



Office of the
Senate Ethics Officer
Bureau du
conseiller sénatorial
en éthique

2019–20 Annual Report

June 2020



Annual Report of the Senate Ethics Officer 2019-20

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Senate Ethics
Officer
Conseiller sénatorial
en éthique

June 25, 2020

The Honourable George Furey
Speaker of the Senate
A112, Senate of Canada Building
Parliament Buildings
Ottawa, Ontario
K1A 0A4

Dear Mr. Speaker:

It is my honour and pleasure to submit to you the Fifteenth Annual Report of the Office of the Senate Ethics Officer, pursuant to section 20.7 of the *Parliament of Canada Act*, R.S.C. 1985, c. P-1, as amended. by S.C. 2004, c.7; S.C. 2006, c.9. It covers the period from April 1, 2019 to March 31, 2020.

Yours sincerely,

Me Pierre Legault

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MESSAGE FROM THE SENATE ETHICS OFFICER

This is my third annual report since my appointment as Senate Ethics Officer (SEO) in January 2018.

The last year was marked by considerable progress on several fronts in the delivery of my three-pronged mandate as SEO: administer the Annual Disclosure Process, conduct inquiries and provide advice to senators.

My Office successfully introduced a staggered Annual Disclosure Process based on the appointment dates of senators that has resulted in a more rapid completion time in the processing of senators' statements and also in the posting of these on the Office's website. This is important for the transparency of the Annual Disclosure Process. The new process also resulted in a more efficient use of the Office resources over the whole year.

We completed the two inquiries that were ongoing from the previous year as well as a preliminary review and examined eight formal complaints from senators. I am pleased to report that, at the end of the fiscal year, there were no outstanding preliminary reviews or inquiries.

I have continued to provide advice to senators with a view to preventing conflicts of interest from arising rather than addressing them once they have arisen. While fewer senators were appointed last year, I have also continued guiding new senators concerning their obligations under the *Ethics and Conflict of Interest Code for Senators* (the *Code*) and assisting them in their transition from their private life to the public life of a senator, insofar as the *Code* is concerned.

The change to the annual disclosure process and the completion of the inquiries have allowed me to shift resources and to focus on other projects to better serve senators and inform the public.

In particular, I have had the opportunity to reconsider this annual report and to re-organize and re-purpose it. Beyond merely a summary of activity and a recitation of statistics, it should be a vehicle to also provide more information and comments on the development of the Office and our projects, on the future of the *Code* and on the general advice provided to help senators in fulfilling their obligations under the *Code*. I hope you will find the new Commentary section towards the end of this report useful and informative.

As the SEO, I am in the peculiar position of having to provide advice to senators about their personal affairs, and make decisions and judgments in a formal process based on the *Code* while making public certain information about senators. While the *Code* strives to afford senators a reasonable expectation of privacy, it also imposes strong confidentiality provisions on the disclosure of information and advice pertaining to senators. As a result, my ability to comment on individual cases is extremely limited. Unfortunately, this can leave the impression that I am trying to be deliberately opaque. This Annual Report, along with some future changes to my Office's website, will attempt to shine as much light as I believe I can responsibly do on the workings of the *Code*.

As the year ended, COVID-19 became a dreadful reality for all Canadians. Like so many, in mid-March, the Office started working remotely and we adapted our paper-based processes as much as possible to a more electronic form of communication.

I want to thank all senators for their understanding and support in making this transition. I especially want to thank them for their support in the course of the year and their commitment to respecting the *Code*.

The Office continues to rely on the Senate Administration for the provision of security, finance, information technology and human resources services under a cost-recovery agreement. I thank them for their services and support.

Finally, I am very thankful and grateful to the employees of my Office who make this journey possible.



MANDATE OF THE SENATE ETHICS OFFICER

The position of Senate Ethics Officer (SEO) was created under the *Parliament of Canada Act* (the Act). The SEO performs the duties and functions assigned by the Senate for governing the conduct of senators. The SEO is responsible for the interpretation, administration and application of the *Ethics and Conflict of Interest Code for Senators* (the Code). The Code defines a set of principles and rules which guide senators in the exercise of their functions. It also provides a means by which to maintain and enhance public confidence and trust in the integrity of senators and the Senate. The Code ensures that questions related to the conduct of senators may be addressed by an independent, non-partisan advisor. It was adopted by the Senate in May 2005, and was revised in 2008, in 2012, and twice in 2014.

The SEO is supported by the Office of the Senate Ethics Officer (the Office).

After consulting the SEO, the *Standing Committee on Ethics and Conflict of Interest for Senators* (the Committee) may give general directives to the SEO on the interpretation, application, and administration of the Code, but not as it relates to the circumstances of a particular senator.

Three Major Functions

The mandate of the SEO includes three major functions: providing opinions and advice to senators, administering the annual disclosure process and conducting preliminary reviews and inquiries.

Opinions and Advice

The first of the SEO's major functions is to provide advice and guidance to senators with respect to the Code, and, in particular, to assist them in understanding their obligations under the Code and identifying ethics and conflicts of interest issues – real, potential and apparent – that could be relevant to their circumstances.

This advisory function is essential to the success of an ethics and conflict of interest regime. It provides a means by which legislators can better understand how ethics and conflict of interest rules apply to their individual circumstances, especially when their application may not be so clear.

Senators are encouraged to seek advice before acting, and to avail themselves of the SEO's advice in order to effectively prevent ethics and conflict of interest issues from arising. This approach best serves the public interest because it avoids costly and time-consuming inquiries. It also ensures that the focus is not on addressing conflicts once they have arisen, but rather on preventing them from arising.

The Code provides that written opinions and advice are to be kept confidential but they may be made public by the senators to whom they relate, or by the SEO with the particular senator's written consent. However, some opinions related to contracts with the federal government must be made public.

