with the public body and their company during the RFP evaluation process. Such interactions could lead to conflicts. However, the RFP did not stem from any past work of the public body, and the public servant would not be involved in the RFP evaluation process. The Commissioner concluded that it was unlikely that the public servant could use their position with the public body to the advantage of their company during the RFP process. Accordingly, the Commissioner determined that the company was permitted to respond to the RFP, provided that the public servant continued to comply with the obligations set out under sections 5 (disclosing confidential information) and 6 (giving preferential treatment) of the conflict of interest rules.

In the event that the company became the successful proponent, there was a greater risk of conflict of interest arising from interactions between the public servant's role and their proposed role as project manager. For example, the public servant's interactions with ministry staff or experts could lead to a benefit to the private company by way of additional business/consulting opportunities. It is also possible that the company's work under the RFP could intersect with future, and as yet unknown, work of the public body. The Commissioner determined that, if the company was the successful proponent, the conflict of interest rules would prohibit the public servant from working as the project manager and as a public servant at the same time.

Speaking at an Event (C10-11/12)

O. Reg. 381/07, s. 6*.*

- Conflict of Interest
- Conflict of Interest Commissioner
- Giving Preferential Treatment

The chair of a public body sought a determination as to whether it would be appropriate for them to speak at an event hosted by a particular foundation. The foundation's mission was to raise, manage and distribute funds solely for an organization that received funding from the public body.

Although no funds were to be solicited at the event directly, the purpose of the event was to generate support for the foundation's subsequent fundraising efforts. The funds to be raised would support the organization funded by the public body. A reasonable person might conclude that the chair's attendance at the event as a keynote speaker was an endorsement of the foundation and the organization that would benefit from the foundation's subsequent fundraising initiative. In turn, this could create the appearance that the public body was giving preferential treatment to the organization affiliated with the foundation. Accordingly, the Commissioner determined that it would not be appropriate for the chair to accept this invitation to speak.

Secondment Opportunities (C01-10/11)

O. Reg. 381/07, s. 8.

- Conflict of Interest
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking

A public servant working in a ministry wished to pursue secondment opportunities with an organization operating in the same sector as the ministry. The public servant's Ethics Executive sought the commissioner's advice about the conflict of interest rules applicable during such a secondment.

The commissioner advised that, for the purposes of applying the conflict of interest rules, a public servant remains a current public servant while on secondment and is not considered a former public servant during that time. Therefore, the Ethics Executive should evaluate whether the public servant would be able to comply with the in-service conflict of interest rules during the secondment. In assessing whether a specific secondment would create a conflict, the Ethics

Executive should consider the responsibilities of the public servant, the intersection between the interests of the outside organization and the ministry, and the intersection between the stakeholders of the outside organization and the ministry. The closer or more frequent these intersections, and the more the public servant's responsibilities involve them, the more likely that a secondment with the outside organization would contravene the rules. To mitigate the risk of conflicts, the commissioner suggested that the Ethics Executive consider restricting the public servant from engaging in certain activities while on secondment, including lobbying or seeking preferential access to public servants in the ministry.

The commissioner also drew the Ethics Executive's attention to the post-service rules set out in Part II of O. Reg. 381/07. If the public servant chose to retire or leave the public service, those rules could prevent the public servant from immediately thereafter accepting certain types of employment.

Teach and Develop Curriculum (C11-11/12)

O. Reg. 381/07, s. 5, 6, 8, 9.

- Conflict of Interest
- Conflict of Interest Commissioner
- Disclosing Confidential Information
- Engaging in Business or Undertaking
- Giving Preferential Treatment
- Participating in Decision-Making

The CEO of a public body sought a determination as to whether they could teach and develop the curriculum for a specific program at an Ontario university.

There was some potential for interactions between the university and the public body, and it was possible that the public servant could be called upon to provide assistance to the university with issues related to their role as a public servant. It was also possible that they could interact with the same stakeholders in both roles. In light of these possible intersections, the Commissioner determined that there was some potential for conflicts between the two roles. The public servant would be required to abide by the following conditions while teaching and developing a curriculum for the university:

i. The public servant would ensure that they did not disclose or use, in the course of the university work, any confidential information obtained while a public servant;

ii. Individuals and groups associated with the university work would not receive, and were made aware that they could not receive, any assistance or information from the public servant beyond that which they would provide in the ordinary course of carrying out their responsibilities as a public servant;

iii. The public servant would recuse themself from all discussions and decision-making in matters where there is an intersection between the university and the public body or the Crown, including matters where the university is lobbying or taking a position inconsistent with that of the public body or the Crown;

iv. The public servant would not participate in fundraising activities directed at the public body or the Crown; and

v. The public servant would recuse themself from any decision-making as a public servant if the decision could result in a benefit to the university.

Temporary Assignment (C12-11/12)

O. Reg. 381/07, s. 8 & 9.

- Conflict of Interest
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking
- Participating in Decision-Making

The president and CEO of a public body sought a determination as to whether they could accept a temporary assignment, in a senior leadership position, with an independent, not-for-profit organization. The public servant wished to return to the public body role following the temporary assignment. The organization's mandate affected the sector of the public body, and it received funding from the ministry that has oversight responsibility for the public body.

The Commissioner noted that when public servants are on temporary assignment, they continue to be subject to the in-service conflict of interest rules. As the not-for-profit organization had only recently been established, and its relationship with the public body was still being developed, the Commissioner acknowledged that it was not possible to anticipate all of the potential intersections between the public body and the organization. However, since the organization and the public body operated in the same sector, the Commissioner concluded that some activities may be expected to intersect. For example, the possibility existed that the public servant would interact

with the same ministry staff in both the temporary and the public body roles. The Commissioner determined that such interactions could create the risk of conflicts of interest.

To minimize the risk, the Commissioner imposed restrictions on the public servant's activities. The public servant was to refrain from lobbying or soliciting the Crown, including the public body, on behalf of the organization, and recuse themself from discussion or decision-making where there was potential for intersection between the two roles. The Commissioner required the public servant to keep the ministry and the Commissioner informed of any duties or responsibilities undertaken during the temporary assignment if those activities could give rise to potential conflicts of interest.

