



OFFICE OF THE SENATE ETHICS OFFICER

Annual Report



Annual Report of the Senate Ethics Officer 2007-2008

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www.parl.gc.ca/seo-cse

Catalogue number: Y7-1/2008
ISBN: 978-0-662-05812-0



June 11, 2008

The Honourable Noël Kinsella
Speaker of the Senate
280-F, Centre Block
Parliament Buildings
Ottawa, Ontario
K1A 0A4

Dear Mr. Speaker:

It is my honour and pleasure to submit to you the third Annual Report of the Senate Ethics Officer, pursuant to section 20.7 of the *Parliament of Canada Act*, R.S.C. 1985, c. P-1, as am. by S.C. 2004, c.7; S.C. 2006, c.9. It covers the period from April 1, 2007 to March 31, 2008.

Through you, I would like to express my sincere appreciation and gratitude to all senators for the cooperation and support they have provided to me and to my office.

Yours sincerely,

Jean T. Fournier
Senate Ethics Officer



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SENATE ETHICS OFFICER'S INTRODUCTORY REMARKS

This is my third Annual Report as the Senate Ethics Officer. It follows a comprehensive review by the Standing Committee on Conflict of Interest for Senators, the first such review since the Code was adopted in May 2005.

After three years of experience with the existing Code, it was appropriate to consider how it could be improved to assure Canadians that high standards of conduct are being maintained among senators. The Committee Report was tabled in the Senate on May 28, 2008 and adopted on May 29, 2008. A copy can be found in Appendix I to my Annual Report.



I welcome the Committee's recommendations and hope that the public will be encouraged by what has been done, and will see that the Senate intends to honour the trust the public has placed in its Members.

The amendments recommended by the Committee include:

- the formal recognition under the Code of the independent status of the Senate Ethics Officer in the interpretation and application of the Code as it relates to individual senators;
- requiring senators to abstain from debate in the Senate or in a committee of the Senate when 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;
- the requirement that senators meet with the Senate Ethics Officer when he advises such a meeting is necessary to carry out his duties and functions under the Code, as part of the annual disclosure process.

The Committee also recommended that any general directives given to the Senate Ethics Officer be "after consultation with the Senate Ethics Officer". While I welcome being consulted by the Committee, I believe that the new subsection 37(2) is redundant and unnecessary since the *Parliament of Canada Act* already provides that the Senate Ethics Officer (like the Conflict of Interest and Ethics Commissioner who has responsibility for members of the House of Commons and public office holders) functions under the "general direction" of a Committee designated or established for that purpose. I hope that consideration will be given to removing this



subsection when the Code is next amended. Meanwhile, in the interest of public confidence and transparency (two purposes of the Code set out in paragraphs 1(a) and 1(c)), I believe that any general directives given to the Senate Ethics Officer should be made public.

The Committee also proposed other changes, including some related to declarations of private interests, the retention of public documents and the status of confidential documents.

“Your committee notes that general satisfaction was expressed with regard to the provisions and operation of the Code and on the proposed amendments thereto.... Two amendments in particular require express mention. The first is that a senator who has declared a private interest will have to abstain from debate in the Senate and in committee, and withdraw from committee proceedings. The second is that the independence of the Senate Ethics Officer in advising senators about the Code as it relates to their particular circumstances is expressly affirmed.”

4th Report of the Standing Committee on Conflict of Interest for Senators, May 28, 2008, the Honourable Serge Joyal, P.C., Chair, and the Honourable Raynell Andreychuk, Deputy-Chair

I began my appointment in 2005 amid questions about the Senate Code. I firmly believe that the changes adopted by the Senate will strengthen and improve the current arrangements, thereby enhancing public confidence that the expected standards are being upheld effectively, and confidence among senators that they are being treated fairly and reasonably. As Canadians expect a rising level of ethical conduct from their parliamentarians, there will always be more to do. But the new measures represent real progress. With these changes, the Senate ethics regime bears favourable comparison with those in many other countries.

I would like to thank the members of the Committee for the opportunity to share my views in this regard and I am pleased that the Committee saw fit to accept many of my recommendations. In my view, one of the Committee's most important roles is to undertake periodic reviews of, and recommend to the Senate changes to, the Code, thereby providing the public with the assurance that senators are continuing to adjust, improve and refine the provisions of the Code. Indeed, I see the Committee as the “conscience of the Code”.



“Your committee notes with appreciation the relationship senators, your committee and members thereof, and the Senate Ethics Officer have established since the adoption of the Code. Your committee believes that such collaboration is an essential component for the success of all conflict of interest regimes.”

4th Report of the Standing Committee on Conflict of Interest for Senators, the Honourable Serge Joyal, P.C., Chair, and the Honourable Raynell Andreychuk, Deputy-Chair, Wednesday, May 28, 2008

This year, I met with the Committee twice, once to discuss last year’s Annual Report after it was tabled in the Senate, as well as certain administrative matters, and a second time to review my submission to the Committee on the review of the *Conflict of Interest Code for Senators*. The members of the Committee are as follows: the Honourable Serge Joyal, P.C. (the Chair), the Honourable Raynell Andreychuk (the Vice-Chair), the Honourable David Angus, Q.C., the Honourable Sharon Carstairs, P.C., and the Honourable Fernand Robichaud, P.C.

Canadian Parliamentary Ethics

My Annual Report also comes as we celebrate the 20th anniversary of the emergence of the Canadian parliamentary ethics model, which originated in Ontario in 1988. Over the subsequent two decades, every province and territory as well as both Houses of Parliament have adopted conflict of interest or ethics legislation. These fifteen jurisdictions have established independent Officers of Parliament or the Legislature to administer, interpret or apply rules regarding the proper behaviour of parliamentarians. While there are some differences in terms of the relationships of independent commissioners with legislatures and individual legislators, and variations on the rules of conduct, the objective is the same: to promote greater public confidence and trust in the integrity of parliamentarians. This was the subject of a presentation I made last year to the annual conference hosted by the Council on Governmental Ethics Laws. A copy of the presentation may be found in Appendix H.

While those of us involved in these endeavours are justifiably proud of what has been accomplished, many of our fellow citizens are only vaguely aware of the parliamentary ethics regime that has been established in their country. This then is a welcome opportunity to acknowledge all those who work in the field of parliamentary ethics and honour their many contributions to our country. Even though the Senate and the House of Commons lagged well behind other jurisdictions in Canada and other countries in introducing legislative ethics rules and procedures, the countrywide efforts over the past twenty years have, for the most part, been remarkably successful in preventing serious conflict of interest



scandals. This is especially true in those jurisdictions which pioneered the introduction of the Canadian parliamentary ethics model in the early 1990s, namely Ontario, British Columbia and Alberta. Parliamentarians in these jurisdictions have been largely free of the discredit brought on by major conflict of interest revelations. Indeed, Canada is now considered a world leader in the field of parliamentary ethics.

