

OFFICE OF THE SENATE ETHICS OFFICER



Annual Report 2018-2019

Annual Report of the Senate Ethics Officer 2018-2019

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Senate Ethics Officer



Conseiller sénatorial en éthique

June 28, 2019

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 fourteenth 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, 2018 to March 31, 2019.

Yours sincerely,

A handwritten signature in blue ink, consisting of a large, stylized 'P' followed by a horizontal line and a small vertical stroke at the end.

Me Pierre Legault

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I. MESSAGE FROM THE SENATE ETHICS OFFICER

This is my second annual report and the first one covering an entire fiscal year since my appointment as Senate Ethics Officer (SEO) in January 2018.

My first role is to provide advice, information and guidance to Senators on the *Ethics and Conflict of Interest Code for Senators* (the *Code*).

My second role is to administer the annual disclosure process whereby Senators have to declare certain information to me on an annual basis. The end result of this process is a Public Disclosure Summary which is published on my Office's website.

These first two roles relate to the preventive part of my mandate. It is always better to prevent conflicts of interest from arising rather than addressing them once they have arisen. Enforcing the *Code* including by conducting preliminary reviews and inquiries when there is an alleged breach of the *Code* constitutes my third role.

Over the past fiscal year, concerns have been expressed regarding the length of time required to complete inquiries. There is no doubt that inquiries should be conducted in as short a time as possible. In fact, the *Code* requires that the SEO conduct inquiries as promptly as circumstances permit. I am pleased to elaborate further on some of these circumstances in this annual report to provide a better understanding of the inquiry process.

During 2018-19, in order to help alleviate the impact of some of the issues mentioned in this report, my Office worked on a project to introduce a staggered annual disclosure process based on the appointment dates of senators rather than a fixed date for all senators. This should result in a more efficient use of our resources spread over the whole year and should free resources that can then be allocated to inquiries and other projects. This new process started on April 1st, 2019.

I have also realigned some of the roles and responsibilities and taken staffing actions that should improve our capacity to deliver on all aspects of our mandate.

We have, of course, provided advice to senators on a continuous, daily basis with a view of preventing conflicts of interest from arising. I am pleased to report that a great number of senators consulted me and my Office as they keenly wished to respect both the letter and the spirit of the *Code*.

Once again this past year, a high number of new senators were appointed. I place great importance in explaining to new senators their obligations under the *Code* and in assisting them in their transition from their private life to the public life of a senator, insofar as the *Code* is concerned.

At the time of the writing of this report, the 2018-19 annual disclosure process is almost completed for the vast majority of senators with a significant improvement in overall

processing time, and their public disclosure summaries have been published on my Office's website.

I provided my inquiry report on Senator Beyak to the *Senate Standing Committee on Ethics and Conflict of Interest for Senators* on March 19, 2019. Two inquiries, one concerning former Senator Meredith and one concerning Senator Oh, were still outstanding as of March 31, 2019. No new preliminary reviews or inquiries were initiated in 2018-19.

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 remain grateful to the employees of my Office for their support.

II. MANDATE OF THE SENATE ETHICS OFFICER

The Office of the Senate Ethics Officer (OSEO) was established under the *Parliament of Canada Act*. The Senate Ethics Officer (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 proper conduct may be addressed by an independent, non-partisan officer. It was adopted by the Senate in May 2005, and was revised in 2008, in 2012, and twice in 2014. The *Code* is a document that is distinct from, but of equal standing to, the *Rules of the Senate*.

It should be noted that the SEO may receive general directives from the Standing Committee on Ethics and Conflict of Interest for Senators (the Committee) on the interpretation, application, and administration of the *Code*, but not as it relates to the circumstances of a particular senator.

A. Three Major Functions

The mandate of the SEO includes three major functions: (i) providing opinions and advice to senators; (ii) administering the disclosure process; and (iii) conducting preliminary reviews and inquiries.

(i) Opinions and Advice

One of the SEO's functions is to provide advice and guidance to senators with respect to the *Code*, in particular, assisting 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.

Subsection 42(4) of 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 under section 31 of the *Code*.

This advisory function is recognized by many Canadian ethics and conflict of interest commissioners to be 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 the application may not be so clear.

Senators are encouraged to seek advice before acting, and to avail themselves of the advisory services of the SEO in order to effectively prevent ethics and conflict of interest issues. 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.

(ii) The Annual Disclosure Process

The SEO is also responsible for administering the annual disclosure process, which begins in the fall of each year. This is a process that is regarded as 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.

Subsections 27(1) and (2) of the *Code* provide that senators are to file, on an annual basis, a confidential disclosure statement on a date that is established by the SEO with the approval of the Committee. Newly appointed senators must file their statements within 120 days after being summoned to the Senate [subsection 27(3)].

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 activities and financial interests of their spouses or common-law partners. Subsection 28(1) 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 with formulating useful advice.

The Office of the SEO also prepares a public disclosure summary for each senator based on the information that was provided in the senator's confidential disclosure statement. Section 31 of the *Code* sets out the list of interests that must be publicly disclosed. Again, this list includes notably 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.