Discussion of Matter after Recusal (C13-11/12)

O. Reg. 381/07, s. 9.

- Conflict of Interest
- Conflict of Interest Commissioner
- Participating in Decision-Making

At a board meeting, the chair of a public body declared a conflict of interest regarding an issue under consideration and recused themself from the discussion and decision-making process. Subsequently, individuals with an interest in the issue contacted the chair and the chair discussed the issue with them. This raised concerns and the Commissioner was asked to make a determination.

The Commissioner determined that the chair's conduct in discussing the issue with interested individuals, outside the board meeting, contravened the conflict of interest rules. The chair had not disclosed any confidential information, but the Commissioner was of the view that, once the chair had declared a conflict of interest, participating in such discussions created the appearance that preferential treatment was being given to those individuals.

To minimize the risk of future contraventions of the conflict of interest rules, the Commissioner recommended that, where the chair has declared a conflict of interest in a matter, they limit interaction, outside of board meetings, with individuals connected to that matter. The Commissioner suggested that the chair advise such individuals that they cannot provide any assistance or engage in discussions with them regarding the matter after declaring a conflict of interest at the board meeting.

Spouse's Affiliation (C14-11/12)

O. Reg. 381/07, s. 9.

- Conflict of Interest
- Conflict of Interest Commissioner
- Participating in Decision-Making

The president and CEO of a public body sought a determination as to whether any conflict of interest concerns arose from their spouse's affiliation with an organization that provided services to that public body.

The public servant was not involved in the decision to select the spouse's organization as a service provider, and the spouse was not involved in providing services to the public body. However, the Commissioner determined that the public servant's participation in discussions or decision-making related to the services provided by the organization could engage the conflict of interest rules. For example, the public servant's participation in decision-making regarding that organization could create the appearance of preferential treatment. To minimize the risks, the Commissioner required the public servant to disclose their spouse's affiliation with the organization prior to any discussion or decision-making by the public body related to the services provided by the organization, and depending on the nature of the matter, recuse themself from the discussion and decision-making process.

Public Servant's Spouse (C15-11/12)

O. Reg. 381/07, s. 3 & 7.

- Conflict of Interest
- Conflict of Interest Commissioner
- Giving Preferential Treatment
- Hiring Family Members

A public servant sought a determination regarding the potential for conflict of interest where the public servant's spouse works in the same organization.

The public servant was not the spouse's supervisor, but was the head of the organization and was the Ethics Executive. The Commissioner determined that there was potential for conflict of interest. The Commissioner was advised that transparent measures had already been put in place to mitigate the risk. The public servant's work-related duties relating to their spouse had been

delegated to another official in the organization, and the public servant's access to employment-related information about their spouse was limited. The public servant had not been precluded from participating in discussion or decision-making with respect to the following:

i. Work issues and products, as required in the ordinary course of the public servant's duties, where the public servant's spouse may have contributed to or may have been responsible for the matter;

ii. Information of a statistical or general nature, provided for information purposes, where it involved the public servant's spouse but was not specific to them; and

iii. Matters that could potentially affect the public servant's spouse, but only where the matters would affect a broad class of public servants.

The Commissioner took into account that a large class of individuals would most likely be affected by such involvement, making it unlikely that any benefit or preferential treatment would flow to their spouse. However, the Commissioner cautioned the public servant to remain mindful of the size of the class of individuals affected by specific decisions. The Commissioner suggested that the public servant refrain from participating in discussions or decisions where the matter affected a smaller class of individuals that included their spouse.

Non-Governmental Organization (NGO) Outside of Canada (C16-11/12)

O. Reg. 381/07, s. 9.

- Conflict of Interest
- Conflict of Interest Commissioner
- Participating in Decision-Making

An Ethics Executive sought advice as to whether a senior public servant may join the board of a non-governmental organization (NGO) outside of Canada.

The Commissioner assessed the potential for conflicts of interest by considering the interactions between the duties of the public servant and the proposed role in the NGO. The Commissioner determined that although the NGO had no current dealings with Ontario, there was some possibility of a future connection with Canada or Ontario and the public servant's role as a decision-maker. In addition, the NGO could ask the public servant to comment on related policies or issues before the Ontario government. The Commissioner suggested that, to mitigate the risk of conflicts, the public servant recuse themself from discussions and decision-making, in their

capacity as a senior public servant, where the issue involved the NGO. This measure should apply not only to the NGO itself, but also to issues related to the business of the NGO. The Commissioner also recommended that, should the NGO board discuss matters relating to Ontario, the public servant should recuse themself from those discussions and decisions. The Commissioner further suggested that the public servant disclose the mitigation strategy to their colleagues to make them aware of what can and cannot be brought to the public servant's attention.

Attend a Fundraising Dinner as Guests (C17-11/12)

O. Reg. 381/07, s. 4.

- Conflict of Interest
- Conflict of Interest Commissioner
- Accepting Gifts

The Commissioner's advice was sought as to whether it would be appropriate for a class of senior public servants to attend a fundraising dinner as guests of a key government stakeholder or whether they should be required to pay the full price of a ticket. These senior public servants were likely to be regarded as key participants in the event, and it was to provide a valuable opportunity for dialogue and relationship-building.

The Commissioner was of the view that it would be inappropriate for the senior public servants in question to attend the function as guests of the stakeholder. It could be perceived that the key government stakeholder was providing the class of senior public servants with a gift, of greater than nominal value, in the hope of doing business with the Crown, and this would be contrary to section 4 (accepting gifts) of the regulation. A further issue was the fact that the event was a fundraiser and a portion of the ticket price would go to the stakeholder. The Commissioner's advice was that public funds should not be used towards the fundraising efforts of a government stakeholder. In order to mitigate the risk of conflicts, the Commissioner suggested that, rather than purchase tickets at the full price, the public servants determine the per-person cost of the dinner, and each public servant pay only that portion of the price of a ticket. Thus, the public servants would neither attend at the expense of the stakeholder nor contribute to the fundraising. The public servants were advised to then request reimbursement for the paid portion in accordance with government directives that are in place for out-of-pocket expenditures. This procedure would ensure openness and transparency with regard to the expenditure of public funds.