Countries with which Canada often compares itself on parliamentary matters have taken an interest in the Canadian experience and, in some cases, have drawn inspiration from it. As ethics reforms for parliamentarians have been enacted in many jurisdictions in the course of the last decade, we are witnessing a growing trend towards the introduction of systems which combine one or more of the four elements of the Canadian approach, namely: an independent commissioner, specific rules of conduct, legislative accountability and an emphasis on advice and on preventing problems before they arise.

“Independent ethics commissioners are an essential feature of the ethics rules of any government that is serious about integrity”.

*Professors Ian Green and David P. Shugarman
York University, 1997*

I am assisted in my work by a small team of four people, each bringing a level of experience and expertise for which I am grateful: Mrs. Louise Dalphy, Administrator and Ethics Advisor; Miss Deborah Palumbo, Assistant Senate Ethics Officer and General Counsel; Mr. Willard Dionne, Director; and Mr. Jacques Lalonde, Chief Advisor. Their commitment and dedication to their work has been invaluable to me over the last three years and I wish to express my sincere appreciation to them for their important contribution to the work of the office.

I would also like to express my appreciation to the Senate Administration for, again this year, providing my office with quality support services throughout the year in the following areas: security, finance, human resources and information technology. These services were provided on a cost recovery basis, pursuant to a written agreement.

Finally, and as in past years, I wish to express my gratitude to senators and their staff for their continued cooperation with my office. I look forward to working with individual senators on the interpretation and application of the new Code and ensuring that the Senate continues to uphold the highest standards in ethics and accountability. I regard it as a real privilege to be the first Senate Ethics Officer and I trust that I may continue to make a meaningful contribution in an area that is, in my view, of the utmost importance in a democracy.



1. THE YEAR IN REVIEW: 2007-2008¹

A. General Overview

This year was a busy and productive year for the office. In addition to its day-to-day operations, a significant amount of time was spent focusing on areas in which the *Conflict of Interest Code for Senators* could be clarified and strengthened. We were provided with an opportunity to share our thoughts on these matters with the Standing Committee on Conflict of Interest for Senators as a result of a review of the provisions of the Code required under section 52.

My office was also busy with the annual disclosure process – a yearly process in which senators are required to disclose their outside activities and financial interests first to me, on a confidential basis. Then, using this information, I prepare a public disclosure summary – a document that is made available to the public and that contains up-to-date information throughout the year.

In addition, I provided numerous opinions and advice to senators on various issues both in relation to the annual disclosure process, as well as in relation to matters outside it.

The office, again this year, took advantage of opportunities whenever possible to participate in conferences and events focused on ethics and conflict of interest in order to exchange views and ideas with others who have an interest in the field. These exchanges also provided the office with the opportunity to convey to others the work that we do and how we do it. This latter point is important, particularly given the growing interest in the office. This year, there were 16,914 visits to our website located at the following address: www.parl.gc.ca/seo-cse.

My office also continued to have regular contact with the office of the Conflict of Interest and Ethics Commissioner in order to ensure a measure of consistency in the interpretation of the *Conflict of Interest Code for Senators* and the *Conflict of Interest Code for Members of the House of Commons* where the provisions are similar. We also continued to work with our provincial and territorial colleagues on issues of interpretation where similarities exist between the Senate Code and the provincial and territorial laws on conflict of interest. These discussions and communications provided important opportunities to share best practices as well.

¹ In this chapter, the sections of the *Conflict of Interest Code for Senators* refer to the Code as it existed from May 18, 2005 to May 28, 2008.



THE OFFICE OF THE SENATE ETHICS OFFICER Vision-Mission-Values Statement

OUR VISION

Our vision is that, through our work, senators will be well-supported in fulfilling their responsibilities under the *Conflict of Interest Code for Senators* in order to maintain and enhance public confidence and trust in the integrity of each senator and in the Senate.

OUR MISSION

The Office of the Senate Ethics Officer administers, interprets and applies the Code and provides sound, timely and independent advice to senators regarding their obligations under the Code in a manner that is non-partisan, responsive and effective.

OUR CORE VALUES

Both as individuals and as an organization, we are committed to the values of integrity, excellence, respect for people, teamwork and quality of life as we carry out our mission and constantly strive to achieve our vision.

These shared values are the key drivers to our success as an office and we strive to uphold them in our daily actions. They guide how we serve senators, how we work together, and generally how we do business.

B. Annual Activities

(a) Opinions and Advice

This year, as in past years, I provided a number of opinions and advice to senators of varying degrees of complexity on a host of issues pertaining to the provisions of the *Conflict of Interest Code for Senators*. Section 8 of the Code explicitly states that individual senators may request written opinions and advice from the Senate Ethics Officer respecting their obligations under the Code. In my view, this provision is the expression of the most important part of my mandate. Although senators are ultimately responsible for arranging their affairs in such a way as to prevent foreseeable real or apparent conflicts of interest, they are encouraged to consult with my office before embarking on a course of action, particularly where the facts in question are complex and the relevant provisions of the Code require interpretation and analysis. I continue to believe that preventing conflicts from arising is preferable to conducting formal inquiries and investigations and that it is in the public interest to avoid conflicts rather than to attempt to deal with them once they have already arisen.



“I have, throughout my time in office tried to encourage all Members to make the widest possible use of the consultative and advisory services of my office...which in turn has made it easier for me to assist them in safely navigating the ship of state through potentially dangerous shoal waters and around hidden rocks.”

*The Honourable H.A.D. Oliver, Q.C.
Former Conflict of Interest Commissioner
of British Columbia (1997-2007), Annual
Report 2004-05*

I prepared numerous written opinions and advice as part of the annual disclosure process concerning a wide variety of matters, including outside activities, federal government contracts, disclosable income, assets and liabilities, as well as other financial interests. Other opinions were unrelated to the annual disclosure process but instead concerned conflict of interest issues that arose throughout the year.

A written opinion or advice is required to be kept confidential under subsection 8(4) of the Code, although it may be made public by the senator to whom it was provided, or by me with the senator's written consent. In addition, some opinions concerning contracts with the federal government must be made public under section 33 of the Code.

I also responded to numerous requests for advice of a more informal nature through telephone conversations, meetings and e-mail exchanges. These informal discussions are as important as the more formal opinions in that they offer guidance and information to senators in order to help them to better understand the Code and how it applies in different circumstances.