Senators are then required to review their public disclosure summaries, sign and return them to the OSEO. These summaries are then placed in both a paper public registry located in the Office, as well as 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 file annually, pursuant to subsection 45(1) of the *Code*, 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 and public disclosure processes. 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 of SEO within 30 days after any material changes occur in their circumstances [subsection 28(6)]. These forms are included within each senator's public disclosure file, where the contents pertain to information set out in section 31 of the *Code*.

In addition, senators must file a statement of gifts or other benefits with the SEO for any gifts, 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, in accordance with paragraph 31(1)(k). 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 [subsection 17(1)] concerning senators receiving gifts and other benefits that could reasonably be considered to relate to a senator's position [subsection 17(2)].

Similarly, sponsored travel that falls under subsection 18(1) must be reported in a statement which forms part of a senator's public disclosure file, if the travel costs exceed \$500 [paragraph 31(1)(k)].

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 their public disclosure files, under paragraph 31(1)(j) of the *Code*.

(iii) 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. The following first discusses the process regarding preliminary reviews and inquiries and then offers some general observations on inquiries.

Process

First, the SEO must conduct a preliminary review, which is distinct from an inquiry, under subsection 47(2) of the *Code* if he or she (a) has reasonable grounds to believe that a senator has not complied with his or her obligations under the *Code*; or (b) 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, identify the alleged non-compliance and the reasonable grounds for the belief the *Code* has not been complied with.

The SEO has to 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 subsection 47(5) of the *Code*. Nevertheless, 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, pursuant to subsections 47(16) and (17). 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 [subsections 48(17),(18) and (19)].

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

Second, subsection 48(2) of the *Code* provides that the SEO must conduct an inquiry in either of the following circumstances: (a) where the SEO determines that an inquiry is warranted after conducting a preliminary review; or (b) 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 access to information on 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 [subsection 48(9)].

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

The SEO may seek information and documents from the senator, the witnesses and others [subsection 48(4)].

The senator will be invited to a second interview where the senator will have an opportunity to respond to allegations of facts based on the testimonies and the documentary evidence and to make representations. The senator will be offered a last opportunity to make representations when the senator is shown parts of the draft inquiry report normally on the process, the allegations and the findings of fact.

Observations

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 to the circumstances of a particular inquiry, yet others relate to factors external to the inquiries. These factors include:

- 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, as a whole, must be fair and follow due process as established by the Senate Ethics Officer. Giving Senators reasonable time and opportunities at several steps of an inquiry to make representations lengthens the time required to complete the process.
- An inquiry is a process to gather evidence and facts, testimony and documents against which the provisions of the *Code* will be applied. Gathering these should be, but is not often a straightforward process. The scheduling of testimonies depends on the availability of senators and witnesses who, due to the Parliamentary calendar, are sometimes unavailable during Parliamentary breaks, some of which last months. Information and documents, both written and electronic, should be made readily available without delay and questions. Too often they are not. The time to establish contacts with witnesses and to obtain documents can be very lengthy. In addition, findings in the course of an inquiry may lead to more witnesses to interview and more documents to obtain and assess.
- Each inquiry also faces its own unique circumstances. These circumstances are normally identified in inquiry reports.
- 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 ethical rules (sections 7.1 and 7.2). The number of inquiries, while still limited in number, started to increase at that time. With the exception of one additional position in recent years, the same number of employees as in 2005 has had to conduct inquiries while continuing to deliver on the SEO core mandate. This Office does not have the capacity to undertake multiple complex inquiries simultaneously.

B. Other Rules and Laws

It is important to note that the SEO's jurisdiction is limited to the *Ethics and Conflict of Interest Code for Senators*. 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 notably 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.

They 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.

C. 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 conflict of interest regime. A number of provisions of the *Parliament of Canada Act* (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 OSEO.

For example, subsection 20.4(1) of the Act ensures that the SEO alone has “the control and management of the office”. Subsection 20.4(7) 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 as a whole. Under subsection 20.4(8), 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 concerning opinions and advice given to individual senators is also clear and is expressly provided for in subsection 41(2) of the *Code*. This independence also applies to any inquiries conducted under subsection 48(2) of the *Code* and any inquiry reports prepared under subsection 48(12).

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* that secure the independence of the Senate Ethics Officer

- The Senate Ethics Officer 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 Senate Ethics Officer has the same privileges and immunities as senators.
- The Senate Ethics Officer 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 Officer a status of independence and autonomy rarely recognized to Government officials and they provide an effective shield against improper or inappropriate influence.
- The Senate Ethics Officer 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 Officer hires his own staff.
- The Senate Ethics Officer 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 Senate Ethics Officer's proposed budget as a part of the annual review of the Main Estimates. This procedure ensures the independence of the Officer and places the responsibility for the estimate of the office on the Senate Ethics Officer. It also emphasizes the direct relationship that Parliament has established between the Senate Ethics Officer and the Senate itself, to which the Officer ultimately reports.
- The Senate Ethics Officer 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.