Appointing Certain Individuals (C06-10/11)

O. Reg. 381/07, s. 6.

- Conflict of Interest
- Conflict of Interest Commissioner
- Giving Preferential Treatment

A minister sought the commissioner's advice about whether appointing certain individuals to a public body would contravene the conflict of interest rules. The individuals in question were affiliated with facilities overseen by a public body for which the minister was responsible.

The commissioner indicated that, where members of an oversight body are affiliated with the very facilities being reviewed, the situation creates, at a minimum, the appearance that preferential treatment may be given to some of those facilities. The commissioner advised that appointees who are affiliated with related facilities should refrain from participating in decision-making or discussions at the public body concerning the oversight of those facilities. They should not participate in or attempt to influence the decision-making at those facilities if the decision could cause a conflict between the facilities' interests and those of the public body or the Crown. The commissioner recommended that the public body codify its processes and make them transparent to the public body and to all related facilities.

Remuneration for Preparing Reports (C07-10/11)

O. Reg. 381/07, s. 8 & 9.

- Conflict of Interest
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking
- Participating in Decision-Making

The chair of an advisory public body sought the commissioner's advice as to whether appointees would be permitted to accept remuneration for preparing reports (1) if the reports were commissioned by outside organizations and the public body might consider them in making a decision, or (2) if the reports were commissioned by the overseeing ministry subsequent to a decision by the public body.

The commissioner advised that the integrity of the public body's decision could be challenged if an appointee both prepared a report and participated in the decision-making process. In order to

enable appointees to provide their expertise to the public body without compromising the integrity of its decisions, the commissioner recommended that appointees be permitted to contribute at the information-gathering stage of the decision-making process but recuse themselves from voting on the decision.

Similarly, a conflict of interest concern may arise if an appointee participates in decision-making that might result in a later opportunity to prepare a report for the ministry. The commissioner advised that Ethics Executives should consider the likelihood of any benefits flowing to appointees as a result of the public body's decisions. Ethics executives should look to (1) the size of the group that would stand to benefit from the decision, and (2) the relationship between an appointee's interests and the matter before the public body. In some cases, the potential benefit to an appointee may be unlikely or only remotely connected to the public body's decision. In order to minimize the potential for conflicts, the commissioner recommended that the chair remind appointees of the restrictions on their outside activities as set out in the *PSOA.*

Use a Report to Support an Application (C08-10/11)

O. Reg. 381/07, s. 8.

- Conflict of Interest
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking

An appointee to a public body had, in a private sector role, prepared a report that related to the public body's field of activity. The public body was considering whether it would be appropriate for an applicant to use this report to support an application before the public body. The Ethics Executive of the public body sought the commissioner's advice as to whether allowing the use of the report would be seen as a conflict of interest.

The commissioner approved the steps the public body had already taken. To mitigate the potential for monetary benefit to the appointee, the appointee had waived the fee for the report. Communication between the appointee and other board appointees involved with the application was restricted to mitigate the perception of bias. The commissioner recommended that the public body develop a formal protocol, based on these steps, to guide the public body in any future situations where appointees have an outside, professional involvement with an application. He further recommended that the public body make the protocol publicly available and accessible.

Appointment as Chair of a Public Body (C09-10/11)

O. Reg. 381/07, s. 6.

- Conflict of Interest
- Conflict of Interest Commissioner
- Giving Preferential Treatment

The Public Appointments Secretariat sought the commissioner's advice with respect to the proposed appointment of a full-time chair of a public body. The proposed appointee had a background in the sector regulated by the public body and was currently employed in a high-profile role by an entity regulated by that public body.

Although the individual intended to resign from their current position if appointed, and would not receive any ongoing compensation, their background in the sector had the potential to create the risk of conflict of interest. The commissioner advised that, if appointed, the individual should ensure that neither preferential treatment nor the appearance of preferential treatment would be given to persons or entities with whom they had interacted in the past. The appointee might also be required to recuse themself from discussions or decisions of the public body if they related to those persons or entities.

Authorized Leave of Absence (C11-10/11)

O. Reg. 381/07, s. 8.

- Conflict of Interest
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking

An Ethics Executive sought the commissioner's advice as to whether a public servant employed in a ministry could accept employment, while on an authorized leave of absence, with an outside firm that does work for the ministry.

The commissioner advised that a public servant on authorized leave of absence remains a public servant and is subject to the in-service conflict of interest rules. The Ethics Executive should evaluate whether the proposed employment would contravene the conflict of interest rules and affect the public servant's ability to resume their duties. The Ethics Executive used the commissioner's advice to implement measures to mitigate the risk of conflict of interest.

Advisory Role with a Minister (C12-10/11)

O. Reg. 381/07, s. 8 & 9.

- Conflict of Interest
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking
- Participating in Decision-Making

A public servant wished to step down as chair of a public body, for a limited time, to assume an advisory role with the minister who has oversight of the public body. The public servant sought the commissioner's advice as to whether there would be any conflict of interest concerns if they continued to serve as a member of the public body during that time.

Given the duration of the advisory role and time commitment involved, the commissioner agreed that it would be appropriate for the public servant to step down as chair of the public body while serving in the advisory role. The commissioner noted that, if the public servant continued to serve as a member of the public body, there would be potential for intersections between that role and the advisory role. For example, since both roles are accountable to the same minister, they could involve interaction with the same ministry officials and/or experts. Moreover, given the broad language of the public body's enabling legislation, the public body and the advisory role could be involved in policy development on similar issues. The potential for such intersections could create a risk of conflict of interest.

To minimize the risk, the commissioner imposed restrictions on the public servant's activities in the advisory role, such as recusing themself from discussions or decision-making where there was the potential for intersections between the two roles.

Concurrent Role as a Volunteer Board Member (C02-09/10)

O. Reg. 381/07, s. 6, 8, 9.

- Conflict of Interest
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking
- Giving Preferential Treatment
- Participating in Decision-Making

As Ethics Executive, the commissioner was asked to determine whether a conflict of interest arose from a public servant's duties as a full-time commissioner of a public body and concurrent role as a volunteer board member in an outside organization. The concern stemmed from the possibility that the organization could have a matter requiring the attention of the public body.