“An ‘ethicist’ would be someone who is sentient, someone who is always willing to pass judgment on the behaviour of others. People stiffen when they learn that we are ‘doing ethics’ . . . Ethics as I practice it takes people as they are, with their various and sometimes contradictory motives, and it aims to put institutions and a series of rules in place that promote morally acceptable motives and tend to check others.”

*Professor Daniel M. Weinstock
Université de Montréal, 2006*



In total, my office provided approximately 250 opinions and advice this year, both of a formal and an informal nature. The number of requests for advice has declined; last year, the number was over three hundred. This is probably due to the fact that senators are becoming more familiar with the requirements of the Code and have a better understanding of its provisions. The first two years of its coming into force were necessarily a learning period for both senators and their staff, as well as myself and my office.

Indeed, I noted that this year, the level of complexity of the requests increased. In my view, this suggests that senators have moved well beyond an understanding of the basic elements of the Code and are spending more time reflecting on more complex scenarios that are not easily resolved. The questions senators asked this year were more thought-provoking and, as such, required more time and consideration.

Having said that, we continue to receive some requests for more routine advice as well. I am always struck by the variety and range of the matters raised with my office. The issues are sometimes simple matters that may be dealt with quickly. For example, senators may simply want to be reassured that their initial instinct regarding a course of action on a matter is the best approach. In other cases, senators will raise a more complex scenario and will request a formal opinion outlining the best way to resolve the conflict.

Chapter two of this Report provides some examples of the types of requests for opinions or advice that may be made under the *Conflict of Interest Code for Senators*.

(b) Disclosure Process

Public disclosure is one of the means by which conflicts of interest are addressed and, although there are other forms of remedies for dealing with conflicts, disclosure is an essential feature of any modern conflict of interest regime. It ensures that legislators and senior public officials are accountable to the public and that any private interests that they have that may become relevant to their official duties and functions are publicly known. This guarantees a measure of transparency so that the public itself may judge whether an official's private interests are impairing his or her judgment in the exercise of his or her official duties and functions.

“Transparency...cleanses. It dissipates the shadows. It casts out the darkness. It enables people to see. It gives them a sense of comfort and confidence because they know there’s nothing being hidden.”

S.M.R. Covey, 2006



The disclosure process under the *Conflict of Interest Code for Senators* is a rigorous one that involves both confidential disclosure, as well as public disclosure through a public registry of information. It also includes a series of face-to-face meetings, which usually commence in November of each year and end in March.

As already noted earlier, senators are required to prepare, on an annual basis, a comprehensive disclosure statement under section 29 of the Code. Subsection 30(1) of the Code lists the information that must be disclosed to my office in this regard. It includes sources of income, assets, outside activities and government contracts. This statement is confidential and is used by my office to prepare a summary of information that is then made publicly available under the Code.

Any material changes to the information senators disclose as part of their confidential disclosure statements must be reported within 60 days after the changes occur (subsection 30(4)).

Senators must also continue to report any gifts or other benefits provided as an expression of courtesy or protocol that they or their family members receive throughout the year where these gifts or benefits exceed \$500 in value. They must be reported within 30 days of their receipt (subsection 19(3)). Senators must also report any such gifts or other benefits if the total value of all of them received from one source in a one year period exceeds \$500. They must be reported within 30 days after that value is exceeded (subsection 19(3)).

It should be noted that the acceptance of most gifts and other benefits offered to a senator or a senator's family member that could reasonably be considered to relate to his or her position as a senator is prohibited under subsection 19(1) of the Code. There are, however, two exceptions to this prohibition. The first was already mentioned above, i.e., gifts or benefits received as a normal expression of courtesy or protocol, or that are within the customary standards of hospitality that normally accompany a senator's position, and the second is any compensation authorized by law (subsections 19(1) and (2)).

Finally, any travel that arises from or relates to a senator's position that is not paid personally by him or her or through the programs for international and interparliamentary affairs of the Parliament of Canada, by the Senate, the Government of Canada, or the senator's political party, must also be reported within 30 days after the end of the trip if the cost of that travel exceeds \$500 (subsection 20(1)).

As the above rules indicate, senators have an ongoing obligation throughout the year to report changes to their circumstances in order to ensure that their confidential and public files contain accurate and up-to-date information at all times.



All 93 sitting senators filed their confidential disclosure statements with my office this year. Most senators provided their statements by the November 2, 2007 deadline that was set by my office with the approval of the Standing Committee on Conflict of Interest for Senators (subsection 29(2)). Regrettably, there were some delays in filing that resulted in further delays in the preparation of the public documents pertaining to senators.

As already noted, I am required under section 32 of the Code to prepare a public disclosure summary pertaining to each senator on the basis of the confidential information provided by senators annually to my office. These summaries must be made available to the public pursuant to section 35 of the Code. They are contained in the public registry, which may be consulted Mondays through Fridays during regular office hours at the following address: 90 Sparks Street, room 526, Ottawa, Ontario, K1P 5B4.

Section 33 of the Code sets out a list of the information that must be included in the public disclosure summaries. It is a lengthy and comprehensive list comprised of the following:

- (a) any official positions a senator holds in any corporations, income trusts, trade unions and partnerships, including a description of the activities of each entity;
- (b) any official positions a senator holds in associations and not-for-profit organizations, including memberships on advisory boards and any honorary positions;
- (c) the source and nature of any income that a senator has received in the preceding 12 months and is likely to receive in the next 12 months that the Senate Ethics Officer determines could be related to the senator's parliamentary duties and functions or could otherwise be relevant;
- (d) the source and nature of any contracts, subcontracts or other business arrangements that a senator may have with the Government of Canada or a federal agency or body, as well as the Senate Ethics Officer's opinion authorizing them;
- (e) the source and nature of any contracts, subcontracts or other business arrangements that a senator may have with the Government of Canada or a federal agency or body by virtue of a partnership or a significant interest in a private corporation that the senator is able to ascertain by making reasonable inquiries, as well as the Senate Ethics Officer's opinion authorizing them;
- (f) the source and nature of any contracts or other business arrangements that a member of a senator's family may have with the Government of Canada or a federal agency or body either directly, through a subcontract, or by virtue of a partnership or a significant interest in a private corporation, that the senator is able to ascertain by making reasonable inquiries;



- (g) information regarding the nature of any assets and liabilities that the Senate Ethics Officer determines could relate to the parliamentary duties and functions of a senator or could otherwise be relevant;
- (h) any declarations of a private interest made by a senator;
- (i) any statements of gifts, benefits and sponsored travel; and
- (j) any statements of material change filed with the Senate Ethics Officer.