III. THE YEAR IN REVIEW: 2018-19

Overview

The Year in Numbers	
Statements of gifts or other benefits	0
Statements of sponsored travel	34
Declarations of private interests	2
Statements of material change	18
Inquiries (completed and ongoing matters that are of public record)	3
Media requests	53
Public requests and comments	114
Opinions and Advice	268

A. Outreach to Senators

The SEO continues to meet all new senators upon their appointment as part of an outreach initiative launched last year. The initiative provides an opportunity for the SEO and senators to discuss the *Code* in general, and for senators to raise concerns or provide feedback on a number of issues, including questions related to their particular circumstances. The SEO also regularly meets other senators in the same context. As of March 31, 2019, the SEO had 70 meetings and 24 scheduled phone conversations with senators. These numbers do not include unplanned phone calls from senators.

B. New Senators

This year, sixteen (16) senators were appointed to the Upper Chamber. The SEO briefed the new senators in person on their obligations under the *Code*, including their responsibilities to file an initial confidential disclosure statement within 120 days of their appointment, and annually thereafter. The SEO provided advice on their particular circumstances and answered their questions. Senators were informed of the need during

the year to disclose to the SEO 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.

To complement 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 hard copies and links to the appropriate forms. Appendix A also provides additional guidance on Frequently Asked Questions (FAQ) related to the *Code*.

C. Retired Senators

While a number of new senators were appointed to the Upper Chamber, four (4) senators retired this year 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 will be 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 disclosure statements be returned to them or destroyed.

D. Annual Disclosure Process

Every year in the fall, senators are subject to a disclosure process (Annual Review process), whereby they must notably 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's (e.g. employment and director or officer positions in for profit or not-for-profit organizations), as well as their and their spouse's income and assets.

On September 17, 2018, the Standing Senate Committee on Ethics and Conflict of Interest for Senators approved the removal of the requirement of each senator to disclose the Canada Pension Plan, Quebec Pension Plan and Old Age Security benefits they may or may not be receiving in their confidential disclosure.

This year, on the recommendation of the SEO, the Standing Senate Committee on Ethics and Conflict of Interest for Senators approved that senators will no longer be required to disclose any benefits derived from the Canada Pension Plan, Quebec Pension Plan and Old Age Security. These programs are government programs that apply indiscriminately to a large population, and as such are a highly unlikely source of a conflict of interest.

Upon receiving the confidential disclosure statements, the SEO will review the information and provide senators with a written opinion and 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 disclosure process, should the SEO have questions related to the information in a senator's confidential statement, he may request clarifications from a senator. Senators have 30 days to respond to the SEO. Senators may in turn seek clarifications from the SEO either in writing or verbally over the telephone or in a meeting.

For fiscal year 2018-19, all senators have complied with their obligations to file a confidential disclosure statement and a statement of compliance within the prescribed timeline. As of March 31, 2019, the disclosure process for 84 senators (or 83.2%) has been completed resulting in the publication of their Public Disclosure Summaries. Files for 17 senators (or 16.8%) remain outstanding on the same date, awaiting the signed Public Disclosure Summary or other additional information from senators. These numbers do not include newly appointed senators whose obligation to file falls after March 31, 2019. Comparatively for the same period last year, the process was completed for 57 senators (or 64.5%), with 31 outstanding files (or 35.4%). The SEO also responded to 104 requests for clarification from senators related to the annual disclosure process.

Over the course of the year, senators must also report to the SEO any sponsored travels 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 were members.

The graphs below provide the number of filings for these ongoing obligations in a given year over the last six years.