The commissioner concluded that serving as a volunteer member of the board of the outside organization, while also serving as commissioner of the public body, was unlikely to lead to a conflict of interest since the mandate of the organization was sufficiently distinct from that of the public body. However, the commissioner directed that, in the unlikely event that the organization had a matter requiring the attention of the public body, the public servant was to take the following steps:

- Advise the organization that it may not receive any information from the public servant other than information supplied in the ordinary course of carrying out their duties as commissioner of the public body
- Recuse themself from any decision-making, as commissioner of the public body, that could result in a benefit to the outside organization
- Recuse themself from any decision-making, as a member of the outside organization's board of directors, that could conflict with the interests of the Crown.

Remove Precautionary Restrictions (C04-09/10)

O. Reg. 381/07, s. 8 & 9.

- Conflict of Interest
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking
- Participating in Decision-Making

A public servant for whom the commissioner was the Ethics Executive sought a determination as to whether precautionary restrictions on financial activities, which had been put in place when the public servant was hired (before the full extent of responsibilities was known), could be removed.

The commissioner determined that, in light of the absence of any relationship between the public body and the organization in which the public servant had financial interests, it was unlikely that the financial holdings would be affected by the individual's duties as a public servant. Accordingly, the commissioner determined that it was unlikely that removing the restrictions would create a conflict of interest for the public servant.

The commissioner indicated that it could become necessary to reinstate the restrictions if a relationship were to be established between the organization and the public body in the future.

Vice-Chair of an Outside Organization (C06-09/10)

O. Reg. 381/07, s. 8.

- Conflict of Interest
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking

As Ethics Executive, the commissioner was asked to determine whether a conflict of interest arose from a public servant's duties as a full-time chair of a public body and concurrent role as vice-chair of an outside organization. The concern stemmed from the potential for the public body and the outside organization to have overlapping interests.

The public servant's primary duties in the public body were to assign and coordinate the hearing duties of other board members. The outside organization did not take a position on specific matters related to the public body or lobby the government. Based on these factors, and taking into account the nature of the public servant's proposed affiliation with and specified activities in the outside organization, the commissioner concluded that holding the position with the outside organization would not be inconsistent the public servant's obligations under the *PSOA.*

Spouse's Professional Interest (C08-09/10)

O. Reg. 381/07, s. 3 & 6.

- Conflict of Interest
- Conflict of Interest Commissioner
- Benefitting Self, Spouse or Children
- Giving Preferential Treatment

A public servant was concerned about a potential conflict of interest arising from their spouse's professional interest in a matter being considered by the government of Ontario. The public servant asked the commissioner, as Ethics Executive, to determine whether sufficient measures were in place to minimize the risk of contravening the conflict of interest rules. The public servant had taken the following steps:

- Another public servant had been identified who would assume the public servant's duties when the matter was being discussed or considered and in any unexpected situations
- The public servant disclosed the spouse's interest and recused themself from discussions or decisions regarding the matter and from reviewing any documentation related to the matter

The commissioner concluded that these measures would sufficiently isolate the public servant and thus mitigate the risk of a potential conflict of interest.

Unable to Dispose of Financial Interests (C09-09/10)

O. Reg. 381/07, s. 3 & 8.

- Conflict of Interest
- Conflict of Interest Commissioner
- Benefitting Self, Spouse or Children
- Engaging in Business or Undertaking

A senior public servant had financial interests related to the sector in which they had responsibility. The public servant's Ethics Executive referred the matter to the commissioner for a determination.

Owing to certain characteristics of the holdings and the associated limits on transferring investment benefits, the public servant was unable to dispose of the holdings. Accordingly, the commissioner directed the public servant to take the following steps mitigate the risk of conflict of interest:

- Refrain from accessing information about the specific entities affected by the holdings
- Ensure that the investment was not extended upon maturity
- Refrain from acquiring additional interests in the sector

To minimize the appearance that any entity could receive preferential treatment by receiving information before it was generally available, the commissioner further suggested that the public servant's ministry codify its existing practice of releasing information to all interested entities simultaneously.

Contract Awarded (C10-09/10)

O. Reg. 381/07, s. 6 & 8.

- Conflict of Interest
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking
- Giving Preferential Treatment

As Ethics Executive, the commissioner was asked to determine whether a conflict of interest arose from a public servant's role as the part-time chair of a public body and their responsibilities with an outside organization. The concern stemmed from the fact that the organization was awarded a contract by the ministry that also had oversight responsibility for the public body.

Although full-time public servants are prohibited from engaging in full-time employment concurrent with their position with the Crown, part-time public servants may do so. Nevertheless, in undertaking such employment, part-time public servants must ensure that they continue to comply with the conflict of interest rules.

In this case, the potential existed that some individuals and organizations with an interest in the public body could also be involved with the outside organization. Accordingly, the commissioner directed the public servant to ensure that these individuals and organizations did not receive (and were aware that they could not receive) any assistance or information from the public servant other than that which the public servant was expected to provide in the ordinary course of carrying out their public service duties. The commissioner also directed the public servant to disclose their affiliation with the outside organization to the public body whenever called upon make decisions concerning the organization and to recuse themself from those decisions.

Terminate Professional Associations (C11-09/10)

O. Reg. 381/07, s. 6.

- Conflict of Interest
- Conflict of Interest Commissioner
- Giving Preferential Treatment

The chief executive officer of a public body had existing professional and personal relationships with individuals associated with the public body's sector. As Ethics Executive, the commissioner

was asked determine whether those relationships conflicted with the public servant's duties as chief executive officer.

The commissioner directed the public servant to terminate the professional associations, and thereafter to recuse themself from discussions and decisions concerning any of those entities. As well, to mitigate the appearance of preferential treatment, the commissioner directed the public servant to disclose the personal relationships when undertaking his duties as a public servant.

Appointment to Another Public Body in the Same Sector (C12-09/10)

O. Reg. 381/07, s. 8 & 9.

- Conflict of Interest
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking
- Participating in Decision-Making

As Ethics Executive, the commissioner was asked to determine whether the duties of the chief executive officer of a public body conflicted with their duties as an appointee to another public body in the same sector.

The commissioner determined that assuming duties with both public bodies was not inconsistent with the public servant's obligations under the *PSOA,* but acknowledged that the interests of the two public bodies could intersect, thereby creating the potential for conflicts of interest for the public servant pursuant to Ont. Reg. 381/07.

