



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

2020–2021 Annual Report

June 2021

Pierre Legault
Senate Ethics Officer

Annual Report of the Senate Ethics Officer 2020-2021

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Senate Ethics
Officer
Conseiller sénatorial
en éthique

June 22, 2021

The Honourable George Furey
Speaker of the Senate
A112, Senate of Canada Building
Parliament Buildings
Ottawa, Ontario
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Dear Mr. Speaker:

It is my honour and pleasure to submit to you the Sixteenth 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, 2020 to March 31, 2021.

Yours sincerely,

Pierre Legault

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MESSAGE FROM THE SENATE ETHICS OFFICER

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

The last year has proven to be a challenging year for all Canadians! Little did we know that we would still be mired in the pandemic a year later! In fact, the pandemic has had a profound and prolonged effect on all Canadians and, as will be seen in this report, on senators and on the Office of the Senate Ethics Officer (Office).

In my last annual report, I wrote that, in response to the pandemic, the Office had started working remotely and was adapting our paper-based processes to a more electronic form of communication.

My Office and I have, of course, continued to fulfil my mandate under the *Ethics and Conflict of Interest Code for Senators* (Code). We have continuously adapted our practices, tools, and processes to allow senators to fulfil their disclosure obligations under the Code remotely. Because of the pandemic, the Senate has not had sittings as frequently, and senators have mainly worked from their regions. One of the effects of this has been a slower completion rate for the annual review process at year end compared to the previous year.

The pandemic and its associated restrictions have also impacted senators' activities and their disclosures. There were no Statements of Sponsored Travel in 2020-2021 and no Statements of Gifts or Other Benefits. Yet, senators have also been active outside of the Senate and many Statements of Material Change have been filed.

While I did not meet any senators in person during the year, I am pleased to report that senators have continued to consult me by email, by phone and by video calls throughout the year. I have also continued to provide advice to senators with a view to preventing conflicts of interest from arising rather than addressing them once they have arisen.

I initiated and completed two preliminary reviews, though moving to the inquiry stage was not warranted for either of these.

Amidst the upheaval of the last year, I am pleased to report that we have been able to focus on various projects to better serve senators and inform the public. My Office has fully deployed a new branding which reflects a more dynamic, professional, and responsive organization. We have also completely rebuilt our website. It sports our new branding. It is more accessible and informative. It includes a partly searchable new Public Registry. It adds a series of Frequently Asked Questions, and it provides a placeholder for future new guidelines on the interpretation of the Code. We also did considerable preparatory work on future guidelines.

The Office continued 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.

I want to thank all senators for their understanding and support in making this transition from working from the office to working remotely and also for their commitment to respecting the Code.

Finally, I am very thankful and grateful to the employees of my Office who have demonstrated considerable resilience, adaptability and commitment despite the circumstances and made the best out of a most unusual year.



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 Interests;
- 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's 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 of Canada 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 of Canada 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: 2020-2021

During the course of 2020-2021, the SEO delivered on his mandate by providing opinions and advice to senators, administering the Annual Disclosure Process and conducting preliminary reviews. In addition, the SEO engaged in outreach activities with senators, including 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 243 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.

Since Fiscal Year 2019-2020, senators are required to file their statements on the anniversary dates of their appointment.



As of March 31, 2021, the Annual Disclosure Process was completed for 68 senators (or 75%). Files for 23 senators (or 25%) remained outstanding. These numbers do not include senators who retired in the course of the year. Comparatively, in 2019-2020, the process was completed for 86 senators (or 87.8%) while files for 12 senators (or 12.2%) remained outstanding. In 2018-2019, the process was completed for 84 senators (83%) with 17 (17%) outstanding files. In 2017-2018, the numbers were 57 senators completed (65%) and 31 outstanding files (or 35%).

The decline in turnaround time is attributed to the impact of the pandemic on senators and on the Office, and the need to reorganize the way in which the Annual Disclosure Process is carried out in order to adapt to an entirely electronic-based system.

The SEO also responded to 43 requests for clarification from senators related to the Annual Disclosure Process. This is similar to last year (31) and substantially lower from the year before last year (104).

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 Disclosure 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 or Other Benefits (none in 2019-2020). Also, there were no Statements of Sponsored Travel (34 in 2019-2020 and 34 in 2018-2019). There was one Declaration of a Private Interests, the same as last year. Finally, there were 40 Statements of Material Change throughout the year (29 in 2019-2020 and 24 in 2018-2019). These changes are again attributable to the pandemic, the restrictions imposed by governments around the world on travel, the fact the Senate has not been sitting as regularly as in the past due to provincial lock-downs and the fact senators have had more time for their personal activities.