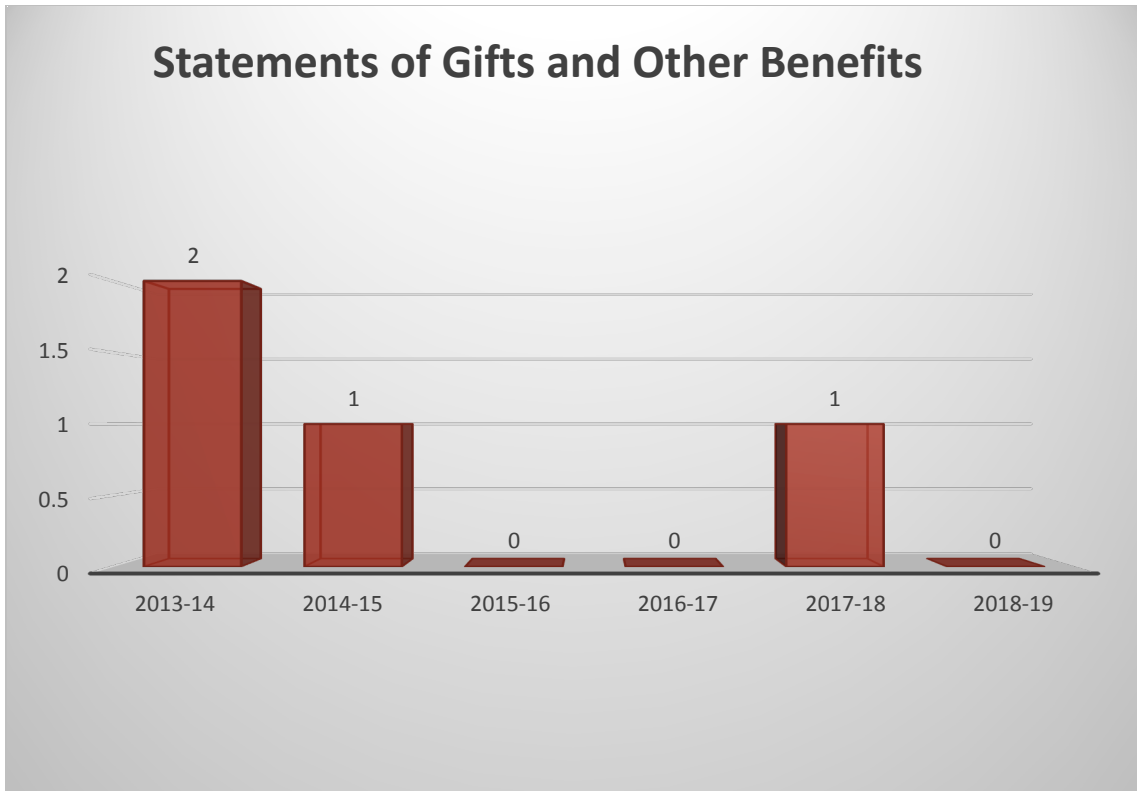


Figure 1

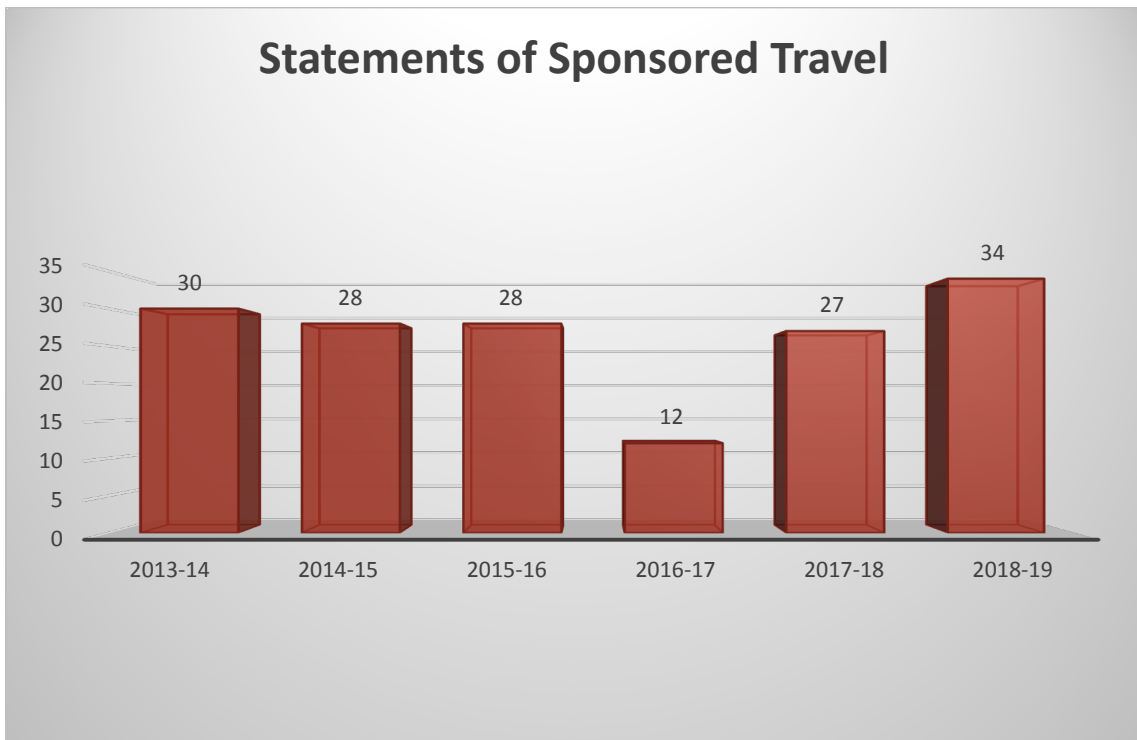


Figure 2

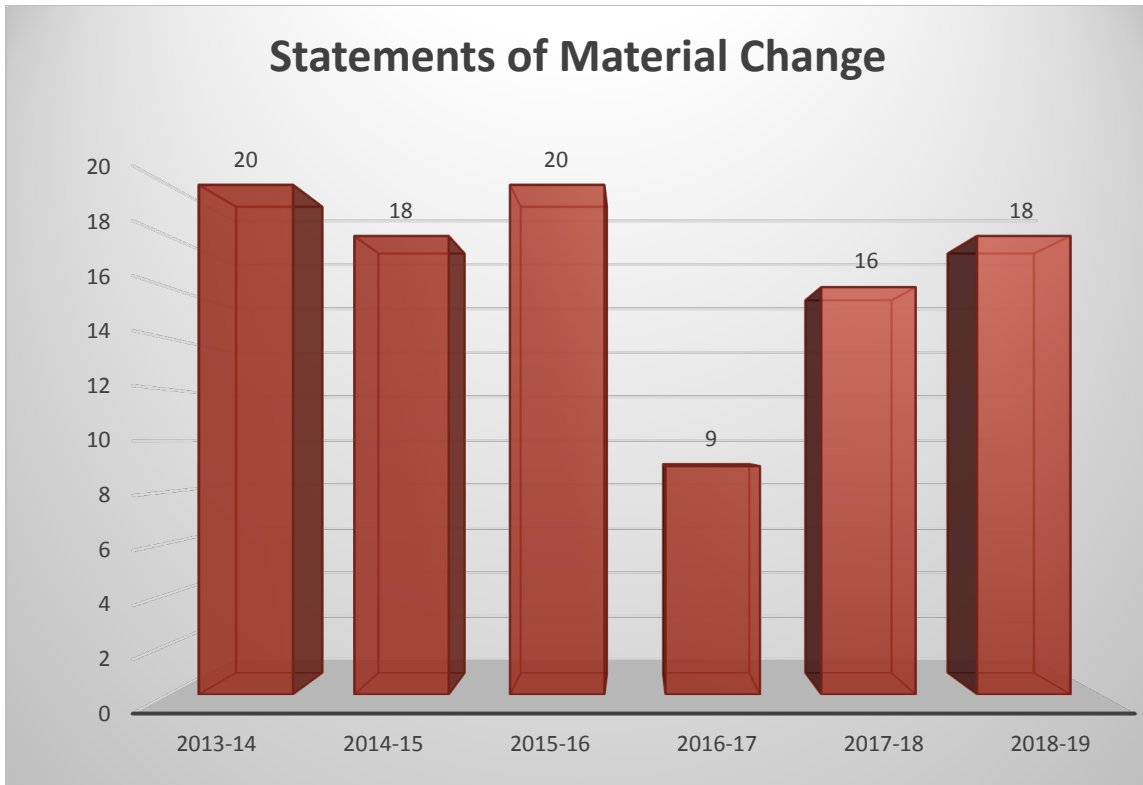


Figure 3

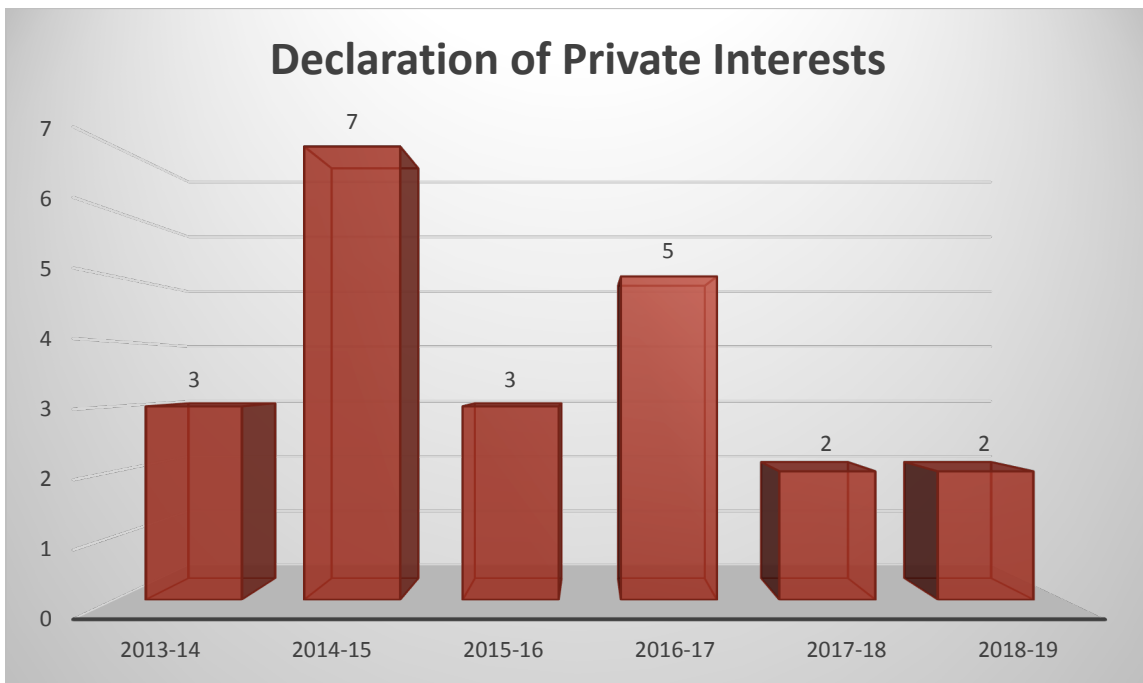


Figure 4

E. Opinions and Advice

As in previous years, 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 the continued compliance with the *Code*.

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

Senators continue to reach out to the SEO and to the Assistant Senate Ethics Officer and General Counsel for advice and opinions, as well as to ask for clarifications and questions concerning their obligations under the *Code*. This year the SEO and Assistant Senate Ethics Officer provided 268 opinions and advice, both verbally and in writing.

F. Inquiries in the Public Domain

(i) Update on Inquiries as of March 31, 2019 (completed, suspended and ongoing)

The Office has worked on the following three (3) inquiries that are in the public domain, one of which was concluded this year. Two inquiries were still ongoing as of March 31, 2019.

Completed Inquiries (1):

On March 19, 2019, an inquiry report concerning Senator Lynn Beyak was published. It involved certain allegations that Senator Beyak breached the *Code* by posting certain materials on her Senate website. The Senate Ethics Officer found that Senator Beyak had breached both sections 7.1 and 7.2 of the *Code* because she had posted five (5) letters on her Senate website that each contained racist content. By posting these letters, the SEO determined that:

- she did not uphold the highest standards of dignity inherent to the position of senator, contrary to subsection 7.1(1) of the *Code*;
- she acted in a way that could (and did) reflect adversely on the position of senator or the Senate, contrary to subsection 7.1(2) of the *Code*; and
- she performed a parliamentary function in a manner that was both undignified and dishonourable, contrary to section 7.2 of the *Code*.