The commissioner directed the public servant to mitigate the risk of conflicts of interest by continuing to follow two established practices; the public servant disclosed the concurrent associations to both public bodies and recused themself from discussions or decisions in either public body that affected the other.

Affiliation with a Public Relations/Government Relations Firm (C13-09/10)

O. Reg. 381/07, s. 6.

- Conflict of Interest
- Conflict of Interest Commissioner
- Giving Preferential Treatment

The part-time chair of a public body asked the commissioner, as Ethics Executive, to determine whether the chair's affiliation with a public relations/government relations firm would conflict with their role and responsibilities as a public servant. The concern stemmed from the government relations activities of the firm and the potential that the firm and the public body (a grant-awarding agency) could have stakeholders in common.

The chair did not intend to engage in the firm's government relations activities. However, given the small size of the firm and the nexus with the chair's responsibilities, the commissioner concluded that the public servant could not be sufficiently insulated from those activities. As well, the commissioner concluded that there was a risk of the appearance of preferential treatment when clients of the firm sought funding from the public body.

Payment Received (C14-09/10)

O. Reg. 381/07, s. 3 & 4.

- Conflict of Interest
- Conflict of Interest Commissioner
- Accepting Gifts
- Benefitting Self, Spouse or Children

A public servant for whom the commissioner is the Ethics Executive sought the commissioner's advice upon receiving a one-time payment of approximately $900 in connection with attendance at an event on behalf of the Ontario government.

The commissioner advised that the rules prohibiting the acceptance of gifts of greater than nominal value did not apply because the sum was not received from a prohibited person, group, or entity. However, the public servant received the payment while on government business, for which they were already receiving a salary. Thus, the payment would represent a benefit if the public servant were to keep it, which would likely contravene section 3. Accordingly, the commissioner advised that, unless the payment was used to compensate the public servant for any non-reimbursed, authorized expenses incurred while attending the event, retaining the payment would contravene conflict of interest rules.

Board Decisions on Programs (C15-09/10)

O. Reg. 381/07, s. 9.

- Conflict of Interest
- Conflict of Interest Commissioner
- Participating in Decision-Making

The chair of a public body asked the commissioner, as Ethics Executive, to advise on the potential for conflict of interest arising from participation in board decisions on programs (administered by the public body) in which the chair was a participant. The chair indicated that these decisions could affect individual program participants.

The commissioner advised the chair to consider several factors in assessing the risk of a contravention of the conflict of interest rules: the chair's duties as a public servant, the extent to which carrying out these duties could have an impact on a final outcome of potential benefit to the chair, and the likelihood that a benefit would accrue to the chair. The commissioner suggested, for example, that in situations where a benefit to individual program participants was only remotely connected to carrying out the chair's duties as a public servant, the risk of contravening the conflict of interest rules was likely to be low.

Authorized Leave of Absence (C16-09/10)

O. Reg. 381/07, s. 8.

- Conflict of Interest
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking

An Ethics Executive sought the commissioner's advice as to whether a public servant could accept employment, while on authorized leave of absence from a ministry, with a firm that does work for that ministry and the Crown.

The commissioner reminded the Ethics Executive that a public servant becomes a *former* public servant only when their relationship with the Crown is fully terminated (as outlined in case summary 15, 2008/09 annual report). Accordingly, a public servant who is on an authorized leave of absence remains a public servant and is subject to the in-service conflict of interest rules.

The commissioner advised the Ethics Executive to consider the extent to which the responsibilities of the public servant intersected with the interests of both the firm and its stakeholders. The more significant or more frequent these intersections, and the greater the public servant's involvement with the firm's and/or stakeholders' interests, the more likely that employment with the firm would conflict with the public servant's duties to the Crown and ability to perform these duties, and the more likely that the firm could obtain an unfair advantage. The commissioner further advised that, if these intersections and the public servant's involvement were limited, it might be possible to mitigate potential conflicts of interest by imposing restrictions on the public servant while on leave.

Company with Dealings with Senior Ontario Government Officials (C17-09/10)

O. Reg. 381/07, s. 5, 6, 9.

- Conflict of Interest
- Conflict of Interest Commissioner
- Disclosing Confidential Information
- Giving Preferential Treatment
- Participating in Decision-Making

The Public Appointments Secretariat (PAS) sought the commissioner's advice with respect to a proposed appointment to a public body. The proposed appointee held a senior position in a company that had dealings with senior Ontario government officials and had an interest in government matters of general public concern (e.g., initiatives and policies). The commissioner was asked to provide advice as to whether conflicts of interest could arise if this individual were to be appointed to the public body.

The commissioner's advised that, given the individual's employment, there was a risk of contravening a number of conflict of interest rules if the appointment took place. However, in the commissioner's view, the risk could be mitigated by restricting the individual's activities. For example, the individual could recuse themself from participating in the public body's decisions on any matters related to the company or matters where there was an opportunity for the company to benefit.

The commissioner also advised that, if the individual was appointed, the PAS should ensure that the appointee was aware of the restrictions on the use and disclosure of confidential information and that staff of both the public body and company were aware of and documented steps to be taken to mitigate any potential conflict of interest arising from the appointment.

In addition, to enhance transparency and limit the appearance of preferential treatment, the commissioner suggested that both organizations consider communicating publicly the steps taken to minimize the risk of a conflict of interest.

Consultant (C18-09/10)

O. Reg. 381/07, s. 3, 6, 8.

- Conflict of Interest
- Conflict of Interest Commissioner
- Benefitting Self, Spouse or Children
- Engaging in Business or Undertaking
- Giving Preferential Treatment

The Public Appointments Secretariat (PAS) sought the commissioner's advice with respect to a proposed appointment to a public body. The proposed appointee was a consultant with an organization that had regular dealings with the public body. The commissioner was asked to advise whether conflicts of interest could arise from this arrangement.

The commissioner advised that there would be potential for conflict of interest if the individual were appointed. The commissioner was of the view that the individual could potentially stand to benefit financially (through increased consulting work) by participating in decisions of the public body on matters favourable to the organization. As well, the individual's affiliation with the organization could create the appearance of preferential treatment for the organization.