It is important to note that any contracts, subcontracts or business arrangements referred to in paragraphs (d) or (e) above are only permissible under one of two circumstances: (1) where the contract or other business arrangement is in the public interest due to special circumstances; or (2) where the contract or other business arrangement is unlikely to affect the senator's obligations under the Code due to the nature of the contract or arrangement, or due to the conditions imposed by the Senate Ethics Officer in order to ensure that there is no real or apparent conflict.

Once the public disclosure summaries of senators are completed and, as I noted earlier, I arrange to meet with each senator individually for the purpose of reviewing his or her confidential disclosure statement, the public disclosure summary, any compliance measures that are required under the circumstances, as well as the senator's general obligations under the Code.

This year, two senators declined to meet with me. In my last Annual Report, I explained at some length the value of a face-to-face meeting, at least once a year, both for individual senators and for myself in the discharge of my duties and responsibilities. As I have noted in the past, this meeting is an important opportunity for a discussion to take place in which questions may be answered, clarifications may be sought, and additional information may be provided as part of the disclosure process. It is also an opportunity for other issues to be raised concerning other obligations of senators under the Code. This issue will be discussed in more detail later on in section D of this chapter.

As in past years, after the annual meetings with senators, and once any outstanding issues were resolved, I confirmed with them in writing that they were in compliance with the requirements of the Code and provided each with a copy of his or her public disclosure summary.

At the time of the writing of this Report, all senators' public disclosure summaries have been placed in the public registry,



“The work done gives me confidence that most public officials and representatives who have to complete the statement of income and assets and respond to our requests for information are honest and are not improperly enriching themselves.”

Jean-Marc Sauvé

*vice-président du Conseil d’État, président de la commission pour la
Transparence financière de la vie politique, Paris, 2008*

(c) Inquiries

The Senate Ethics Officer may conduct an inquiry in order to determine whether a senator has complied with his or her obligations under the *Conflict of interest Code for Senators*: (a) at the direction of the Standing Committee on Conflict of Interest for Senators (subsection 44(1)); (b) at the request of another senator (subsection 44(2)); and (c) on his own initiative, with the approval of the Committee (subsections 44(7) to (9)).

I am pleased to report that, again this year, it has not been necessary to undertake any inquiries concerning breaches of the provisions of the Code.

In my view, and as I have noted in my previous Annual Reports, the public interest is better served by avoiding costly and time-consuming inquiries and investigations. It is always preferable to prevent conflicts of interest rather than to attempt to address them after they have already developed. For this reason, I continue to place a strong emphasis on my advisory function. As noted earlier, if senators are availing themselves of the advisory services my office provides, the necessity for inquiries and investigations is greatly reduced.

(d) Outreach and External Activities

As I have noted in past years, our relationships with other professionals in the field of ethics and conflict of interest are invaluable to the office. Through these exchanges, we are able to compare different ethics models in Canada and abroad, different rules on conflict of interest and different approaches to similar problems, while at the same time sharing best practices. We are better able to identify the strengths in our system, as well as its weaknesses, and to consider ways of improving and enhancing it. It is also important to reach out to other organizations with an interest in ethics, both national and international, in order to communicate the mandate of my office and to better educate people on the type of work for which it is responsible. This is particularly important since the ethics regime in the Senate is still relatively new.



From September 13, 2007 to September 15, 2007, I had the pleasure of co-hosting with my federal counterpart, Ms. Mary Dawson, the Conflict of Interest and Ethics Commissioner for public office holders and members of the House of Commons, the annual meeting of the Canadian Conflict of Interest Network (CCOIN). This meeting was held in Ottawa, Ontario. The Assistant Senate Ethics Officer and General Counsel also participated. CCOIN is an informal organization that is comprised of the various federal, provincial and territorial ethics commissioners and officers in Canada. As in past years, the annual meeting of the association, as well as the ongoing exchanges among members throughout the year, provided an opportunity to share thoughts and views on matters of common interest. They were also opportunities to seek advice from colleagues on more complex issues and to exchange information on similarities and differences in the various ethics regimes across the country.

“We must restore the American people’s confidence in the ethics process by ensuring that political self-interest can no longer prevent politicians from enforcing ethics rules.”

Senator Barack Obama
United States Senate, January 2007

From September 16, 2007 to September 19, 2007, I attended, with the Assistant Senate Ethics Officer and General Counsel, the annual conference hosted by the Council of Governmental Ethics Laws (COGEL), which was held in Victoria, British Columbia. COGEL is an organization that is rooted primarily in the United States. Membership is drawn principally from the U.S. and Canada, although there are some European, Australian and Latin American members as well. The organization is a professional body for government agencies, organizations and individuals with responsibilities or interests in governmental ethics, elections, campaign finance, lobby laws and freedom of information. Its goal is to ensure that ethics professionals are able to connect with others in the field and to keep them apprised of any new developments in the area that might be of interest.

“At a time when the public is demanding change, the Senate needs to more aggressively enforce its own rules. We should do this not just by making more public the work that the Senate Ethics Committee currently undertakes, but by addressing the conflict that is inherent in anybody that regulates itself. By creating ... a new office with the capacity to conduct and initiate investigations and a perspective uncolored by bipartisan concerns or collegial relationships, I believe we can address this long-standing structural problem.”

Senator John McCain
United States Senate, January 2007



I participated in this particular conference as a member of a panel, comprised of Canadian speakers to discuss the *Federal Accountability Act*. My presentation was entitled, “Emergence of a Distinctive Canadian Parliamentary Ethics Model: 1988-2008”. A copy of my presentation is contained in Appendix H to this Report.

On September 28, 2007, I again participated in a panel discussion with my federal counterpart, Ms. Mary Dawson, the Conflict of Interest and Ethics Commissioner, in a seminar organized by the Library of Parliament entitled, “An Introduction to Ethics in Parliament”. This event provided an opportunity for parliamentarians and their staff to learn more about the *Conflict of Interest Code for Senators*, the new *Conflict of Interest Act*, and the *Conflict of Interest Code for Members of the House of Commons*. It was also an opportunity for both offices to communicate how they function on a day-to-day basis and to respond to questions about how the federal ethics system works more generally.

Finally, I have spent some time this year reflecting upon the need for an international forum in which ethics officers and commissioners in other countries may exchange information on the differences and similarities between the various ethics regimes that apply to legislators. In this regard, I had the opportunity to meet with the vice-président du Conseil d'état et président de la commission pour la Transparence financière de la vie politique, Mr. Jean-Marc Sauvé, on March 10, 2008, in Paris, France, as well as other senior French officials. Prior to Mr. Sauvé's appointment to this position, which he has held since 2006, he was secrétaire général du Gouvernement from 1995 to 2006.