Annual Disclosure Process

The SEO is also responsible for administering the annual disclosure process, which is an essential feature of any ethics and conflict of interest regime. It ensures a measure of transparency and accountability which, in turn, inspires public confidence in the system.

The Code provides that senators must file, on an annual basis, a confidential disclosure statement on a date that is established by the SEO with the approval of the Committee. As of 2019, this date for a senator is the anniversary date of his or her appointment to the Senate. Newly appointed senators must file their initial statements within 120 days after being summoned to the Senate.



These disclosure statements include information concerning senators' activities outside their parliamentary duties and functions, their assets and liabilities over \$10,000, their sources of income over \$2,000, and any federal government contracts, as well as the activities and financial interests of their spouses or common-law partners. The *Code* sets out the list of interests that senators are required to report confidentially to the SEO.

The SEO provides each senator with a letter, which draws attention to any relevant provisions of the *Code* that are relevant to his or her circumstances. Where senators have specific questions about a particular situation, they should raise the matter with the SEO and provide the necessary information to assist the latter in formulating useful advice.

The Office also prepares a public disclosure summary for each senator based on the information that was provided in the senator's confidential disclosure statement. The *Code* sets out the list of interests that must be publicly disclosed. Again, this list includes senators' activities outside their parliamentary duties and functions, as well as their income over \$2,000, and their assets and liabilities valued at over \$10,000. The information about spouses and common-law partners is not publicly disclosed.

Senators are then required to review their public disclosure summaries, sign and return them to the Office. These summaries are then placed in both a paper public registry located in the Office. They are also published in an online public registry available on the Office's website. This registry contains all the information that is required to be made public under the *Code*.

In addition, senators are required to annually file a statement of compliance confirming that they have read the *Code* within the last 30 days and that, to their knowledge and belief, they are in compliance with the *Code* as of the day the statement is filed.

The disclosure process is an ongoing process that continues throughout the year, even after completion of the annual confidential disclosure statements and their publication in the Public Registry. Senators are required to ensure that their confidential disclosure statements are kept up-to-date throughout the year by filing material change forms with the Office within 30 days after any material changes occur in their circumstances. These forms are included within each senator's public disclosure file. They are published as soon as possible after they are received.

In addition, senators must file a statement of gifts or other benefits with the SEO for any gifts and benefits received as a normal expression of courtesy or protocol, or that is within the customary standards of hospitality that normally accompany the senator's position, if the value of the gift or benefit (or the cumulative value of all gifts or benefits received from one source in a 12-month period) exceeds \$500. The statement of gifts or other benefits is placed in the senator's public disclosure file.

It should be noted that courtesy gifts are exceptions to the general prohibition concerning senators receiving gifts and other benefits that could reasonably be considered to relate to a senator's position.

Similarly, sponsored travel must be reported in a statement which forms part of a senator's public disclosure file if the travel costs exceed \$500.

Over the course of the year, senators must also publicly declare any private interests that may be affected by matters before the Senate, or a committee of the Senate of which they are members. These public declarations are also placed in the public disclosure files of senators.



The following information about a senator must be disclosed publicly:

- employment outside the Senate, a profession, or a business;
- a senator's positions in corporations, income trusts and trade unions, associations and not-for-profit organizations;
- the source and nature, but not the amount, of any income over \$2,000 that senators have received in the last 12 months, or are likely to receive in the next 12 months;
- the nature, but not the value, of any assets and liabilities over \$10,000;
- the source and nature, but not the value, of any contracts, subcontracts or other business arrangements with the Government of Canada or a federal agency or body involving a senator or his/her family, directly or indirectly, through a subcontract or by virtue of a partnership or significant interest in a private corporation;
- a trust in which a senator could derive an income or other benefit;
- any declarations of private interest;
- any statements of gifts or other benefits and sponsored travel; and
- any statements of material change.

Preliminary Reviews and Inquiries

It is also the SEO's responsibility to conduct inquiries in order to determine whether a senator has complied with his or her obligations under the *Code* where there are allegations of non-compliance. Below is an explanation of the process regarding preliminary reviews and inquiries.

First, the SEO must conduct a preliminary review -- which is distinct from an inquiry -- if he has reasonable grounds to believe that a senator has not complied with his obligations under the *Code* or receives a request to conduct an inquiry from a senator who has reasonable grounds to believe that another senator has not complied with his or her obligations under the *Code*.

A request by a senator to the SEO to conduct an inquiry must be in writing and signed by the senator. It must identify the alleged non-compliance and the reasonable grounds for the belief the *Code* has not been complied with.

The SEO must afford the senator who is the subject of a preliminary review an opportunity to respond within 15 days. This period may be extended by the SEO depending on circumstances. The SEO must provide the senator with a preliminary determination letter that includes his reasoned decision as to whether an inquiry is warranted.

A preliminary review is conducted confidentially pursuant to the *Code*. However, where the SEO determines that an inquiry is not warranted, the preliminary determination letter is made public (unless the matter is not in the public domain) when the Committee tables it in the Senate. If the SEO determines that an inquiry is warranted, the matter remains confidential until the inquiry report of the SEO is tabled in the Senate.



The *Code* does not provide a mechanism for the public to trigger a preliminary review or an inquiry. However, the SEO examines all information pertaining to a senator that is brought to his attention by members of the public, including the media, and may self-initiate a preliminary review under the *Code* as described above.

Second, the *Code* provides that the SEO must conduct an inquiry in either of the following circumstances: where the SEO determines that an inquiry is warranted after conducting a preliminary review; or where the senator who was the subject of a preliminary review requests that an inquiry be conducted because the SEO has made a finding that an obligation under the *Code* may have been breached but has determined that an inquiry is not warranted.