To mitigate any potential conflicts of interest, the commissioner advised the PAS to require that the individual, if appointed to the public body, no longer provide consulting services to the organization. In addition, to mitigate the continued risk of an appearance of preferential treatment, the commissioner suggested that the PAS and the public body make known the past consulting relationship.

Volunteer Member of NGO (C03-08/09)

O. Reg. 381/07, s. 8.

- Conflict of Interest
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking

The chair of an advisory agency, who was also a volunteer member of a non-government organization, asked the commissioner to determine whether a conflict of interest would arise if they made certain statements in their volunteer capacity.

Considering section 8 of Ontario Regulation 381/07, the responsibilities of the chair, and the mandates of the two organizations, the commissioner determined that making public statements in a volunteer capacity would not conflict with the public servant's role as chair and ability to perform their duties.

Spouse's Private Sector Role (C05-08/09)

O. Reg. 381/07, s. 6.

- Conflict of Interest
- Conflict of Interest Commissioner
- Giving Preferential Treatment

An employee of a public body asked the commissioner for a determination on a potential conflict of interest matter arising from their spouse's recent appointment to a senior position in a related private sector industry. In particular, the public servant sought direction as to how to avoid any conflicts of interest that could arise as a result of interaction between the public servant and the private sector industry.

In his capacity as the public servant's Ethics Executive, the commissioner reminded the public servant that section 6(1) of Ontario Regulation 381/07 prohibits a public servant from giving preferential treatment to any person or entity in the course of performing their duties to the Crown. The commissioner also pointed out the section 6(3) restriction on a public servant's offering assistance to a person or entity in dealing with the Crown, except such assistance as is offered in the ordinary course of their employment.

The commissioner directed the public servant to recuse themself from any involvement in the public body's discussions or other activities concerning business undertakings related to their spouse's employer. The commissioner further directed the public servant to recuse themself from any discussion or involvement in any business undertaking if they became aware that their spouse's employer was intending to express an interest in that undertaking.

Serve on a Committee (C06-08/09)

PSOA, s. 77 & 79; O. Reg. 381/07, s. 8.

- Conflict of Interest
- Political Activity
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking
- Political Activity - All Other Public Servants

The chair of a regulatory agency asked the commissioner to provide advice as to whether it would be appropriate for the chair to serve on a committee that was to monitor and write a report on media coverage of an election.

In his capacity as the chair's Ethics Executive, the commissioner considered the conflict of interest and political activity sections of the PSOA and regulations. The commissioner concluded that the chair was subject to the limitations on engaging in undertakings outside the scope of employment with the Crown as set out in section 8, despite the fact that they did not intend to receive compensation for participating on the committee. The commissioner advised that the chair should take the following steps to ensure that their involvement in the proposed undertaking did not violate section 8:

- ensure that the time spent on committee activities did not interfere with their ability to perform their duties as a public servant; and
- refrain from using their work premises, equipment or supplies in undertaking committee work.

As a public servant, the chair is also subject to the political activity provisions in section 77 and section 79 of the PSOA. The commissioner reminded the chair that they were prohibited from participating in any activities set out in section 77. The commissioner also advised that section 79(1)(c) of the PSOA restricted the chair's ability to comment publicly on matters directly related to their duties as a public servant and that are addressed in the policies of a federal party or a federal candidate, unless the chair obtained an unpaid leave of absence. The commissioner therefore advised that if the chair chose to serve on the committee, they would have to ensure that their actions, including the comments made in any report, did not contravene the restrictions set out in section 77 or section 79(1)(c).

Membership in a Professional Association (C07-08/09)

O. Reg. 381/07, s. 6 & 8.

- Conflict of Interest
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking
- Giving Preferential Treatment

The chair of a regulatory agency asked the commissioner to determine whether it would be appropriate for them to maintain membership in a professional association that had an interest in the work of the agency.

In his capacity as the chair's Ethics Executive, the commissioner determined that the chair's continued membership in the professional association would contravene the conflict of interest rules set out in section 6, 8(1) and 9(1) of Ontario Regulation 381/07.

Section 6 prohibits a chair from giving preferential treatment to any person or entity while performing their duties as chair. Moreover, section 6(2) requires the chair to endeavour to avoid creating the appearance that a person or entity is receiving preferential treatment. Given the overlapping interests of the regulatory agency and the professional association, the commissioner said that the chair's continued affiliation with the professional association could call into question the impartiality of the chair in matters brought to their attention by the professional association.

Section 8(1) prohibits a public servant from engaging in an undertaking if their private interests in connection with the undertaking could conflict with their duties as a public servant. Section 9(1) prohibits a public servant from participating in decision-making with respect to a matter that the public servant is able to influence in the course of his or her duties if the public servant could benefit from the decision. The commissioner said that continued involvement with the association could conflict with the chair's ability to perform their duties. As a member of the professional association, the chair could benefit from decisions made by the agency affecting the professional association, and therefore would be prohibited from participating in such decisions.

The chair subsequently advised the commissioner that they would terminate affiliation with the professional association.

Free Tickets (C08-08/09)

O. Reg. 381/07, s. 4.

- Conflict of Interest
- Conflict of Interest Commissioner
- Accepting Gifts

The chair of an adjudicative agency asked the commissioner to determine whether it would be appropriate for them to accept free tickets, of nominal value, to an event hosted by a private sector organization. The chair was the former chair of a regulatory agency responsible for governing and regulating the private sector organization.

In his capacity as the chair's Ethics Executive, the commissioner determined that the role and function of the adjudicative agency the individual presently chaired had no connection to the private sector organization offering the tickets, and that the chair no longer had any decision-making power with respect to the regulation of the private sector organization. The commissioner thus determined that accepting the invitation would not influence the chair in performing their current duties as chair of an adjudicative agency. Accordingly, accepting free tickets of nominal value under these circumstances was not prohibited under section 4(1) of Ontario Regulation 381/07.

Decision Could Generate Income Opportunities (C09-08/09)

O. Reg. 381/07, s. 3 & 9.

- Conflict of Interest
- Conflict of Interest Commissioner
- Benefitting Self, Spouse or Children
- Participating in Decision-Making

The chair of an advisory agency asked the commissioner for advice regarding a concern that an appointee of the agency could benefit from a decision made by the agency in carrying out its mandate. Specifically, the concern was that the decision could generate income opportunities for the appointee.