Suspended Inquiries (1):

On December 1, 2017, an inquiry concerning former Senator Don Meredith involving a workplace assessment report was suspended in order to avoid causing prejudice to a police

investigation that was simultaneously underway in this matter. On April 12, 2018, after receiving notice that the police investigation was closed, the inquiry was resumed, effective that same day.

Ongoing Inquiries (2):

- The first ongoing inquiry concerns a workplace assessment report in relation to former Senator Meredith, already referred to above, that was commissioned by the Steering Committee of the Standing Senate Committee on Internal Economy, Budgets and Administration. This inquiry was suspended on May 10, 2017 upon the resignation of Senator Meredith, pursuant to subsection 48(21) of the *Code*. On June 21, 2017 in its [Third report](#), the Committee directed the Senate Ethics Officer to resume this inquiry. On December 1, 2017, the SEO again suspended this inquiry at the request of another authority, as already noted above. On April 12, 2018, the inquiry was resumed for a second time. The inquiry was still ongoing as of March 31, 2019.
- The second ongoing inquiry concerns Senator Victor Oh and involves 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 still ongoing as of March 31, 2019.

G. Outreach and External Activities

(i) Media and Public Feedback

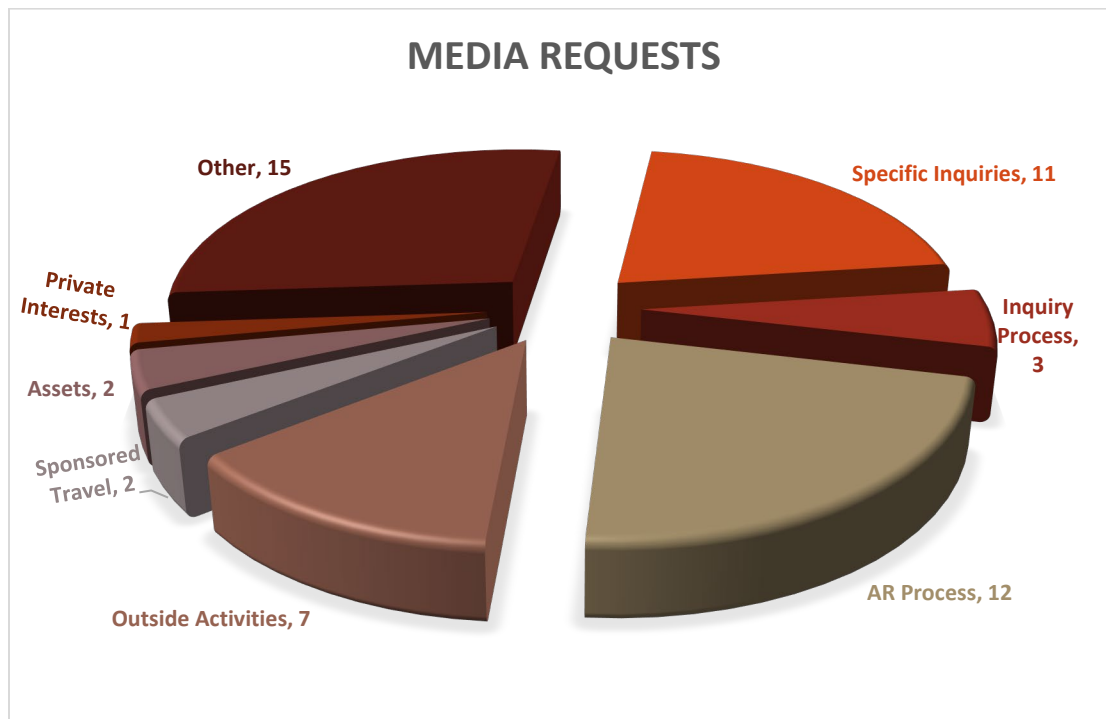


Figure 5

The Office continues to respond to information requests 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 about 53 requests from the media this year compared to 90 requests the previous year, and received approximately 114 comments and requests from the public, compared to 60 last year. Media requests this year focused mainly on specific inquiries or the inquiry process, as well as the annual review process (AR process). Figure 5 highlights the number of media requests received by subject matter this fiscal year. The “Other” subject matter notably includes questions related to the Office of the Senate Ethics Officer (OSEO), the position of SEO, and Senate-related issues.