The SEO must give the senator who is the subject of an inquiry access to information about the relevant facts, access to documents, a reasonable opportunity to make representations in writing or in person and to be represented at the various stages of the inquiry process. What is reasonable is at the discretion of the SEO.

This process may often be lengthy and includes inviting the senator to attend an initial interview to ascertain facts and obtain evidence. The senator testifies under oath. Witnesses are also identified and invited to provide their testimony under oath.

The SEO may seek information and documents from the senator, the witnesses and others.

The senator who is the subject of the inquiry will be invited to a second interview towards the end of the process -- the final interview in the inquiry process -- where he or she will have an opportunity to respond to the allegations and to make representations on the testimony of witnesses and the documentary evidence. The senator will be offered a final opportunity to make representations when the senator is invited to read parts of the draft inquiry report, ordinarily on the process, the allegations and the findings of fact.

The length of an inquiry is the result of a combination of factors. Some of these factors are related to the very nature of an inquiry, others are related to the circumstances of a particular inquiry (these are normally identified in inquiry reports), and some relate to factors external to the inquiries. Examples of these factors include the following:

- An inquiry is a complex, impartial and objective process that is meant to balance the rights and privileges of the Senate to discipline its own members and the right of individual senators to a fair process.
- The *Code* requires that senators who may be the subject of an inquiry be given information and reasonable opportunities to make representations at various stages of the inquiry process. Senators who are the subject of an inquiry and other participants to an inquiry can be, and often are, represented by counsel. The inquiry process established by the SEO must be fair and follow due process. Giving senators a reasonable time and multiple opportunities during the various stages of an inquiry to make representations lengthens the time required to complete the process.
- An inquiry is a process for gathering evidence and facts, testimony and documents against which the provisions of the *Code* will be applied. Gathering these should be, but is often not, a straightforward process. The scheduling of witnesses depends on the availability of senators and others who, due to the parliamentary calendar, are sometimes unavailable during parliamentary breaks, which sometimes extend for months at a time. Information and documents, both written and electronic, should be made readily available without delay and without raising questions but, often, they are not. The time required to establish contacts with witnesses and to obtain documents may be lengthy. In addition, the evidence obtained throughout the course of an inquiry may lead to the need to interview more witnesses and to obtain and assess additional documents and evidence.



- The Office of the SEO was created in 2005. The first inquiry was initiated in 2013. Up until 2014, the *Code* was singularly focused on conflicts of interest. In 2014, the *Code* was amended to add broad ethics rules (sections 7.1 and 7.2). The number of inquiries, while still limited in number, started to increase at that time as did their complexity.

Other Rules and Laws

The SEO's jurisdiction is limited to the *Code*. The *Code* however is not the only set of rules that governs the conduct of senators. Senators are subject to a number of other rules and laws, which are outside the purview of the SEO.

Senators are subject to the *Senate Administrative Rules* and other Senate policies and directives relating to the proper allocation and use of Senate resources. These rules, policies and directives are within the jurisdiction of the Standing Senate Committee on Internal Economy, Budgets and Administration.

Senators are also subject to section 16 of the *Parliament of Canada Act*, which prohibits senators from receiving or agreeing to receive outside compensation, whether directly or indirectly, for services rendered or to be rendered to any person, either by the senator or another person, in relation to any matter before the Senate or the House of Commons or any of their committees, or for the purpose of influencing or attempting to influence any member of either House.

In addition, sections 119, 121 and 122 of the *Criminal Code* are other examples of laws that apply to senators relating to the misuse of a public office. Section 119 deals with offences that relate to bribery. Section 121 concerns frauds on the government and is aimed, in part, at influence peddling. Section 122 creates offences relating to fraud and breach of trust.

Independence of the Senate Ethics Officer

The SEO is an independent, non-partisan Officer of the Senate. This independence is essential in order to ensure public confidence and credibility in the Senate ethics and in the conflict of interest regime. A number of provisions of the Act and of the *Code* confer this status of independence and autonomy on the SEO, including the provisions in the Act concerning the appointment process, the security of tenure, financial autonomy, and the management of the Office.

For example, the Act ensures that the SEO alone has “the control and management of the Office”. In fact, the Office is a separate employer distinct from the Senate and does not fall under its jurisdiction. It provides that the SEO is responsible for preparing the estimate of the budget for the Office. This estimate is separate and apart from the estimates of the Senate. The estimate of the SEO is provided to the Speaker of the Senate who, after considering it, transmits it to the President of the Treasury Board who, in turn, lays it before the House of Commons with the estimates of the Government for the fiscal year.

The independence of the SEO in respect of opinions and advice given to individual senators is also clear and is expressly provided for in the *Code*. This independence also applies to any preliminary review, inquiries and any inquiry reports.

These, and other provisions, ensure that the SEO is able to carry out his functions in an impartial manner, free from any outside influence or coercion.



Provisions of the *Parliament of Canada Act* on the independence of the Senate Ethics Officer

- The SEO is appointed by the Governor in Council, by Commission under the Great Seal, after consultation with the leader of every party in the Senate and after approval of the appointment by resolution of the Senate. This is to ensure that the appointment has the broadest support of the Senate, irrespective of political party line. The SEO has the same privileges and immunities as senators.
- The SEO is appointed for a term of seven years as an Officer of the Senate and may be removed from his or her Office only for cause, by the Governor in Council, on address of the Senate. These provisions again confer on the SEO a status of independence and autonomy and they provide an effective shield against improper or inappropriate influence.
- The SEO has the rank of a deputy head of a department of the Government of Canada and has the control and the management of the Office, which he or she runs independently from the Senate and its Internal Economy Committee. The SEO hires his own staff.
- The SEO has the responsibility for preparing the estimate of the sums required to pay the charges and expenses of the Office. This estimate is separate from the estimates of the Senate. The Speaker of the Senate, after considering the estimate, transmits it to the President of the Treasury Board who lays it before the House of Commons with the estimates of the Government for the fiscal year. The Senate reviews the SEO's proposed budget as a part of the annual review of the Main Estimates. This procedure ensures the independence of the SEO and places the responsibility for the estimate of the Office on the SEO. It also emphasizes the direct relationship that Parliament has established between the SEO and the Senate itself, to which the SEO ultimately reports.
- The SEO is required, within three months after the end of each fiscal year, to submit a report of his or her activities to the Speaker of the Senate, who must table the report in the Senate.