Section 3(1) of Ontario Regulation 381/07 prohibits public servants from using or attempting to use their employment to directly or indirectly benefit themselves, their spouses, or their children. Section 9(1) states that a public servant shall not participate in decision-making by the Crown with

respect to a matter that the public servant is able to influence in the course of his or her duties, if the public servant could benefit from the decision.

The commissioner suggested that the chair consider the likelihood that a benefit would flow to the appointee as a result of the decision. The closer the nexus between the appointee's interests and the decision made, the greater is the likelihood of a conflict of interest. In circumstances where a public body's decision could potentially benefit a large proportion of the population, the decision cannot reasonably be seen to be of particular benefit to an appointee.

The commissioner advised that if the chair had any concern that an appointee's participation in the decision-making process had the potential to contravene the conflict of interest rules, the chair could consider steps to minimize the risk. To assist the chair in deciding on steps to minimize the risk of a conflict of interest, the commissioner drew the chair's attention to the range of options available to Ethics Executives in comparable situations:

- Pursuant to section 9(2) of Ontario Regulation 381/07, the chair may permit an appointee to participate in the decision-making process if, for example, preventing the appointee from participating would severely hamper the organization in carrying out its business.
- Pursuant to section 9(2) of Ontario Regulation 381/07, the chair may allow an appointee to contribute to the decision-making process at the information gathering stage, but preclude them from deliberations and from contributing to a final decision.
- Pursuant to section 9(1) of Ontario Regulation 383/07, the chair may request that the appointee recuse themself from participating in any discussions, deliberations and decision-making.

The commissioner advised that in determining which option would be most appropriate, the chair would need to balance concerns about an appointee's potential benefit as a result of a decision with the appointee's anticipated contribution to the decision-making process.

A Matter Before the Courts (C10-08/09)

O. Reg. 381/07, s. 8.

- Conflict of Interest
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking

The Ethics Executive of a public body sought the commissioner's advice about a potential conflict of interest involving an appointee. The Ethics Executive's concern stemmed from the fact that the

appointee was also an employee of a private sector company involved in a matter presently before the courts, and there was a possibility that the appointee, in their private sector role, would be asked to take a position on the court proceeding.

To assist the Ethics Executive in arriving at a determination, the commissioner suggested that the Ethics Executive might consider the following:

- the role of the public body
- the way in which decisions or actions taken by the public body could influence the outcome of the court process
- the extent to which the appointee could affect decisions or actions of the public body referred to above
- the way in which the appointee could potentially give preferential treatment to the company in the context of the judicial proceeding.

The commissioner indicated that, since the public body was not a party to the court proceeding and therefore not in a position to influence the outcome, the potential for a conflict of interest in this matter appeared to be remote. He further advised that the risk of conflict of interest could be further mitigated by directing the appointee to recuse themself from any discussions directly related to the judicial proceeding.

Recruitment of a Family Member (C11-08/09)

O. Reg. 381/07, s. 7.

- Conflict of Interest
- Conflict of Interest Commissioner
- Hiring Family Members

An Ethics Executive sought the commissioner's advice regarding a situation where the spouse of a public servant was an applicant for a position reporting to the public servant.

In providing his advice, the commissioner referred to section 7(3) of Ontario Regulation 381/07, which states that a public servant who hires a person on behalf of the Crown shall ensure that the person does not report to, or supervise the work of, the person's spouse. In the commissioner's view, it would be reasonable to interpret section 7(3) as prohibiting only *direct* reporting or supervision between family members. However, the commissioner further noted that, in some circumstances, *indirect* reporting and supervision may also result in a conflict of interest, depending on the facts of the case. The commissioner advised that in cases of indirect reporting

between family members, the potential for conflict should be identified and appropriately managed by Ethics Executives. The commissioner also cautioned that no public servant should be involved in any recruitment activities in which a family member of the public servant is an applicant.

Timely Reminder (C12-08/09)

O. Reg. 381/07, s. 8.

- Conflict of Interest
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking

In his capacity as Ethics Executive, the commissioner contacted the part-time chair of a public body who had recently accepted a concurrent position. The commissioner reminded the chair of the outside employment restrictions set out in section 8 of Ontario Regulation 381/07. The commissioner explained that the purpose of that section is to ensure that public servants' private interests in connection with businesses or other undertakings outside the government of Ontario do not conflict with their positions with the Crown. The individual responded by stating that he was mindful of this restriction and was satisfied that his new role would not conflict with his current role as part-time chair.

Report on Media Coverage of an Election (C13-08/09)

O. Reg. 381/07, s. 8; PSOA 77 & 79.

- Conflict of Interest
- Political Activity
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking
- Political Activity - All Other Public Servants

The chair of a regulatory agency asked the commissioner to provide advice as to whether it would be appropriate for the chair to serve on a committee that was to monitor and write a report on media coverage of an election.

In his capacity as the chair's Ethics Executive, the commissioner considered the conflict of interest and political activity sections of the *PSOA* and regulations. The commissioner concluded that the

chair was subject to the limitations on engaging in undertakings outside the scope of employment with the Crown as set out in section 8, despite the fact that they did not intend to receive compensation for participating on the committee. The commissioner advised that the chair should take the following steps to ensure that their involvement in the proposed undertaking did not violate section 8:

- ensure that the time spent on committee activities did not interfere with their ability to perform their duties as a public servant; and
- refrain from using their work premises, equipment or supplies in undertaking committee work.

As a public servant, the chair is also subject to the political activity provisions in section 77 and section 79 of the PSOA. The commissioner reminded the chair that they were prohibited from participating in any activities set out in section 77. The commissioner also advised that section 79(1)(c) of the PSOA restricted the chair's ability to comment publicly on matters directly related to their duties as a public servant and that are addressed in the policies of a federal party or a federal candidate, unless the chair obtained an unpaid leave of absence. The commissioner therefore advised that if the chair chose to serve on the committee, they would have to ensure that their actions, including the comments made in any report, did not contravene the restrictions set out in section 77 or section 79(1)(c).