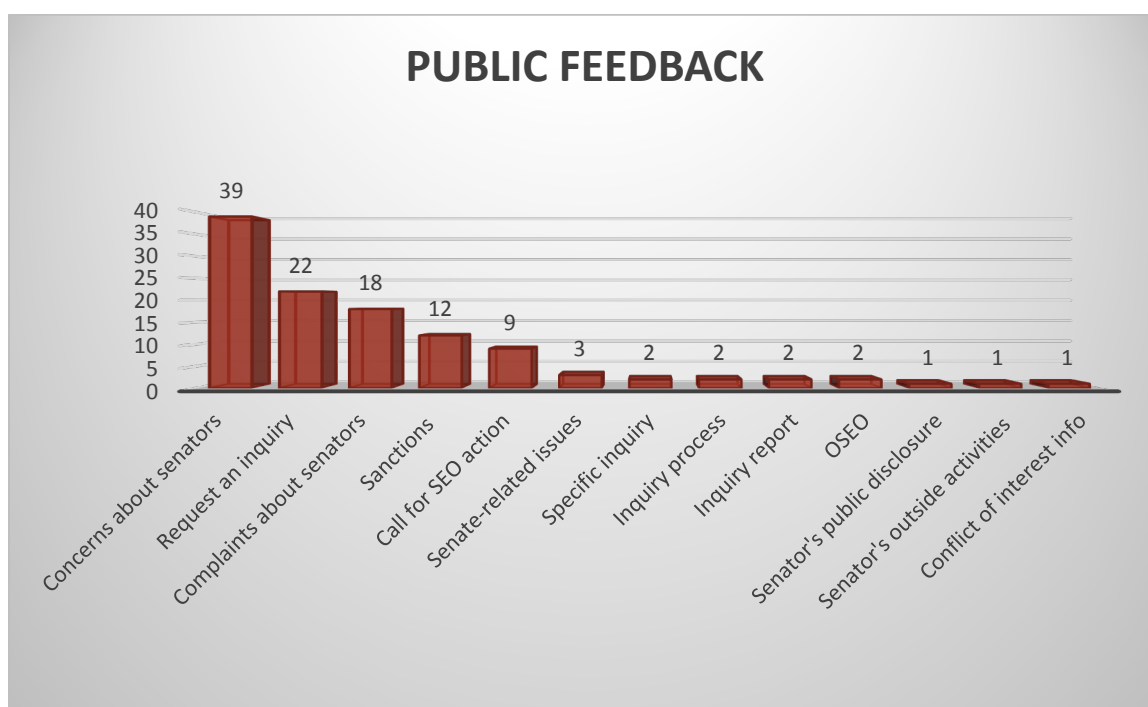


Figure 6

This year, the public was particularly engaged, and its feedback nearly doubled from last year. The main area of concern from the public remains the behaviour of certain senators. The public was also active in making complaints, requesting an inquiry and seeking sanctions for certain senators. Figure 6 provides an overview of the number of correspondence received by subject-matter over the 2018-19 fiscal year. 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.

(ii) Website

The Office’s website serves as an interface between the SEO and the general public. Importantly, it contains information related to the Office, the *Code*, and documents

concerning the interests of senators, such as the online public registry where senators' Public Disclosure Summary and other statements can be found. The website also includes general contact information to provide for comments and feedback. The "Announcements" section generally provides the status of preliminary reviews and inquiries to the public.

Over the years, the Office has received a fair number of visits to the website from individuals within Canada and abroad. The number of visits this year totalled over 20,000, a significant increase from previous years. This increase would be in alignment with the number of public feedback items and requests for action, which also rose this year. The Office continues to welcome the opportunity to inform the public about the *Code*, the mandate of the SEO, and any new developments that involve matters of public interest.

(iii) Conferences and Committee Appearances

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 St. John's, Newfoundland, in September 2018. 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 the context of the annual conference of the "Assemblée parlementaire de la Francophonie" that took place in July 2018 in Quebec City, the SEO attended meetings of parliamentary ethics commissioners from Francophone countries around the world. At the request of the Assemblée, the commissioners have been tasked to create a « Réseau francophone de l'éthique et de la déontologie parlementaires » that will support the Assemblée and its members or the parliaments in relation to ethics.

The SEO attended the Council on Governmental Ethics Law (COGEL) international conference in December 2018 in Philadelphia. COGEL members work in the fields of government ethics, elections, lobbying, and campaign finance across North America.

The SEO also appeared three times (3) before the Standing Senate Committee on Ethics and Conflict of Interest for Senators on matters related to the *Code*.

H. Internal Administration

The SEO has focused much efforts this year on improving the annual disclosure process to achieve greater efficiency. The Office will be transitioning to a staggered timeline of the

annual review process, starting next fiscal year. This new timeline will mean that senators will not be subject to the annual review process in the fall as it has been the case since the creation of the Office, but rather on the anniversary date of the appointment of each senator. As such, the annual review process will be staggered over the year, resulting in a better distribution of work which would result in a better use of resources, while enhancing the timeliness and efficiency of the process.

I. Budget

For the year 2018-19, the Office's total authorities were \$1,387,179. The actual expenditures were \$1,141,279, which represented an increase from \$ 1,006,732 of the previous fiscal year 2017-18. This increase was mainly the result of costs incurred for the additional consulting services related to inquiries and salaries costs.

The Office's financial statements for the year 2018-19 are audited by the firm KPMG. The financial statements will be posted on the Office's website once the audit is completed.

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 (subsection 2(1)).
- 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 (paragraph 2(2)(c)).
- Senators are required to **uphold the highest standards of dignity** inherent to the position of senator (subsection 7.1(1)).
- Senators must refrain from acting in a way that could **reflect adversely on the position of senator or the institution of the Senate** (subsection 7.1(2)).
- Senators must **perform** their parliamentary duties and functions **with dignity, honour and integrity** (section 7.2).
- 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 (section 8).
- 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 (section 9).
- 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 (section 10).
- 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 (subsection 12(1)). They may not participate in debate on that matter, nor are they permitted to vote, though they may abstain (subsections 13(1) and (2) and section 14). In the case of committees, senators must also withdraw from the proceedings (subsection 13(2)). 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 (subsection 13(3)).