Preliminary Reviews and Inquiries

This year, the Office completed two preliminary reviews. One of these concerned the failure on the part of a senator to file this past year's Confidential Disclosure Statement by the anniversary date of that senator's appointment to the Senate, despite repeated reminders from myself and my Office to do so. However, the specific details of this preliminary review are required to remain confidential, pursuant to the Code, due to the fact that the matter was not in the public domain and that it did not move to the inquiry stage of the process. Having said that, the Code does not preclude me from disclosing the fact that a preliminary review was conducted in the matter.

The second preliminary review was in the public domain and it concerned Senator Leo Housakos, the details of which are provided below.

As of March 31, 2021, there are no ongoing preliminary reviews or inquiries.

The Senate also gave me a follow-up mandate to the inquiry report concerning Senator Beyak, which I discharged during this past year.

Preliminary Review – Senator Housakos

The preliminary review involving Senator Housakos concerned allegations that Senator Housakos had breached his obligations under the Code because he appeared to have been endorsing Erin O'Toole as Leader of the Conservative Party of Canada in an email sent from his Senate email account on May 5, 2020.



I self-initiated this preliminary review on July 22, 2020. This review was completed on August 26, 2020 when I released my preliminary determination letter, which sets out my findings and conclusions in the matter.

In this case, I concluded that by using his Senate email account, Senator Housakos used his position as a Senator in order to influence the recipients of the email in question to become Conservative Party members, which furthered both the private interests of the Conservative Party as well as Mr. O'Toole. This was “improper” because, under the *Senate Administrative Rules* and the *Senators’ Office Management Policy*, senators are not permitted to use their Senate resources in order to promote a leadership candidate.

In addition, and contrary to paragraph 2(2)(c) of the Code, the line between Senator Housakos’ official role as a senator and his private affairs was blurred when he used his Senate resources for a non-Senate activity.

In the particular circumstances of this case, however, I did not find it necessary to conduct an inquiry to confirm the relevant evidence that there was indeed a violation. I concluded that such an inquiry was not warranted in light of the fact that I did not believe it would yield any new evidence. More importantly, Senator Housakos had already made a public apology in this matter. He had acknowledged and apologized to all recipients of the original email and he had taken remedial measures to ensure that this would not reoccur in the future. He proactively took steps to ensure that his Senate and non-Senate emails would be kept separate and that further emails of this nature would not originate from his Senate account. In my opinion, these measures were sufficient to address my concerns.

Follow-up - Senator Beyak Inquiry Report

In Recommendation 3 of its Fifth Report to the Senate, dated April 30, 2019 (which concerned my inquiry report involving Senator Beyak), the Standing Committee on Ethics and Conflict of Interest for Senators (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 in Canada, and the particular responsibility of a legislator in that context and how this 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 such, I began work on this new mandate as of the latter date and this work continued throughout March, April and May of 2020.

On June 9, 2020, I provided my report to the Committee as required under the Committee's First Report (dated January 31, 2020). In my report, I provided the evaluation of the educational provider, any submissions from Senator Beyak, and any observations and recommendations that I considered appropriate. My report was appended to the Committee's Third Report, entitled "Developments and actions in relation to the committee's fifth report from the 42nd Parliament regarding Senator Beyak", dated June 22, 2020. Senator Beyak resigned on January 25, 2021.

My Office and I expended considerable efforts in the last fiscal year on this follow-up mandate that was conferred on me in the Committee's First Report of January 31, 2020 related to the training of Senator Beyak. However, with my report of June 9, 2020 to the Committee, my mandate in this matter had been fulfilled.

Outreach and Best Practices

Outreach to Senators

Normally, 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. Because of the pandemic, the SEO did not meet any senators in person. However, senators have continued to consult with the SEO by email, by phone and by video calls throughout the year. As of March 31, 2021, the SEO had 81 consultations with senators.

The SEO meets all new senators upon their appointment. This year, no senators were appointed to the Upper Chamber (three senators were appointed in 2019-2020 and 16 senators were appointed in 2018-2019). The SEO briefs new senators 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 are informed of the need to disclose to the SEO any changes to their Confidential Disclosure Statements throughout the year and within the timeline prescribed by the Code. They are also made aware that the Code requires that certain information be publicly released.