THE YEAR IN REVIEW: 2019-20

During the course of 2019-20, the SEO delivered on his mandate by providing opinions and advice to senators, administering the Annual Disclosure Process and conducting preliminary reviews and inquiries. In addition, the SEO engaged in outreach activities with senators, including newly appointed senators and retiring senators, the media, the public and officials and organizations who have an interest in ethics and conflict of interest.

Opinions and Advice

Senators are encouraged at any time to consult the SEO on any concerns or questions relating to their obligations under the *Code* in order to promote continued compliance with the *Code*.

The SEO responds to these requests as promptly as their nature, complexity and the workload permit. Some requests may require more research and consideration than others. The opinions and advice are kept confidential, unless the senator who made the request decides to release them to the public or provides his written consent for the SEO to release them.

Senators continue to reach out to the SEO and to the Assistant SEO and General Counsel for advice and opinions, as well as to ask for clarifications and to raise questions concerning their obligations under the *Code*. This year, the SEO and the Assistant SEO provided 269 verbal and written opinions and advice to senators.

Annual Disclosure Process

Every year on the anniversary date of their nomination, senators are subject to a disclosure process (Annual Disclosure Process), whereby they must disclose to the SEO, by means of a Confidential Disclosure Statement, information relating to their particular circumstances, such as their activities outside of the Senate and those of their spouse (e.g. their employment and any director or Officer positions in for profit or not-for-profit organizations), as well as their income, assets and liabilities, and those of their spouses.

Upon receiving the Confidential Disclosure Statements, the SEO will review the information and provide senators with a written opinion or advice relating to their particular circumstances. Following this review, the SEO will prepare a Public Disclosure Summary containing information related to a senator, which is required to be published under the *Code*. Senators must examine the information and sign the Public Disclosure Summary prior to the document being placed in the Public Registry. As part of this process, senators must also sign a Statement of Compliance confirming that they have read the *Code* within the last 30 days, and that they are, to the best of their knowledge, in compliance with the *Code*.

At any point during this Annual Disclosure Process, should the SEO have questions related to the information in a senator's Confidential Disclosure Statement, he may request clarifications from a senator. There may be more than one such request made to a senator. Each time a request for information is made, a senator has 30 days to respond to the SEO. This may have an impact on the overall processing time for a Confidential Disclosure Statement.

Fiscal Year 2019-20 was the first year when senators were required to file their statements on the anniversary dates of their nomination. This meant that the filing of statements and the related work and analyses were carried out throughout the entire fiscal year. On average, this resulted in a more rapid processing of statements.



As of March 31, 2020, the Annual Disclosure Process was completed for 86 senators (or 87.8%). Files for 12 senators (or 12.2%) remain outstanding. These are primarily senators whose anniversary appointment dates are in late March. These numbers do not include the newly appointed senators whose obligation to file falls after March 31, 2020 and senators who retired in the course of the year. Comparatively, in 2018-19, as of March 31, 2019, the process was completed for 84 senators (83%) with 17 (17%) outstanding files. In 2017-18, the respective numbers were 57 senators (65%) and 31 outstanding files (or 35%).

The SEO also responded to 31 requests for clarification from senators related to the Annual Disclosure Process. This has decreased substantially from last year's total of 104. This significant decrease seems to indicate a net improvement on senators fully completing their Confidential Disclosure Statements.

Over the course of the year, senators must also report to the SEO any sponsored travel or gifts they received, as well as changes to their Confidential Statements. In addition, they are required to report any Declarations of Private Interests in the Senate or in committees when they have reasonable grounds to believe that they or their family members have a private interest that might be affected by a matter that is before the Senate or a committee of the Senate in which they are members.

This year, there were no Statements of Gifts and Other Benefits. There were 34 Statements of Sponsored Travel, a number similar to that for last year. There was 1 Declaration of a Private Interest. Finally, there were 29 Statements of Material Change throughout the year, 5 more than last year.

Preliminary Reviews and Inquiries

This year, the Office completed one preliminary review that was in the public domain concerning Senator Pierre-Hugues Boisvenu and two inquiries, one of these concerning former Senator Don Meredith and the other concerning Senator Victor Oh. All three of these cases involved the broader ethics provisions of the *Code* (sections 7.1 and 7.2), though the inquiry concerning Senator Oh also involved some of the conflict of interest provisions. The SEO was also mandated by the Senate to implement some of the recommendations of the Committee following the Inquiry Report concerning Senator Beyak.

As of March 31, 2020, there are no ongoing preliminary reviews or inquiries.

I also received eight requests from senators to conduct inquiries concerning allegations of violations of the *Code*. After a careful consideration of these requests, I did proceed with a preliminary review on Senator Boisvenu following the two requests made against him. I otherwise did not proceed to preliminary reviews following the other complaints for different reasons depending upon the case.

In one case, the senator requesting an inquiry failed to properly identify an alleged non-compliance under the *Code*. In a further case, the complaining senator failed to properly identify reasonable grounds to believe the senator in question had not complied with his obligations. In four other cases, I did not proceed with them due to the fact that I did not have jurisdiction to address these matters under the *Code*.

The details of the six complaints that did not result in a preliminary review are required to remain confidential under the *Code*.



