

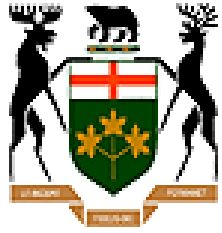
2012 SOAR Conference

Conflict of Interest and Political Activity

Dianne Carter

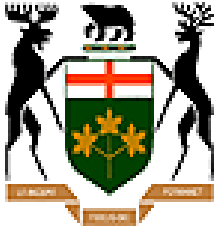
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DISCLAIMER: The views expressed in this presentation are my own and not indicative of the views of Environment and Land Tribunals Ontario or the Ministry of the Attorney General.



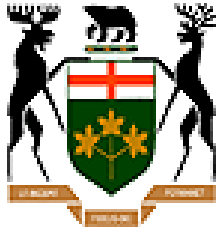
Presentation Overview

- Ethical Framework PSOA
- Conflict of Interest
 - Key concepts
 - Conflict of interest rules
- Political Activity



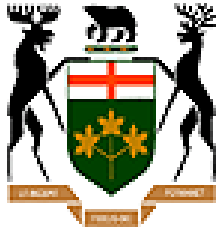
Ethics Rules

- *Public Service of Ontario Act, 2006 (PSOA)* establishes rules that apply to all public servants
- Proclaimed in August 2007
- Intent of PSOA is to achieve greater consistency in the application of conflict of interest and political activity rules throughout the public service
- Establishes an ethical framework providing for:
 - Oath/affirmation of allegiance to the Crown
 - Rules regarding political activity
 - Disclosure of wrongdoing
 - Conflict of interest rules



PSOA

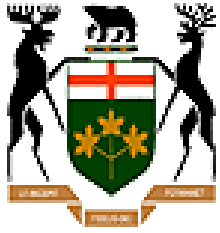
- The definition of “public servant” includes:
 - every employee of a public body
 - every person appointed to a public body
(O.Reg 146/10 lists public bodies)
- Establishes a Conflict of Interest Commissioner
- *Adjudicative Tribunals Accountability Governance and Appointments Act, 2009 (ATAGAA)* proclaimed April 2010,
COI Commissioner assigned responsibility for approving ethics plans for tribunals
- Identifies an ethics executive to address matters of conflict of interest for ministries and public bodies
- Objective of ethics plan is for tribunals to describe the steps to be taken to ensure members are familiar with ethical requirements



PSOA

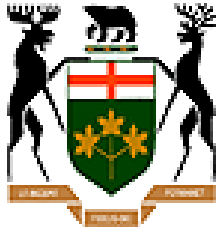
- Ethics Executive

- Provides advice and direction to public servants on conflict of interest and political activity matters and is responsible for dealing with disclosure of wrongdoing
- Deputy Ministers – Secretary of Cabinet
- Ministry Employees – Deputy Minister
- Public Body appointees – Chair
- Public Body employees – Chair or prescribed ethics executive
- Former public body appointees and employees – Conflict of Interest Commissioner



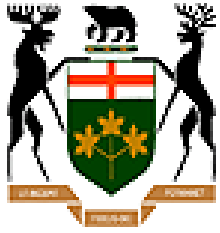
PSOA

- Ethics Executive (cont'd)
 - A public servant or former public servant may request a determination from the ethics executive
 - A public servant must notify his or her ethics executive if he or she has personal or pecuniary interests that could raise an issue under the conflict of interest rules that apply to him or her



Conflict of Interest – Key Concepts

- What is conflict of interest?
 - Conflict of interest is generally understood to arise from a situation in which a person has a private or personal interest sufficient to influence or appear to influence the objective exercise of his or her duties as public servant.
 - The existence of a conflict of interest is incompatible with third party neutral dispute resolution.
 - “Test” for conflict of interest: whether or not the facts could raise a reasonable apprehension of bias in the mind of a reasonable and informed person.



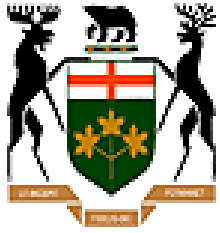
Conflict of Interest – Key Concepts

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- “Test” for bias: “the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question.....”

(Committee for Justice and Liberty v. National Energy Board (1976), 68 DLR (3d) 716 (SCC))

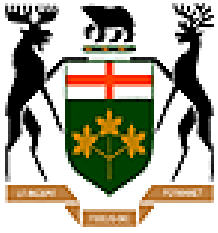
- It is the presence of any factor that might cause a reasonable person to think that it is likely to bias a decision-maker’s judgment or cause a person to doubt the objectivity of a decision-maker.
- A conflict of interest does not only arise in situations where a financial gain is at stake.



Conflict of Interest – Key Concepts

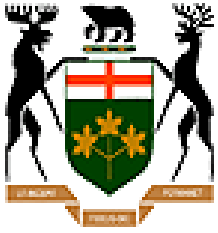
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- The driving consideration behind conflict of interest rules is the public good.
- Conflict of interest rules provide a framework for identifying, managing and resolving conflicts.
- Conflict of interest rules are important for maintaining public confidence in the integrity and neutrality of the public service.