- 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 (sections 17 and 18) and these must be publicly declared pursuant to paragraph 31(1)(k).
- 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 (sections 20-26).
- 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 (sections 27-33).
- 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 (subsection 45(1)).
- Senators must report to the Senate Ethics Officer any **material change** to the information in their confidential disclosure statements, within the prescribed time (subsection 28(6)).
- Senators must **cooperate** with the Senate Ethics Officer with regard to **any preliminary review and any inquiry**, and **respect their confidentiality** (subsections 47(6) and 48(7) and (8)).

APPENDIX A

Frequently Asked Questions

regarding the

Ethics and Conflict of Interest Code for Senators (the Code)

Frequently Asked Questions

1. *Who are the key stakeholders and what are their roles with respect to the Code?*

The Senate adopted on May 18, 2005, the *Conflict of Interest Code for Senators*, which was amended several times in later years, and renamed in 2014 as the *Ethics and Conflict of Interest Code for Senators*. Key stakeholders include senators, the Senate Ethics Officer, and the Standing Committee on Ethics and Conflict of Interest for Senators. Senators are required to comply with the provisions of the *Code* to the best of their knowledge and belief. The Senate Ethics Officer is an independent and autonomous officer who is responsible for advising individual senators and assisting them in fulfilling their obligations under the *Code*. The Standing Committee on Ethics and Conflict of Interest for Senators has overall responsibility for the *Code* and gives “general direction” to the Senate Ethics Officer, but without giving specific direction in any particular case.

2. *What is the relationship of the Senate Ethics Officer to the Senate?*

The Senate Ethics Officer is an independent officer of the Senate under the *Parliament of Canada Act*. The officer is appointed by the Governor in Council, on address of the Senate. The Senate Ethics Officer has the control and management of his/her office, independently of the Senate and its Internal Economy Committee. The Senate reviews the Senate Ethics Officer’s proposed budget as part of the annual review of the Main Estimates. The Senate Ethics Officer’s role is prescribed by the Senate to which the Senate Ethics Officer ultimately reports.

3. *Does the Senate’s ethics and conflict of interest regime provide senators with a single stop for ethical advice?*

No, the Senate’s ethics and conflict of interest regime is one of several instruments that govern the conduct of senators. They are also subject to other rules and laws, such as the *Parliament of Canada Act*, the *Criminal Code*, the *Senate Administrative Rules*, and the *Rules of the Senate*. The Senate Ethics Officer does not have jurisdiction to interpret and apply these other rules and laws. Nothing in the *Code* displaces the jurisdiction of other authorities that are responsible for interpreting and applying them.

4. *What is the Annual Disclosure Process?*

The *Code* requires that senators file every year a Confidential Disclosure Statement providing their private interests and other information to the Senate Ethics Officer. In addition, they must complete a Statement of Compliance, asserting that they have read the *Code* and that to the best of their knowledge they are in compliance with the *Code*. After a review of a senator’s Confidential Disclosure Statement, the Senate Ethics Officer will prepare a Public Disclosure Summary based on the senator’s statement, and submit it to the senator for his/her review, before it is made public. Please note that at any time during the process, if senators have questions regarding their disclosure

obligations, they should consult with the Senate Ethics Officer. Similarly, the Senate Ethics Officer may request a meeting with senators to further discuss their obligations under the *Code*.

5. *What information related to a senator will be **publicly disclosed** under the Code?*

The following list provides information involving a senator which must be disclosed publicly:

- employment outside the Senate, profession, business;
- a senator's position 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.

6. *How will information related to senators that is required to be publicly available be disclosed to the public?*

Information is made available to the public on the website of the Senate Ethics Officer under the tab "Public Registry", or onsite at the Office of the Senate Ethics Officer, at 90 Sparks Street, Suite 526, Ottawa, Ontario.

7. *What information related to requests for inquiries does the Code authorize the Senate Ethics Officer to disclose publicly as a matter of public interest?*

If a matter is of public interest, the *Code* allows the Senate Ethics Officer to inform the public as to whether or not a matter is under preliminary review or inquiry or has already been reviewed, inquired into and reported on or tabled in the Senate or with the Clerk. The *Code* also authorizes the Senate Ethics Officer to inform the public about decisions of the office and the *Code*, provided the information does not concern particular circumstances of an individual senator. This information may be found on the office's website under the tab "Announcement".

8. *What happens with an inquiry in respect of a senator who ceases to be a senator?*

If a senator ceases to be a senator while there is an ongoing inquiry pertaining to that senator, subsection 48(21) of the *Code* provides that the inquiry is permanently suspended, unless the Standing Committee on Ethics and Conflict of Interest for Senators decides otherwise. In such a case, under subsection 48(22) of the *Code*, the Committee would have to consider any representations from the former senator, from any senator who initiated the inquiry, and from the Senate Ethics Officer before making its decision in this respect.