Preliminary Review – Senator Boisvenu

The preliminary review involving Senator Boisvenu concerned allegations that Senator Boisvenu had breached his obligations under the *Code* because he had engaged in a pattern of involvement with online groups that promote and proliferate content known to be racist, discriminatory and hateful.

I initiated this preliminary review on August 20, 2019, after I received separate complaints from two senators. This review was completed on December 19, 2019 when I released my preliminary determination letter, which set out my findings and conclusions in the matter.

In this case, I concluded that, though an obligation under the *Code* might have been breached, the situation had been remedied to my satisfaction. Senator Boisvenu had expressed a sincere apology and had already taken a number of remedial measures to prevent the reoccurrence of a similar situation. As such, it was not necessary to proceed to an inquiry.

Inquiry – Former Senator Meredith

The inquiry involving former Senator Don Meredith concerned a workplace assessment report of his Senate Office that was commissioned by the Steering Committee of the Standing Senate Committee on Internal Economy, Budgets and Administration. The inquiry involved allegations of breaches of the *Code* concerning harassment, sexual harassment and abuse of authority.

This inquiry had been suspended on May 10, 2017 upon the resignation of Senator Meredith from the Senate. On June 21, 2017, in its Third report, the Committee directed my predecessor to resume this inquiry. On December 1, 2017, I again suspended this inquiry at the request of another authority. On April 12, 2018, the inquiry was resumed for a second time. The inquiry was completed on June 28, 2019.

In this case, I found that former Senator Meredith had engaged in behavior that constituted both harassment and sexual harassment. This behavior did not uphold the highest standards of dignity inherent in the position of a senator. Moreover, the former senator had acted in a way that reflected adversely on the position of a senator and of the Senate. Finally, to the extent that his conduct constituted harassment, both of a non-sexual and of a sexual nature, it was undignified, dishonourable and he acted without integrity in the way that he managed and dealt with his Senate staff.

Inquiry – Senator Oh

The inquiry involving Senator Victor Oh concerned certain allegations that Senator Oh breached the *Code* in relation to a trip he took to Beijing and Fujian Province, China in April 2017. The inquiry was completed on February 18, 2020.

In this case, I found that Senator Oh had breached the *Code* by accepting payment from his sister for a trip that had a substantial official component. I also concluded that Senator Oh had breached the *Code* when he accepted a dinner hosted by a commercial airline during the trip and when he accepted two dinners hosted by a private equity firm, all of which are prohibited gifts and benefits under the *Code*. Finally, I also found that Senator Oh had failed to uphold one of the principles of the *Code* by intentionally failing to maintain a clear separation between the personal and private part of his trip on the one hand, and the official part of it on the other.



Follow-up - Senator Beyak Report

Finally, in Recommendation 3 of its Fifth Report to the Senate, dated April 30, 2019 (which concerned my inquiry report involving Senator Beyak), the Committee recommended to the Senate that I be required to pre-approve an educational program for Senator Beyak to complete as part of the disciplinary measures that had been recommended by the Committee as a result of her failure to uphold some of her obligations under the *Code*. The program was required to relate to racism towards Indigenous peoples in Canada and the history of Crown-Indigenous Relations. The Committee also mandated that I monitor Senator Beyak's participation in the program and report back to it on her attendance and performance. The Report was adopted by the Senate on May 9, 2019.

I fulfilled the mandate conferred on me by the Senate by reporting to the Committee on June 20, 2019. Following this, in a letter dated July 23, 2019, the Committee asked me to continue monitoring further training to be taken by Senator Beyak. I reported back to the Committee on this additional training on October 8, 2019 and again on October 22, 2019.

Subsequent to this, in its First Report of the new 43rd Parliament, dated January 31, 2020, the Committee again recommended to the Senate that Senator Beyak take further training to guide her conduct in relation to racism, particularly related to Indigenous issues stating that a "successful completion of such a program is necessary for her continued presence in the Senate." Recommendation 2 of the Committee's First Report outlined my continued involvement in this matter. It required that I identify and approve an educational program provider with a number of qualifications explicitly set out in the Report and that I also approve an educational program related to racism -- especially towards Indigenous people, related to the role of a legislator in that context and related to the past actions of Senator Beyak. It required that I report back to the Committee on this within a certain time frame. The First Report was adopted by the Senate on February 27, 2020. As of March 31, 2020, I am continuing to fulfill this mandate conferred on me by the Senate, which is outside the mandate provided to me under the *Code*. The Senate has the discretion to confer such additional mandates on me and my Office.

My Office and I have expended considerable efforts on the various complaints, the preliminary review and the inquiries during the course of the year, in addition to the follow-up mandates related to the training of Senator Beyak.

Outreach and Best Practices

Outreach to Senators

The SEO regularly meets individually with senators to discuss the *Code* in order to give senators the opportunity to raise concerns or in order for the SEO to provide feedback on a number of issues, including questions related to the particular circumstances of senators. As of March 31, 2020, the SEO had 39 individual meetings and 68 organized phone consultations with senators.

The SEO continues to meet all new senators upon their appointment. This year, three senators were appointed to the Upper Chamber, a substantial decrease from the 16 senators who were appointed in the last fiscal year. The SEO briefed the new senators in person on their obligations under the *Code*, including their responsibility to file an initial Confidential Disclosure Statement within 120 days of their appointment, and annually thereafter. The SEO provided advice on the particular circumstances of these senators and answered their questions. Senators were informed of the need to disclose to the SEO during the year any changes to their Confidential Disclosure Statement within the timeline prescribed by the *Code*. They were also made aware that the *Code* requires that certain information be publicly released.

In addition to the briefing of the SEO, new senators are provided with an information package, which includes a copy of the *Code*, general guidance on certain sections of the *Code*, some common questions and answers, as well as the relevant forms.