While no new senators were appointed to the Senate this past year, seven 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. After this time, the confidential documents relating to a senator are returned to the senator at his or her request. Otherwise, they are destroyed after this period, unless there is an investigation or inquiry in progress or charges have been laid against the senator. In the latter case, they are required to be destroyed 12 months after the final disposition of all proceedings. The public documents are forwarded to the Senate archives after the 12-month period.



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.

It should be noted that the Code does not provide a formal 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.

Even if the SEO does not initiate a preliminary review as a result of a media or public complaint, the SEO may, in that context, 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 seeks 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. There were no requests from the media this year compared to 21 requests last year and 53 requests the year prior to last year. The Office received 77 comments and requests from the public, compared to 72 last year and 114 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.

Due to COVID-19, the annual conference of the Canadian Conflict of Interest Network (CCOIN) did not take place. Instead, the SEO, along with his federal, provincial and territorial colleagues, attended two virtual meetings in September 2020 and March 2021. 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 from 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.



The Office is also one of the founding members of the “Réseau francophone de l'éthique et de la déontologie parlementaires.” The Réseau is an international non-profit association of parliamentary ethics organizations in francophone jurisdictions. It was created at the instigation of the “Assemblée parlementaire de la Francophonie.” The Réseau promotes exchanges between francophone parliaments and entities responsible for ethics oversight. Together, they focus on ethics issues and on promoting them throughout the international francophone community.

Again, due to COVID-19, the in-person annual general meeting of the Réseau was cancelled. Instead, the SEO attended a virtual meeting that took place over two days in November 2020.

The SEO and all the Office's staff attended the Council on Governmental Ethics Law (COGEL) international virtual conference in December 2020. 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 rebranding the Office and completely remodeling the Office's website. The new website provides some information on the Code and its administration.

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 2020-2021, 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 2020-2021 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
0	Statements of Sponsored Travel
1	Declaration of Private Interests
40	Statements of Material Change
0	Inquiries
2	Preliminary Reviews
0	Formal Complaints by Senators
0	Media Requests
77	Public Requests and Comments
243	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 on the advice provided to senators as it evolves regarding senators' obligations under the Code. This section is one of those rare opportunities.

As already noted earlier, this past year has been a year unlike any other. There have been many changes to which we have had to adapt as a result of the pandemic, including having to work remotely, and this has impacted on how we work as an office and how we work with senators. The pandemic has also impacted how senators work and how they go about fulfilling their role of senators.

This commentary offers observations on three issues of note during the last year.

Development of the Office

As already mentioned, the pandemic has had an impact on the Office and our employees, as with other offices and institutions. We have implemented all the measures put forward by health authorities and have gone even further in this regard. All the Office's employees have been working remotely, save for the very occasional and necessary visits to our physical office as some of our tasks cannot be accomplished remotely. Any visits to the Office are required to adhere to the strictest conditions to ensure the greatest protection possible for the Office's employees.

Protective equipment and screens have been procured and are being used. Employees have been equipped so they may safely work from home.

Ordinarily, senators file all their statements on paper forms that are delivered to the Office in that format. The pandemic and working remotely have made that model impossible. We have had to rapidly modify this model and accept facsimiles and electronic forms along with electronic signatures. We have also had to modify our processes and workflow to accommodate these. The downside of these changes and of the pandemic itself was a process that took slightly longer than would otherwise have been the case and a necessary but not optimum realignment of responsibilities. The upside is a clarification of the processes, workflow and tools used in the Annual Disclosure Process. While I see these changes as a temporary adaptation borne out of immediate necessity without forethought, the electronic disclosure system, which is further described below, should offer a more modern, durable, and long-term solution.

I embarked on a renewal exercise over 18 months ago, after having had the opportunity to examine and think about the position of SEO and of the Office, how we provide services to senators, and the tools that we use to provide them.

The first concrete result was the adoption of a new branding that was first used in my 2019-2020 Annual Report. It reflects a more dynamic, professional, and responsive organization that fulfills its mandate effectively and efficiently inspiring confidence and trust on the part of senators and the public at large. Last summer, we fully operationalized the new branding across our Office and in our communication tools with senators and the public.

As part of this renewal exercise, the most significant project of the last year was to completely rebuild the Office's website. The new website provides greater transparency on the application of the Code and the operation of the Office. I am pleased to report that the new website was successfully launched last March.