The Commission, which was established in 1988, has a mandate to review the declarations of personal assets of senior public officials, and since 1995, that mandate has been extended to also include members of the Senate and the National Assembly.

The sharing of information among countries with which Canada often compares itself is extremely valuable in better understanding how other jurisdictions understand ethics and conflict of interest issues. This, in turn, can be helpful in identifying the advantages and disadvantages of adopting different approaches to issues, with a view to improving upon and enhancing an already effective ethics regime in the Senate.

C. Budget

The office's Main Estimates for the year 2007-2008 were \$954,000. The total for this year is \$791,000 (2008-2009). The reduction of \$163,000 in this year's Estimates reflects the fact that my position became a part-time position as of April 1, 2007.



Our financial statements for the years 2006-2007 and 2007-2008 were audited by the firm van Berkom & Ritz Chartered Accountants. I am pleased to report that we received a favourable report on both audits. The results of these audits are contained in Appendix E to this Report.

D. Proposed Amendments to the Conflict of Interest Code for Senators

As already noted earlier, section 52 of the *Conflict of Interest Code for Senators* requires that the Standing Committee on Conflict of Interest for Senators undertake a comprehensive review of the provisions of the Code within three years of its coming into force, and every five years thereafter. This first review provided a welcome opportunity to reflect on the current system of ethics in the Senate and to consider ways in which to clarify certain provisions of the Code, and thereby improve on it.

The office was pleased to be able to provide advice and recommendations to the Committee based on its experience in working with the Code over the last three years.

I raised a number of issues with the Committee, both of a substantial as well as a technical nature. Of the broader policy issues, three of them were, in my view, of sufficient importance that they required consideration as part of this first review of the Code.

(i) Roles and Responsibilities of the Senate Ethics Officer

First, I recommended that the Committee amend the Code in order to clarify the roles and responsibilities of the Senate Ethics Officer, highlighting the fact that the roles and responsibilities of other Canadian ethics commissioners at the federal, provincial and territorial levels are clear and unambiguous.

In practice, I am solely responsible for providing opinions and advice to individual senators on the application and interpretation of the Code. Yet some of the provisions of the Code that referred to the Standing Committee on Conflict of Interest for Senators created a false impression that the Committee had a role to play in this regard. I am referring, in particular, to subsections 8(5), 39(3), (4) and (5) of the Code.

“Members judging members raises reasonable doubts about the independence, fairness and accountability of the process.”

*Professor Dennis Thompson
Harvard University, 1995*



There is no doubt that the Committee does have an important role to play. It is responsible for the overall effectiveness of the system. It provides general direction to the Senate Ethics Officer under subsection 20.5(3) of the *Parliament of Canada Act*. It also has an important function with respect to inquiries and investigations. As in other jurisdictions, the Senate, working with the Standing Committee on Conflict of Interest for Senators, retains its constitutional authority to discipline its own members by making final determinations regarding sanctions and penalties where senators have violated the provisions of the Code. Moreover, the Committee is responsible for undertaking periodic reviews of, and recommending to the Senate changes to, the Code.

However, in my view, the Code required clarification with respect to the fact that the Senate Ethics Officer alone is responsible for providing opinions and advice to individual senators regarding their obligations under the Code. This clarification was, in my view, important since it had an impact on the perception of the public concerning the independence of the Senate Ethics Officer. I firmly believe that the appearance of independence in these matters is as important as real independence.

“On March 11th, the House passed legislation (H.Res. 895) to strengthen congressional ethics enforcement with a new Office of Congressional Ethics. This will bring greater accountability and transparency to the ethics enforcement process by requiring, for the first time in history, an independent review of alleged ethics violations by individuals who are not Members of Congress.”

*Speaker Nancy Pelosi
U.S. House of Representatives
March 11, 2008*

(ii) Annual Disclosure Process

Second, I emphasized to the Committee the importance of face-to-face annual meetings in the course of the disclosure process. As I noted earlier in this Report, the annual disclosure process is a key element of the Code that ensures transparency and provides a measure of accountability to the public. This important process is a shared responsibility. On the one hand, senators are responsible for disclosing, on a confidential basis, the information required to be disclosed under subsection 30(1) of the Code. On the other hand, I am responsible for preparing a public statement of the information required to be disclosed under subsection 33(1) of the Code, based on the information provided to me by senators.



In order to ensure the effectiveness of this process, section 31 of the Code authorizes the Senate Ethics Officer to request to meet with senators regarding their confidential disclosure statements. This meeting provides an opportunity for me to raise questions and discuss issues pertaining to the statement, to clarify inconsistencies or ambiguities in this regard, and to ensure that the information provided to me is up-to-date and accurate. A face-to-face meeting is particularly useful where the information contained in the confidential disclosure statement raises complex issues and the best course of action is not readily apparent. This meeting is also an opportunity for senators to discuss future plans and to obtain advice in this regard, as well as to raise issues concerning other obligations that senators have under the Code outside the disclosure process – for example, issues pertaining to gifts and benefits, sponsored travel, and declarations of private interests in the Senate or in committees of the Senate.

There is tremendous value in these meetings and this is evident when one examines the experiences over the last twenty years of the ethics commissioners of the various provincial and territorial assemblies across Canada. Every former and current provincial and territorial ethics commissioner with whom I have communicated over the last three years has underscored their importance. In fact, the necessity of annual meetings is reflected in the legislation pertaining to conflict of interest in other Canadian jurisdictions. In most provinces and territories, annual meetings between the ethics commissioners and members of the various legislative bodies are statutorily required. Under the Senate Code, while the Senate Ethics Officer is authorized to “request” such a meeting, there is no corresponding obligation on the part of senators to agree to the meeting. In other words, unlike in most jurisdictions in Canada, an annual meeting is not mandatory. In light of the significant benefits of a face-to-face meeting, I recommended to the Committee that the Code be amended to require at least one meeting per year.

(iii) Declarations of Private Interest

Third, section 15 of the Code, when read on its face, raised concerns regarding its effect in certain circumstances. Subsection 15(1) provided that a senator who had reasonable grounds to believe that he or she, or a family member, had a private interest that could be affected by a matter before the Senate could participate in debate on the matter, provided that an oral declaration was first made on the record prior to each intervention. Subsection 15(2) essentially provided a similar rule where a senator believed on reasonable grounds that he or she had an interest in a matter that is before a committee of which the senator was a member.