While only three new senators were appointed to the Senate this past year, eight senators left the Senate on or prior to their mandatory retirement age of 75. In the case of senators who cease to be senators, the *Code* requires the SEO to retain all documents relating to them for a period of 12 months. These documents are destroyed after this period, unless there is an investigation or inquiry in progress or charges have been laid against a senator, in which case they will be destroyed 12 months after the final disposition of all proceedings.

While public documents relating to senators who cease to be senators are forwarded to the Senate archives, confidential documents may be returned to senators at their request, rather than being destroyed. The SEO systematically sends a letter informing retired or former senators of these provisions of the *Code*, and asks them whether they wish their confidential documents be returned to them or destroyed.

Media and the Public

The Office frequently receives requests from the media and comments from the public.

The public generally raises complaints concerning senators, requests inquiries and asks that sanctions be imposed on certain senators. Over the past year, the main area of concern from the public remained the behaviour of certain senators, particularly their use of social media and the statements they make publicly. Media requests this year focused primarily on ongoing inquiries and the inquiry process and, to a lesser degree, on the Annual Review Process.

It should be noted that the *Code* does not provide a formal complaint mechanism for the general public. However, the SEO always welcomes and carefully considers all feedback and information from the public as well as from the media.

If the SEO has reasonable grounds to believe that a senator has not complied with his or her obligations under the *Code*, he may self-initiate a preliminary review which may lead to an inquiry. This is, in fact, what happened with the Oh Inquiry. Following the publication of some articles in the *Globe and Mail*, the SEO initiated a preliminary review, which later became the Oh Inquiry and which has been reported on in this annual report.

Even if the SEO does not initiate a preliminary review as a result of a media or public complaint, the SEO may provide advice to a senator on his obligations under the *Code*.

Members of the public often expect the SEO to inform them on the follow up he does pertaining to their requests. The media also often seek information concerning the circumstances of particular senators or the status of an inquiry. Unfortunately, the *Code* imposes strong confidentiality obligations on the SEO and his Office that preclude the SEO from commenting or providing information on individual senators. This includes informing others about the actions he takes in relation to each complaint or providing a status update on an inquiry. The only exception in terms of confidentiality with respect to an inquiry is that the SEO may officially acknowledge its existence if he believes it is in the public interest to do so and he has done so in the past.

The Office continues to respond to requests for information from senators, their staff, the media and the general public as promptly as circumstances permit. The number of requests for information varies each year. The Office responded to approximately 21 requests from the media this year compared to 53 requests last year and 90 requests the year prior to last year. It received approximately 72 comments and requests from the public, compared to 114 last year and 60 the year before last year.



Best practices

The Office participates in seminars, conferences and events in order to exchange information about ethics and conflict of interest with other experts in the field, to remain current on recent developments in these areas and to educate and inform others on the work of the Office and of the *Code*.

The Office was represented at the annual conference of the Canadian Conflict of Interest Network (CCOIN). This year, the conference was held in Regina, Saskatchewan, in September 2019. CCOIN is a key organization in the area of ethics and conflict of interest related to members of legislative bodies. It is comprised of the various ethics and conflict of interest commissioners across the country. CCOIN not only provides a useful resource for sharing information and practices, but it is also a key resource throughout the year for ethics and conflict of interest commissioners to seek members' views and information on related issues.

In April 2019, the SEO welcomed to Ottawa a working group of parliamentary ethics commissioners from Francophone countries tasked by the "Assemblée parlementaire de la Francophonie" to create a « Réseau francophone de l'éthique et de la déontologie parlementaires » to support the "Assemblée" and its members in relation to ethics. In October 2019, the SEO attended a series of meetings hosted by the "Parlement de Wallonie" where the Réseau was officially created. The Office became one of its founding members.

The SEO attended the Council on Governmental Ethics Law (COGEL) international conference in December 2019 in Chicago. COGEL members work in the fields of government ethics, elections, lobbying, and campaign finance across North America.

Budget and Administration

The SEO has focused considerable efforts this year on improving the Annual Disclosure Process to achieve greater efficiency. The Office transitioned to a staggered annual disclosure process. This resulted in a better distribution of work and a better use of resources while enhancing the timeliness and efficiency of the process.

The Office is a small one with limited personnel. With the exception of one additional position in recent years, the same number of employees as in 2005 has had to conduct inquiries (there were no inquiries prior to 2013) while continuing to deliver on the SEO core mandate. The resources of the Office are seriously strained when more than one inquiry or major project is underway.

The Office continues to rely on the Senate Administration for the provision of security, finance, information technology and human resources services under a cost-recovery agreement. These services are provided to the Office under the direction of the SEO, not of the Senate.

For the year 2019-20, the Office's total budget was \$1,357,010. The actual expenditures were \$1,146,773. An important portion of the operating budget of the Office is to augment the operational capacity of the Office if and when there is a surge in work required as a result of inquiries or major projects. This, and prudent management, explains why our budget was not fully expended last year.

The Office's financial statements for the year 2019-20 are audited by the firm KPMG. They form part of the Public Accounts. The financial statements are posted on the Office's website once their audit is completed.



The Year in Numbers

0	Statements of Gifts or Other Benefits
34	Statements of Sponsored Travel
1	Declarations of Private Interests
29	Statements of Material Change
2	Inquiries
1	Preliminary Reviews
8	Formal Complaints by Senators
21	Media Requests
81	Public Requests and Comments
269	Opinions and Advice



COMMENTARY

The necessary restrictions placed on me by the nature of the Office and the *Code* leave me few opportunities to comment on the development of the Office, the development of the *Code* itself, and the advice as it evolves regarding senators' obligations under the *Code*. This section is one of those rare opportunities.

Development of the Office

In the over two years that I have carried out the role of the Senate Ethics Officer, I have had the opportunity to examine and think about the position of SEO and the Office, how they were created and the image the Office has developed over the 15 years that it has existed. I have also had the opportunity to think about how we provide services and the tools that we use to provide them.