The new website offers several noticeable improvements, including the following:

- The new website sports the new branding of the Office. By using the logo of the Senate and the colours of the logo, it reflects the duality of the SEO carrying out his duties and functions within the institution of the Senate while being independent from it.
- The new website is more accessible, more readable, more informative, and more transparent.
- The new website includes a new Public Registry that is partly searchable by senators' names, fiscal years and types of statements, or a combination of these.
- The new website includes a series of Frequently Asked Questions that provide information on, and a better understanding of the Code, the Office, and the SEO. These FAQs and their answers are based on the questions the Office has received and responded to over the years from senators, their staff, the public and the media.
- The new website includes a placeholder for future new guidelines on the interpretation of the Code, which the SEO will publish, with the approval of the Standing Committee on Ethic and Conflict of Interest for senators, as is required by the Code.

With respect to the FAQs, I should note that past annual reports included a Qs & As section. You will not find it in this annual report. Instead, it has been replaced by the more extensive FAQs on the website. They are more accessible. They are found in one place rather than in several annual reports. Finally, they are also more relevant given that we will update them regularly.

With respect to future guidelines, I am pleased to report that we have undertaken considerable work in this respect in order to offer the guidance and certainty that senators will no doubt find beneficial. As already mentioned, the Code requires me to obtain the approval of the Standing Committee on Ethics and Conflict of Interest before I publish any new guidelines. The public would also find more information in these guidelines resulting in more transparency on the Code and how it is interpreted and administered.

We have also more recently undertaken another project that will have a considerable impact: the creation of an electronic disclosure system for senators. Spurred on by the pandemic, it will allow senators to securely file all their statements through this system rather than on paper. It will be more efficient and easier and faster for senators to file their statements while doing so with greater accuracy. It will also facilitate the work and turnaround time of my Office.

Nature of Advice Sought and Outside Activities

I have observed that the pandemic has also had an impact on the kind of advice that senators are seeking and the kind of activities in which they are engaged. For example, there were no requests for advice on sponsored travel nor were any Statements of Sponsored Travel filed this past year because, and as noted earlier in this report, senators did not travel due to the pandemic.

However, while I have seen a decline in certain activities, possibly due to the pandemic and the restrictions that followed, I have also observed a steady continuation of senators being involved in certain outside activities, in some cases, carrying on a profession, or carrying on a business or, in many cases, supporting the causes they care about.



For example, in many cases, senators have chosen to accept positions on boards of not-for-profit organizations. And while the Code authorizes senators to engage in outside activities, under section 5 of the Code, they are only permitted to do so provided that they are able to comply with the principles of the Code and the rules of conduct.

In this respect, the issue that arose time and time again this past year was the difficulty in ensuring that senators maintain a clear separation between their public lives and their private lives. This separation is not always easy in the context of supporting or promoting causes and working for not-for-profit entities.

This is because the same causes and issues pursued and advanced by these entities are the same causes and issues that senators care about and that senators would like to support or promote in the Senate. However, the Code does not permit senators to use their Senate positions to promote or further the private interests of not-for-profit entities. Having said that, senators may do this in a private capacity without using their Senate title, their Senate office and their Senate resources, provided that, in doing so, they do not create a perception of conflict.

Moreover, senators are not precluded from supporting or drawing attention to a cause in their capacity as senators and using their platform as senators in this respect provided that they are not using their Senate position to advance the interests of a specific not-for-profit organization. In short, a distinction must be made between promoting and supporting a cause, on the one hand, and supporting or promoting an organization, on the other. The former is acceptable under the Code, while the latter may not be, particularly if a senator is associated with this organization.

Though supporting or promoting these entities and their causes – important and worthy causes – seems harmless, if senators are privately associated with these entities, for example by sitting on their boards of directors or holding officer positions within these entities, then these organizations have an advantage over others similarly-situated by virtue of the fact that they were able to secure a senator on their board, for example. This results in the preferential treatment of an organization over another.

Moreover, section 5 of the Code, referred to above, which permits senators to engage in activities outside of Parliament, including holding positions within entities, does not distinguish between sitting on boards of not-for-profit organizations in order to support or promote a cause on the one hand, and sitting on the boards of for-profit organizations on the other. In fact, the observations I make in this commentary are equally applicable in the context of for-profit organizations, and I have seen examples of these as well.

Notwithstanding the valuable contributions that senators make to important causes by virtue of their personal work with not-for-profit entities, they are still required to comply with the Code and the principles of the Code in respect of these activities and the Code imposes some limitations as to what they can and cannot do in this respect.