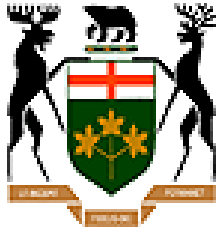
Conflict of Interest Rules

- Application
 - Apply to public servants and former public servants
 - the COI rules that apply to a public servant are either:
 - » conflict of interest rules made by the public body, approved and published by the Conflict of Interest Commissioner; or
 - » COI rules prescribed by regulation under PSOA (O. Reg 381/07)
- Where a public body develops its own conflict of interest rules, if they provide for a standard of ethical conduct lower than PSOA, the rules under PSOA will apply.



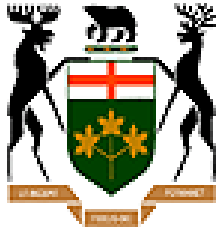
Conflict of Interest Rules

- Set out in O.Reg.381/07 under PSOA
 - If no COI rules approved and published by COI Commissioner regulations (O. Reg. 381/07) with necessary modifications apply (s.58 clause 4)
- In service rules: What is prohibited?
 - Benefitting self, spouse or children (s.3)
 - Accepting gifts (s.4)
 - Disclosing confidential information (s.5)
 - Giving preferential treatment (s.6)
 - Hiring family members (s.7)
 - Engaging in business or undertakings (s.8)
 - Participating in certain decision-making (s.9)
 - Disclosure of financial interests (s.10,11)
 - Prohibition against certain purchases (s.12)



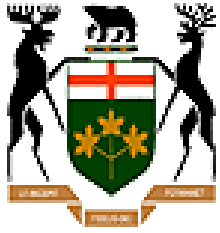
Conflict of Interest Rules

- Post service rules: What is prohibited?
 - Seeking preferential treatment (s.16)
 - Disclosing confidential information (s.17)
 - Lobbying restriction (s.18)
 - Employment restriction (s.19)
 - Certain transactions restricted (s.20) – applies to designated senior positions



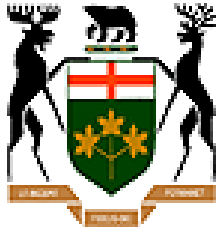
Conflict of Interest Rules

- What should you do if you think you are in a conflict of interest situation?
 - The adjudicator should consider any circumstance that might suggest a possible conflict of interest or raise a perception of bias
 - Check applicable conflict of interest rules
 - Seek directions from ethics executive
 - If during the course of a proceeding adjudicator becomes aware of a circumstance which causes a conflict of interest, or a perception of bias, this should be disclosed to parties as soon as it is known – may want to consult with ethics executive in making determination



Political Activity

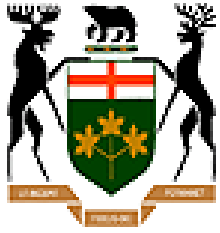
- What are the objectives of the Political Activity Rules?
 - Rules try to balance neutrality of public service with public servant's ability to engage in political activity.
 - Courts have found that political activity is protected under the Canadian Charter of Rights and Freedoms.



Political Activity

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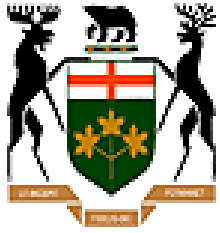
- Courts have recognized that some limits may be placed on political activity.
- Safeguards designed to protect the neutrality of the public service.
- The type of restriction imposed on a public servant depends on public servant's position.



Political Activity

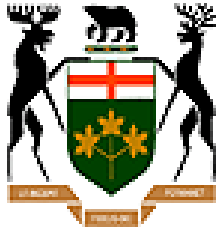
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- Most public servants may engage in any type of political activity unless it is specifically restricted or prohibited.
- “Specifically restricted” public servants may only engage in listed forms of political activity.



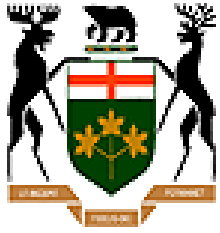
Political Activity

- All Public Servants are prohibited from engaging in political activity:
 - in the workplace;
 - while wearing a uniform associated with Public Service of Ontario;
 - using government premises, equipment or supplies; and
 - by associating his/her position.



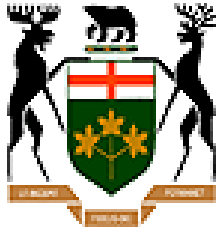
Political Activity

- Most Public Servants
 - may engage in political activity that is not restricted (restricted activities s.79(1))
 - must be on a leave of absence to engage in restricted political activity.
- Specifically Restricted Public Servants
 - may engage in political activity that is specifically permitted under s.89 and s.90
 - part time specifically restricted public servant may seek authorization from Conflict of Interest Commissioner to engage in certain additional activities.



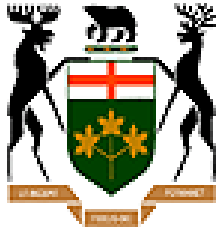
Political Activity

- Who are “specifically restricted” public servants?
 - All appointees to tribunals listed in O.Reg.377/07
 - Conflict of Interest Commissioner
 - Secretary of Cabinet
 - Every Deputy Minister or associate deputy minister in a ministry
 - Every assistant Deputy Minister in a ministry
 - Every director in a ministry
 - Every deputy legal director of a ministry
 - Every Crown Attorney
 - Every commissioned officer and detachment commander in the OPP



Political Activity

- Which political activity is permitted for specifically restricted public servants?
 - voting in federal, provincial or municipal election
 - contributing money to a federal or provincial party or to a federal, provincial or municipal candidate
 - being a member of a federal or provincial party
 - attending an all-candidates meeting



THANK YOU