For instance, it is clear that our brand, our image and our tools are dated. They have not been updated since the Office was first established in 2005. As such, in December of 2019, my Office began the exercise of reviewing our branding and the tools we use to provide services.

The objective of this exercise is to make changes that will ensure we are reflecting a more dynamic and responsive organization that fulfills its mandate effectively and efficiently inspiring confidence and trust on the part of senators and the public at large.

This is the first annual report that reflects our new branding. Other visible changes will follow in the weeks and months to come.

As part of this renewal exercise, we are updating our communications tools, including and especially the Office's website. We are also adopting new ways of communicating with both senators and the public. With respect to the Office website, we are reconstructing it to ensure that it is more accessible and useful, more transparent, more informative and more readable. We are working on providing more up-to-date information with common questions and answers to assist people in better understanding the *Code* and how it is applied in different circumstances. Past annual reports used to include a Qs & As section. You will not find it in this annual report. Instead, we will develop an extensive series of Qs & As that will appear on our website. They will be more accessible and will be found in one place and they will be more relevant as we will update them regularly. We also intend to make the Public Registry found on the Office's website searchable. These will provide greater transparency on the application of the *Code* and the operation of the Office.

A number of other changes have taken place this past year that have enhanced the ability of the Office to carry out its work more efficiently. One of these was to move from a disclosure process that took place in the fall months every year to one that is staggered throughout the year. The anniversary date of appointment of each senator is the new date on which the annual review for that senator is triggered. This has improved the Office's ability to process these files more quickly and more efficiently since they need not all be completed at the same time.

The Office is also working on a new electronic filing system, which will help increase research capability in order to quickly and accurately identify precedents from past years. Information will be more easily retrieved and will be able to be filed more efficiently as well. In addition to increased research capability and efficiency, a better electronic filing system will be more environmentally friendly while lowering costs.



The Future of the *Ethics and Conflict of Interest Code for Senators*

On August 12, 2019, the Committee tabled its Seventh Report concerning changes to the *Code*. This was a comprehensive report that included a history of the *Code*, recommendations that do not require changes to the *Code*, recommendations for changes to the *Code*, as well as issues requiring further study and consideration by the Senate. Though it has not yet been adopted by the Senate, I would like to highlight a few issues raised in the report that are particularly noteworthy.

The issue of transparency was a central feature of the report. Among the recommendations that do not require changes to the *Code*, the report highlighted the need for more information about the *Code* and its application to specific cases for both senators and the public. It recommended the publication of educational materials and guidelines. It also encouraged the SEO to continue public outreach activities. In its report, the Committee also encouraged annual or bi-annual meetings between senators and myself, though it did not propose a specific obligation to ensure periodic meetings. As a general practice, I regularly meet with senators, both in person and *via* telephone, in order to raise issues, questions and obtain information. I also meet with all new senators shortly after their appointment to the Senate in order to introduce myself and to provide them with some general information about the *Code* and their obligations under it. My Office and I have also been engaged in outreach activities from the outset of my appointment.

I welcome these recommendations by the Committee for more information on the *Code*. As discussed earlier, my mandate requires me to maintain a high level of confidentiality. I am constrained by the confidentiality provisions of the *Code* in publishing details about the advice I provide to senators and my interpretations of the *Code* in relation to specific sets of facts, and this makes sense.

The publication of general guidelines to assist senators and the public in better understanding the *Code* requires that I first seek the approval of the Committee. These are guidelines that do not refer to any one senator or his or her particular circumstances and do not lead to the identification of any particular senator. The confidentiality rules and controls over the materials that my Office is permitted to publish may have left the mistaken impression that we are deliberately reticent in providing information to the media and to the public. This is not true. My Office provides as much information as is permissible under the *Code*.

I welcome the opportunity to publish guidelines for senators and the public on our website, as well as examples of typical and common cases and how the rules apply in those circumstances, in order to increase transparency, knowledge and understanding about the *Code* and its application. Further to these recommendations, my Office has started to draft guidelines on a number of topics of immediate interest to senators and the public. When ready, the guidelines will be submitted to the Committee for its approval and then posted on our website.

This annual report and its new format, with additional information, is also an attempt to shed more light on the work that the Office does, as well as on my views regarding various issues that may be of interest to senators and to the public. These new approaches to disseminating information all tie in with the Office's emphasis on modernizing our communication tools with the aim of being as transparent as possible. There will be numerous changes in this regard in the coming year and I look forward to sharing new developments in these areas in the future.

A further issue raised in the Committee's Seventh Report concerns parliamentary privilege and how the *Code* operates within the principles that apply in this regard. The Committee emphasized the importance of ensuring that senators understand the limits of parliamentary privilege in relation to their activities under the *Code* and in their engagements with my Office.



The *Code* operates within the context of parliamentary privilege but, as I have already noted in one of my inquiry reports, parliamentary privilege should be invoked as minimally as possible with respect to the proceedings in an inquiry. It is important that the results of these enforcement proceedings are based on a complete and comprehensive consideration of all the relevant evidence. In short, the concern inherent in the Committee's recommendation is that parliamentary privilege not be used to shield evidence that could be material to an inquiry. This will ensure that senators are able to carry out the important role that the Senate has as a body of regulating the conduct of and disciplining its members.

There are many other issues raised in the Report that are important and I look forward to senators discussing and debating these matters in the Senate.

Advice to Senators in Fulfilling their Obligations under the *Code*

The expectations of Canadians towards senators and their ethical behavior will always increase. The complaints I receive from the public against senators is evidence of that. Moreover, the work done by my Office virtually ensures that the obligations of senators under the *Code* will also evolve if only because of its interpretation. Preliminary reviews and inquiries look at new facts and different circumstances and realities. Often from these, new understandings develop that lead to new practices and interpretations that senators should be aware of and that they should integrate in their daily habits in order to remain in compliance with the *Code*.