Paragraph 2(1)(c) of the Code provides that senators are expected to arrange their private affairs so that foreseeable real or apparent conflicts of interest may be prevented from arising, but if such a conflict does arise, they must resolve it in a way that protects the public interest.

This principle of the Code is important because, it not only emphasizes that senators are responsible for arranging their private affairs in ways in which conflicts are avoided – which necessarily requires a separation between their private and public activities – but it also refers to “apparent conflicts” in addition to real conflicts. In other words, senators are expected to, not only arrange their private affairs in such a way that prevents real conflicts from arising, but also to prevent the perception of conflicts from arising.



The perception of conflicts between a senator's public duties and his or her private activities is amplified when the line between these two roles is blurred. At a certain point where these two lines are crossed, it becomes impossible to distinguish between when a senator is acting in his or her public capacity and representing the interests of his or her region and province as a public official on the one hand, and when he or she is acting in his or her private capacity and representing the interests of the entity within which he or she holds a position or office on the other.

Under paragraph 2(2)(c) of the Code, senators are expected to resolve any such conflict between these two roles in favour of the public interest. This concept is also found in the principle outlined in subsection 2(1) of the Code. The latter provides that senators must give precedence to their parliamentary duties and functions over any other duty or activity and "to lay aside all difficulties and excuses to perform their parliamentary duties and functions". This means that senators cannot choose to act in a way that gives priority to their outside activities over their parliamentary duties and functions.

The underlying message in these principles is that senators are senators first and members of boards and officers of outside organizations after. Not only should senators be mindful of the time spent on outside activities and ensure that they are giving priority to their Senate duties and responsibilities but, in the case of a conflict or even an apparent conflict, they must choose the public interest over any other interest.

In some cases, this may mean that senators may have to choose to decline to serve on a board or to accept an officer position within an entity in order to fully discharge their responsibilities as senators. Of course, and as was already alluded to above, nothing prevents senators in such situations from supporting and advancing in the Senate, through committee studies and by other such means, the causes that are important to them that these entities are also supporting and advancing.

In other cases, in order to remain in compliance with the Code if they do accept to hold a position within an entity, senators may have to refrain from raising and speaking about certain issues in the Senate, in committees and in the context of their senatorial duties.

The decision as to whether senators associate themselves with a particular organization or not depends, in part, on the all-important question about whether a senator would rather speak unfettered and unencumbered in the Senate to advance an issue or a cause using this broader, national platform, or would rather work on an issue or cause in a private and personal capacity by holding a position in an entity, thus curtailing his or her ability to raise and debate the matter in his or her capacity as a senator.

To conclude, though there have been a number of cases this year concerning the above issues, I am grateful to the senators who have consulted me on them and have sought and taken my advice regarding how to address them in order to avoid real and perceived conflicts.

Complying with Deadlines for Filing Documents Under the Code

There are a number of deadlines imposed under various provisions of the Code for the filing of documents. For example, there is a 30-day time limit for senators to file a Statement of Material Change after a material change has occurred that would affect the information a senator filed in his or her senator's Confidential Disclosure Statement. There is also a 30-day deadline for filing the annual Confidential Disclosure Statement and other deadlines for senators' reviewing and signing their Public Disclosure Summaries.



These deadlines are important in order to ensure that the disclosure of senators' activities and interests takes place in a timely and efficient manner and this, of course, is in the public interest. These timelines advance transparency and ensure that there are no unnecessary delays in the Annual Disclosure Process.

Notwithstanding the challenging circumstances in which we have found ourselves this past year, senators were (and are) nonetheless required to comply with these disclosure requirements. Having said that, given the unusual year we have had, I have shown understanding in cases where senators have, for good cause, reached out to me to explain their circumstances concerning missed deadlines.

However, it is not appropriate for a senator, even during these unusual circumstances, to repeatedly ignore deadlines or be unresponsive to my calls and efforts to reach out to him or her with a view to reminding the senator of the deadline past. This was in fact the case with respect to the preliminary review I carried out this past year, referred to earlier in this report, the details of which are required to remain confidential under the Code.

It is important that senators recognize that a failure to comply with a deadline imposed under the Code is a breach of the Code. Indeed, the Standing Committee on Ethics and Conflict of Interest for Senators issued a directive in 2015 concerning this very issue, a copy of which is posted on the Office's website. As noted above, the deadlines serve an important purpose in ensuring transparency in a timely fashion and, as such, should be respected.

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 benefits** 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
conseiller sénatorial
en éthique