Section 15, when read alone, seemed to authorize senators to promote in the Senate or in committee the interests of entities on whose boards they sit or in which they or their family members have an interest. However, when read with sections 10 and 11 of the Code, the meaning of section 15 was less clear. Section 10 provides that senators may not, in the course of performing their parliamentary duties and functions, act or attempt to act in any way to further their private interests, those of their family members, or to improperly further those of another person or an entity. Section 11 prohibits senators from using or attempting to use their position as senators to influence the decision of another person in order to further those same interests. The advice that I have consistently provided to senators in these matters is that they should be cautious about debating a matter in which they have a private interest within the meaning of subsection 13(1) of the Code in order to avoid appearing to violate sections 10 and 11, and senators have complied with this advice.

However, since section 15 did seem to raise questions in this regard, I recommended to the Committee that the section be amended to provide that senators should not debate any matter in the Senate or in a committee in which they or their family members have a private interest, as defined under the Code.

Excerpts from the office's submissions to the Committee are contained in Appendix F to this Report. It should be noted that these are only a sample of the issues that were raised. The office also made a number of recommendations on other issues, including declarations of private interest, the retention of public documents, and the status of confidential documents.

I would like to take this opportunity to express my appreciation to the members of the Committee for their interest in the views of my office throughout the course of the review process.

The Committee's final report was tabled in the Senate on May 28, 2008 and was adopted by the Senate on May 29, 2008. A copy of it is included in Appendix I.

"What was good enough yesterday may no longer be good enough today. Today's "business as usual" may be tomorrow's "unacceptable". The (ethics) bar will continue to rise and we should celebrate this."

*Howard R. Wilson
Former Ethics Counsellor, 1994-2004*



2. THE CODE IN PRACTICE¹

“You have to take responsibility because the world holds you accountable for what you do.”

Leonard Cohen, 2007

Last year’s Annual Report provided the reader with examples of scenarios in which some of the provisions of the *Conflict of Interest Code for Senators* would be engaged in order to demonstrate how the Code might apply to a particular set of facts and to highlight some of the considerations that might be relevant in a given set of circumstances.

In light of the interest expressed in, and the important educational value of, these brief summary cases, we have again provided a sample for illustrative purposes. It should be noted, however, that they are abbreviated and, as such, only highlight some of the key considerations in each fact scenario. Senators who require specific advice on the best course of action in a particular case are encouraged to contact the Senate Ethics Office in order to ensure that the matter is thoroughly examined and that all the relevant facts are considered before an official opinion is provided by the Senate Ethics Officer.

DEFINITION OF “CONFLICT OF INTEREST”, THE CANADIAN ENCYCLOPEDIA, 2006 (KENNETH GIBBONS, UNIVERSITY OF WINNIPEG)

Conflict of Interest may be defined as a situation in which politicians and public servants have an actual or potential interest (usually financial) that may influence or appear to influence the conduct of their official duties. Even when this conflict is not illegal, it may create doubts or suspicions concerning the integrity or fairness of decisions made by such officials, and over time recurring conflicts may increase the level of distrust and cynicism toward government....

...Whether in statute, guideline or code form, conflict of interest documents require that those covered, be they politicians or public servants or both, shall avoid behaviour which places their private interest ahead of the public interest. Typically, this may mean that they may be required to remove themselves from decisions where they have a financial interest, to avoid giving preferential treatment, to not use insider information or government property for personal benefit, to refuse gifts or other benefits of more than nominal value, or to avoid employment after leaving public office that takes improper advantage of their previous position.

¹ In this chapter, the sections of the *Conflict of Interest Code for Senators* refer to the Code as it existed from May 18, 2005 to May 28, 2008.



A. Activities Outside Official Parliamentary Duties

1. Issue

A senator was asked to sit on the Board of Directors of a public corporation and inquires as to whether the Code imposes any restrictions in this regard.

Considerations

Paragraph 5(c) of the Code explicitly authorizes senators, who are not ministers of the Crown, to participate in outside activities, including sitting on the boards of commercial corporations. However, any such positions must be publicly disclosed under paragraph 33(1)(a). In addition, a senator in such circumstances would be asked to comply with certain restrictions. For example, he or she would be required to refrain from making any representations on behalf of the corporation to federal officials in order to obtain financial assistance or contracts. This restriction would ensure that the senator not only complies, but appears to comply (paragraph 2(1)(c)), with section 11 of the Code. This provision prohibits senators from using or attempting to use their position to influence the decision of another in order to improperly further their own interests, those of their family members, or to improperly further another person's or entity's private interests, as defined under subsection 13(1). The senator would also be asked to refrain from being involved in any announcements of federal funding to the corporation. This addresses the perception that the funding was obtained because of the senator's involvement with the corporation.

2. Issue

A senator would like to engage in fundraising activities on behalf of a national political party. He or she asks whether there are any restrictions in this regard under the Code.

Considerations

A senator who is involved in political fundraising is advised that he or she should take certain precautions in order to avoid a real or apparent (paragraph 2(1)(c)) breach of section 10. First, the senator should not personally solicit political donations from any person with whom he or she has present or foreseeable future dealings in his or her capacity as a senator, or from any person who has dealings with a committee in which the senator is a member. This restriction is important in order to avoid the perception that a donation that was made by a person may be influencing a senator in the performance of his or her parliamentary duties and functions. Second, a senator would also be advised not to use Senate letterhead to solicit contributions to registered parties, candidates, nomination contestants, registered associations and leadership contestants in order to remain, and to appear to remain, in compliance with section 11 of the Code.



Finally, the senator would be cautioned that the Senate Ethics Officer's jurisdiction is limited to the rules contained in the *Conflict of Interest Code for Senators* but that there are other rules and laws that may also be relevant to the above question. For example, some of the internal rules of the Senate (the *Senate Administrative Rules*) relate to the proper allocation and use of Senate resources and, of course, the *Canada Elections Act* contains provisions governing electoral financing.

3. Issue

A senator asks whether his or her directorship in a private corporation, which has recently become inactive but has not yet been officially dissolved, must continue to be publicly disclosed.

Considerations

Paragraph 33(1)(a) of the Code requires the public disclosure of “any corporations” in which a senator is a director or officer. This provision does not exclude inactive corporations from its operation. Indeed, an inactive corporation remains a legal entity until it is officially dissolved. Consequently, a senator's directorship, in these circumstances, must continue to be made public.

4. Issue

A senator inquires whether he or she may accept a position as Honorary Chairperson of a fundraising committee of a not-for-profit organization where the duties and functions of the position would require the senator to personally solicit funds.