Spouse is a Municipal Councillor (C01-07/08)

O. Reg. 381/07, s. 6.

- Conflict of Interest
- Conflict of Interest Commissioner
- Giving Preferential Treatment

A member of an operational service agency asked the commissioner to determine whether a conflict of interest arose on the basis that their spouse is a municipal councillor, and the municipality owns a facility that could be subject to decision-making before the agency.

Considering section 6 of Ontario Regulation 381/07, the commissioner stated that any potential conflicts of interest could be resolved if the member recused themself from any decisions or discussions regarding the particular facility in question, and if the member advised the chair of the agency of the spouse's position.

University Professor (C03-07/08)

O. Reg. 381/07, s. 8.

- Conflict of Interest
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking

A member of an operational service agency asked the commissioner to determine whether there was a conflict of interest between their role as member, and as a professor at a university.

Considering section 8 of Ontario Regulation 381/07, the commissioner determined that the member's role as professor would generally not conflict with their role as member of the agency. However, as a precaution, the commissioner directed the member not to use any materials prepared by the agency or the responsible ministry in course materials without permission, not to disclose confidential information regarding the agency or the ministry in the context of their teaching, and not to publicly criticize agency or ministry policy. The commissioner also directed the member to include a disclaimer in research papers stating that the views in the paper are those of the author and do not necessarily reflect those of the agency or the ministry.

Chair's Spouse is Appointee (C05-07/08)

O. Reg. 381/07, s. 7.

- Conflict of Interest
- Conflict of Interest Commissioner
- Hiring Family Members

The chair of an adjudicative agency asked the commissioner to determine a conflict of interest matter involving the chair and their spouse. Specifically, the chair stated that their spouse is an appointee of the agency. The chair also provided the commissioner with additional details about the limits and extent of the relationship between the chair and the spouse as an appointee.

In his capacity as the chair's Ethics Executive, under section 65 of the *PSOA*, the commissioner determined that, based on the information provided, he had no concerns about compliance with the rules regarding family members in section 7 of Ontario Regulation 381/07. The commissioner also advised that should any conflict of interest matters arise in the future with respect to the spouse, the chair should not act as the spouse's Ethics Executive, as would normally be the case

under the *PSOA*. Rather, the commissioner advised the chair that they should refer these matters to the commissioner under section 65(6) of the *PSOA.*

Municipal By-Law Investigator (C07-07/08)

O. Reg. 381/07, s. 8.

- Conflict of Interest
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking

The chair of an operational service agency asked the commissioner to determine whether there was a conflict of interest between their roles as chair and as a municipal by-law investigator under Part VI of the Municipal Act, 2001.

Considering section 8 of Ontario Regulation 381/07, and in light of the mandate of the agency, the commissioner determined that the chair's role as municipal bylaw investigator would generally not conflict with their role as chair. However, as a precaution, the commissioner directed the chair to recuse themself from any discussions or decisions on matters that may come before the agency relating to the specific municipality (or local governments within the municipality) for which the chair is acting as an investigator.

Private Sector Event Tickets (C09-07/08)

O. Reg. 381/07, s. 4.

- Conflict of Interest
- Conflict of Interest Commissioner
- Accepting Gifts

The chair of a regulatory agency asked the commissioner to determine whether it would be appropriate for the chair to accept free tickets to two events hosted by a private sector organization.

In his capacity as the chair's Ethics Executive, the commissioner determined that accepting the free tickets would be prohibited under section 4(1) of Ontario Regulation 381/07 because the tickets had a relatively high face value, the agency regularly makes decisions that may affect the organization's business, and a reasonable person might conclude that the gift could influence the chair when performing their decision-making duties.

The commissioner directed the chair not to accept the free tickets. The commissioner also advised the chair that the *PSOA* would not prohibit the chair from attending the events if they paid for the tickets. The chair confirmed that they would not accept the free tickets, but would pay for them if they decided to attend the events.

Lobbyist Role (C11-07/08)

O. Reg. 381/07, s. 8.

- Conflict of Interest
- Conflict of Interest Commissioner
- Engaging in Business or Undertaking

In their role as Ethics Executive, the chair of an adjudicative agency asked the commissioner for advice about a conflict of interest matter concerning a member of the agency. Specifically, the member had advised the chair that they worked on a part-time basis with two outside organizations, and that they acted as a registered lobbyist for both organizations.

The commissioner advised the chair that, in his view, the *PSOA* would not prohibit the member from working with the first organization, provided they recused themself from any discussions at the organization involving the Ontario government. The commissioner also advised the chair of his view that section 8 of Ontario Regulation 381/07 would prohibit the member from being involved with the second organization, since there is a conflict of interest between the member's adjudicative role and the second organization's primary function, which is to make representations to the Ontario government on policy issues. The commissioner stated that this conflict could not be resolved by the member's recusal. Further, the commissioner advised the chair that he believed the *PSOA* would prohibit the member from acting as a lobbyist with either organization.

The commissioner stated that to resolve the conflict, it may be the case that the member should either resign from the second organization and from his position as lobbyist with both organizations, or resign as a member of the agency. The member later advised the commissioner that they chose to resign from the agency.

Appointment Considerations (C13-07/08)

O. Reg. 381/07, s. 3 & 9.

- Conflict of Interest
- Conflict of Interest Commissioner

- Benefitting Self, Spouse or Children
- Participating in Decision-Making

A minister asked the commissioner for advice about the proposed appointment of an individual to a particular agency.

The commissioner explained that his role under section 1(4) of Ontario Regulation 384/07 is to provide assistance to the minister in the minister's assessment of any potential or real conflicts of interest the proposed appointee may have, as described in the *PSOA* and its regulations.

The commissioner stated that the minister's assessment must take into account the individual's potential role within the agency, their past and present activities, and their financial and other interests, and must consider whether these activities and interests could call into question the integrity, impartiality, and/or independence of the agency. In particular, the commissioner directed the minister's attention to section 3 of Ontario Regulation 381/07, relating to individuals and family members benefiting from employment, and section 9 of that regulation, which prohibits individuals from participating in decision-making if those individuals could benefit from the decision.

Finally, the commissioner referred to the conflict of interest rules of another agency, which provided specific examples of how the *PSOA*'s principles of ethical conduct are applied in a context similar to that of the agency in question.

Later, the minister advised the commissioner that he had conducted the necessary assessment of the individual, and had decided to proceed with the appointment.