Over the course of this year, a number of issues arose in which it became important to make certain observations about the *Code* and senators' obligations. I did so in some of the reports that have been published by my Office but I think they are significant enough that they are worth repeating in this annual report.

I have already mentioned above that, in one inquiry report, I raised the issue of the use of parliamentary privilege in the context of inquiries and invited senators to reach a balanced view between the use of that privilege and the need to disclose information in the course of an inquiry. I am encouraged to see that many senators have initiated a debate on this issue.

One of the issues that arose in the context of a preliminary review concerns senators associating with groups, whether online or offline. While this may be positive and desirable in some instances, it also carries some risks. Senators must be careful to prevent their names and the Office of senator from being used in an inappropriate and improper manner. In order to do this, senators must act responsibly by taking certain precautions, for example, maintaining control over group affiliations and social media contacts and regularly reviewing these to ensure that the associations, organizations and other contacts do not promote and proliferate content that is discriminatory or hateful. Associating with such content could bring the Senate as an institution into disrepute.

Another issue arose in the context of an inquiry concerning sponsored travel. It shed light on the importance of clearly identifying who is paying for the trip in a case where a senator's travel is being sponsored by an entity or person. This is key in order to determine whether the trip qualifies as permissible sponsored travel or not. Moreover, the obligation to identify the payer rests with each senator taking the trip and this obligation to undertake due diligence cannot be delegated to any other senator even if their trip is also being paid for by the same entity or person. Each senator is responsible and accountable for his or her own obligations under the *Code*. It is important that I remind senators that the obligations are held individually, not collectively. If senators are uncertain about how the rules apply to their particular circumstances, they are expected and most welcome to contact my Office and seek advice rather than to rely on other senators for advice or to make decisions for them.



A further observation that resulted from one of the inquiries is that senators who accept sponsored travel would be wise to keep proper records, including those concerning who paid for trips, how much they paid, when payments were made, and any agreements concerning reimbursements. This would avoid unnecessary complications should an issue regarding that trip arise.

Also, with respect to sponsored travel, I note that in the Seventh Report mentioned above, the Committee recommended that senators debate the issue of sponsored travel, which is one exception to the prohibition in the *Code* on senators receiving gifts and other benefits. I welcome this important recommendation.

Finally, I cannot emphasize enough the importance of senators fully cooperating during an inquiry. I consider a deliberate failure to do so as being directly related to a senator's obligation to uphold the highest standards of dignity and to act with integrity, honour and dignity when acting in the course of their parliamentary duties and functions. The public must have confidence that senators will act with the highest degree of dignity, integrity and candour, particularly in relation to inquiries by my Office into potential violations of the *Code*.

Appendix

Summary of key obligations of senators in the context of the ***Ethics and Conflict of Interest Code for Senators***



SUMMARY OF KEY OBLIGATIONS OF SENATORS IN THE CONTEXT OF THE *ETHICS AND CONFLICT OF INTEREST CODE FOR SENATORS*

- Senators are required to give **precedence to their parliamentary duties and functions** over any other duty or activity.
- Senators are expected to arrange their private affairs so that **foreseeable real or apparent conflicts of interest may be prevented from arising**, and, if such a conflict does arise, to resolve it in a way that protects the public interest.
- Senators are required to **uphold the highest standards of dignity** inherent to the position of senator.
- Senators must refrain from acting in a way that could **reflect adversely on the position of senator or the institution of the Senate**.
- Senators must **perform** their parliamentary duties and functions **with dignity, honour and integrity**.
- Senators may not act in any way to further their **private interests**, or those of their family members, or to improperly further another person's or entity's private interests when performing parliamentary duties and functions.
- Senators may not use their position to **influence** a decision of another person in order to further their own private interests, or those of their family members, or to improperly further another person's or entity's private interests.
- Senators may not use **information that is generally not available to the public** to further their own private interests, or those of their family members, or to improperly further another person's or entity's private interests.
- Senators are required to make a **declaration**, orally or in writing, when they have reasonable grounds to believe that they or their family members have a private interest that might be affected by a matter that is before the Senate or a committee of the Senate in which they are members. They may not participate in debate on that matter, nor are they permitted to vote, though they may abstain. In the case of committees, senators must also withdraw from the proceedings. With respect to senators who are only participating in committee proceedings, but are not formal members, they too must refrain from participating in debate on any matter in which they have reasonable grounds to believe they have a private interest and they too must withdraw from the proceedings in question.



- Senators may not accept, nor may a family member accept, **any gift or other benefit** that could reasonably be considered to relate to their position, except as permitted under the *Code*. Gifts, benefits and sponsored travel that are acceptable under the *Code* must be declared to the Senate Ethics Officer if they exceed \$500 in value and these must be publicly declared.
- Senators may not be parties to, or have interests in corporations or partnerships that are parties to, **contracts with the Government of Canada** under which they receive a benefit, unless specifically authorized by the Senate Ethics Officer.
- Senators must file a **Confidential Disclosure Statement** with the Senate Ethics Officer on an annual basis disclosing their private interests, and those interests that are required to be publicly disclosed under the *Code* are then made public *via* the Office website and also in paper format at the Office of the Senate Ethics Officer.
- Senators must file a **Statement of Compliance**, annually, confirming that they have read the *Code* within the last 30 days and that, to the best of their knowledge and belief, they are in compliance with the *Code* as of the day the statement is filed.
- Senators must report to the Senate Ethics Officer any **material change** to the information in their Confidential Disclosure Statements, within the prescribed time.
- Senators must **cooperate** with the Senate Ethics Officer with regard to **any preliminary review and any inquiry**, and **respect their confidentiality**.



Office of the
Senate Ethics Officer

Bureau du
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en éthique