Considerations

Under section 5 of the Code, senators are permitted to engage in outside activities, including holding official positions in organizations, as long as they are able to fulfill their obligations under the Code. However, senators would be asked to comply with certain conditions depending upon the circumstances. In this particular case, the senator would be asked to refrain from making any representations on behalf of the organization to the Government of Canada or any federal agency or body in order to obtain financial assistance. The senator would also be asked to refrain from being involved in any announcements of federal funding to the organization. These restrictions would address the perception that might be created that any federal financial assistance was obtained due to the senator's involvement with the organization in question (section 11 and paragraph 2(1)(c) of the Code). In addition, the senator would be advised to use the letterhead of the organization – not that of the Senate – in carrying out his or her responsibilities on the fundraising committee, and to ensure that any fundraising is carried out in his or her capacity as the Honorary Chairperson of the organization's fundraising committee, not in his or her



capacity as a senator. Finally, the senator's honorary position would have to be publicly disclosed under paragraph 33(1)(b) of the Code.

SECTION 5 OF THE SENATE CODE

Section 5 provides that senators may engage in outside activities unless, in doing so, they are unable to fulfil their obligations under the Code. It reads:

5. Senators who are not ministers of the Crown may participate in any outside activities, including the following, as long as they are able to fulfil their obligations under this Code:

- (a) engaging in employment or in the practice of a profession;
- (b) carrying on a business;
- (c) being a director or officer in a corporation, association, trade union or not-for-profit organization; and
- (d) being a partner in a partnership.

A similar provision is also found in the *Conflict of Interest Code for Members of the House of Commons*. These provisions are intended to reflect the principle that conflict of interest rules should not discourage qualified people from diverse backgrounds and who have had successful business and professional careers from entering public life. Indeed, senators are expected to remain members of their communities and regions and to continue their activities in those communities and regions while serving the public interest. However, where a senator's public duties come in conflict with his or her private interests, the conflict must always be resolved in favour of the public interest. Conflict of interest rules are aimed at ensuring this result.

5. Issue

A senator would like to send a letter using Senate letterhead, not only to his or her Senate colleagues, but also to individuals and organizations outside the Senate in order to solicit funds on behalf of a not-for-profit organization. The senator does not hold an official position within it.

Considerations

The Code would not preclude a senator from sending out such a letter. Section 11 provides that a senator shall not use or attempt to use his or her position as a senator to influence the decision of another person in order to further the senator's private interests, or those of a family member, or to improperly further another person's or entity's private interest. The word "improperly" suggests that the Code permits the furthering of another person's or entity's private interest in some



circumstances, but not all. Indeed, senators play a key role in advocating for, and championing, important social causes. Since the senator does not hold an official position in the organization in question, it cannot be said that he or she is “improperly” furthering its private interests by writing a letter to promote the organization’s goals and to solicit the funding necessary for it to achieve those goals. The senator would, however, be cautioned that the Senate Ethics Officer’s jurisdiction is limited to the rules contained in the *Conflict of Interest Code for Senators* and that some of the *Senate Administrative Rules* may also be relevant to the above question, most notably the rules pertaining to the use of Senate resources.

B. Sponsored Travel

6. Issue

A not-for-profit organization requests that a senator, who sits on the Board of Directors of the organization, attend an event abroad as its representative. The organization has offered to pay the senator’s travel and accommodation expenses.

Considerations

The senator may accept the offer of the organization to pay his or her travel and related benefits. Moreover, there is no requirement for a public declaration in this regard since the sponsored travel and related benefits fall outside section 20 of the Code. The reason for this is that they relate to the senator’s professional outside activities, not his or her parliamentary duties and functions. Subsection 20(1), which requires the public disclosure of certain sponsored travel that exceeds \$500 in value, only pertains to travel and related benefits that arise from or relate to a senator’s position.

7. Issue

A senator inquires as to whether the Code prohibits a senator from accepting an offer by the sponsor of a conference to pay for the travel costs and accommodation for two nights for the senator. He or she is taking part in a symposium as a guest speaker in his or her capacity as a senator.

Considerations

Since the travel arises from or relates to the performance of the senator’s parliamentary duties and functions, it falls within subsection 20(1) of the Code. This provision provides that such travel is acceptable but that where the costs exceed \$500 and the trip does not fall within an explicit exception, the senator must file a statement of sponsored travel with the Senate Ethics Office within 30 days after the end of the trip. The declaration must include the name of the person or organization paying for the trip, the destination, the purpose and length of the trip and the



general nature of the benefits received (subsection 20(2)). This declaration is then placed on the public record pursuant to paragraph 33(1)(i) of the Code.

8. Issue

A senator is invited by a foreign government to attend a series of meetings abroad as part of his or her parliamentary duties and functions. The host country is offering to pay the travel and accommodation costs. The senator inquires whether he or she may accept the offer under the Code.

Considerations

Under subsection 20(1), sponsored travel that arises from or relates to a senator's position is acceptable. However, since the cost of the travel exceeds \$500, the senator would be required to file a statement of sponsored travel with the Senate Ethics Office within 30 days after the end of the trip. This statement would include the name of the government paying for the trip, the purpose and length of the trip, as well as a general description of the benefits received (subsection 20(2)). This information would then be placed on the senator's public file under paragraph 33(1)(i) of the Code.

9. Issue

A senator is asked to travel to the United States for the Canada-United States Inter-Parliamentary Group's annual meeting. The senator inquires as to whether this trip must be publicly declared.

Considerations

Subsection 20(1) of the Code provides, in part, that any travel that is paid through a program for international and interparliamentary affairs of the Parliament of Canada need not be publicly declared. The Canada-United States Inter-Parliamentary Group is a parliamentary association that is funded through the Joint Interparliamentary Council (JIC). JIC operates under the authority of the Senate Standing Committee on Internal Economy, Budgets and Administration and the Speaker of the House of Commons as the Chair of the House of Commons Board of Internal Economy and it determines the level of funding to be distributed to each association. Since the travel is funded by the Senate and the House of Commons rather than by an outside party, there is no requirement for a public declaration in these circumstances.

C. Gifts and Other Benefits

10. Issue

A senator inquires whether he or she may accept certain benefits which are offered by a commercial corporation in recognition of the senator's past service as a member



of its Board of Directors. The corporation does not have present dealings with the Senate, nor will it have any dealings with the Senate in the foreseeable future.

Considerations

These benefits fall outside the ambit of section 19 of the Code since they relate to the senator's previous professional outside activities. As such, the senator may accept these benefits. Moreover, there is also no requirement that they be publicly disclosed.

11. Issue

A senator asks whether he or she may accept a gift as an expression of appreciation for delivering a speech at a conference in which he or she participated in his or her capacity as a senator.

Considerations

The gift is acceptable under subsection 19(2) of the Code since it is "a normal expression of courtesy or protocol" and is "within the customary standards of hospitality that normally accompany [a] senator's position". However, if the value of the gift exceeds \$500, a declaration must be filed with the Senate Ethics Office within 30 days after the receipt of the gift, in accordance with subsection 19(3) of the Code. This declaration must then be filed in the senator's public file under paragraph 33(1)(i).

12. Issue

A senator inquires as to whether he or she may request that, instead of accepting a gift offered as a token of appreciation for having given the keynote address at an event, a donation be made to a charitable organization of the senator's choice. The senator is participating in the event as part of his or her parliamentary duties and functions.

Considerations

The senator may make such a request provided he or she does not receive any benefit, directly or indirectly, from the donation (subsection 19(1) of the Code). The donation should be given directly by the event organizer to the charitable organization and any income tax receipt should be provided to the sponsor of the conference, not the senator.

13. Issue

A senator inquires whether he or she may accept a gift from a foreign government during a trip abroad where the senator is part of an official Canadian delegation.



Considerations

The gift may be accepted under subsection 19(2) of the Code since it was received as a “normal expression of courtesy or protocol” and is “within the customary standards of hospitality that normally accompany [a] senator’s position”. However, if the value of the gift exceeds \$500, a declaration must be filed with the Senate Ethics Officer within 30 days after the receipt of the gift pursuant to subsection 19(3) of the Code and this declaration will then form part of the senator’s public record (paragraph 33(1)(i)).

14. Issue

A senator inquires whether he or she may accept free hockey tickets from a friend under the Code.

Considerations

Subsection 19(1) of the Code prohibits the acceptance of gifts and benefits that could reasonably be considered to relate to a senator’s position, with some limited exceptions. If the gift or benefit is not related to a senator’s parliamentary duties and functions – for example, if it is provided on the basis of a friendship – it may be accepted depending upon the particular circumstances. Both the nature of the relationship, and whether the senator’s judgment could be influenced in the performance of his or her official duties in the particular circumstances, are key. The questions that would require some consideration include the following: (1) whether there were any exchanges of gifts and benefits between the two parties in the past; (2) whether the relationship existed prior to the senator’s appointment to the Senate; (3) whether social meetings between the senator and the donor took place in which Senate business was not discussed; (4) whether the donor has, at present or in the foreseeable future, any official dealings with the Senate or any of its committees; and (5) whether the donor is a registered lobbyist. In other words, the particular circumstances will determine whether the relationship between the donor and the senator in question can be characterized as a “friendship” and whether the gift may be accepted under the Code.

D. Declarations of Private Interests

15. Issue

A senator inquires whether he or she is required to make a second declaration of a private interest under subsection 14(1) of the Code in respect of a bill that is before a committee of the Senate where he or she had already made such a declaration regarding this measure during the previous parliamentary session.



Considerations

The senator should make a further declaration of a private interest under subsection 14(1) of the Code if the bill in question is reintroduced in the new session. During a prorogation or dissolution of Parliament, all bills die on the *Order Paper* and most parliamentary committees cease to exist. When Parliament resumes, any bills that are reintroduced would be renumbered. In addition, committees are reconstituted and, consequently, there may be changes in their membership. In light of these circumstances, a further declaration in the new Parliament or the new session makes sense in order to ensure that the public record is clear and that there is no confusion regarding which measure may pose a conflict for the senator in question.

16. Issue

A bill before the Senate concerns a sector of the economy (for example, agriculture), which is also the sector of operation of a corporation in which a senator has an interest. The senator inquires whether he or she must make a declaration of a private interest in the Senate, pursuant to subsection 14(1) of the Code, regarding the matter.

Considerations

Since the bill involves a matter that is of general application and one which affects the corporation as one of a broad class, a declaration of a private interest is not required in these circumstances (paragraphs 13(2)(a) and (b)). A declaration would be required if the bill in question specifically related to the corporation or a competitor of the corporation.

E. Disclosure Requirements

17. Issue

A senator inquires as to what he or she is required to disclose to the Senate Ethics Officer in the nature of income.

Considerations

Paragraph 30(1)(c) of the Code requires a senator to disclose the nature of any source of income over \$2,000 that the senator has received in the preceding 12 months and is likely to receive during the next 12 months. Under this provision, each and every individual source that has generated income over \$2,000 or that the senator anticipates will generate income over \$2,000 must be reported. Sources of income would include, for example, the name of a particular stock, the name of an employer, a business or profession and the name of a party with whom a contract has been concluded. With respect to investments, each investment must be reported as a separate source, rather than all investments being reported as a single source of investment income.



As to the nature of the income, it includes, for example, dividends, capital gains, director's fees, wages, professional fees for services rendered, interests from investments, or any amount received as a result of an interest in the shares of a private corporation, including a holding company.

It should be noted, however, that only the nature and source of the income must be reported, not the income itself.

18. Issue

A senator inquires about what he or she is required to disclose to the Senate Ethics Officer under the Code in the nature of assets.

Considerations

Senators are required to provide information regarding the nature, but not the value, of any assets and liabilities over \$10,000 under paragraph 30(1)(g) of the Code.

Some examples of the types of assets that must be reported include, but are not limited to, farms, lands, rental or real property for commercial operations, interests in partnerships, interests in private corporations including holding corporations, publicly traded securities of corporations or foreign governments such as stocks, bonds, stock market indices, trust units, units of mutual funds, commercial papers, stock options and similar instruments.

In the case of publicly traded securities, the name of a particular asset that has a value greater than \$10,000 must be disclosed. In this regard, a list of the names of those specific assets or, alternatively, a statement of account from a financial institution or a broker, may be provided, although the value of the assets may be excluded.

F. Federal Contracts

19. Issue

A senator is asked to become a partner in a partnership that is a party to a contract with the federal government. The senator inquires regarding any prohibition or restrictions in this regard under the Code.

Considerations

Section 24 of the Code prohibits senators from having an interest in a partnership or in a private corporation that is a party, directly or through a subcontract, to a contract or other business arrangement with the Government of Canada or any federal agency or body unless the Senate Ethics Officer is of the opinion that: (1) the



contract or business arrangement is in the public interest due to special circumstances; or (2) the Senate Ethics Officer is of the opinion that the contract or other arrangement is unlikely to affect the senator's obligations under the Code.

With respect to the first exception, it has to date never been cited. Turning to the second exception, if the senator complies with certain conditions prior to accepting a position as a partner, his or her circumstances would fall thereunder. For example, if the senator agrees to recuse himself or herself from any involvement in negotiations and discussions with federal officials on matters relating to the contract in question, any renewal or extension of it, and any future contracts with the federal government, the senator would remain in compliance with section 11 of the Code, notwithstanding his or her interest in the partnership and the existence of the contract in question. This recusal would also address the appearance of a conflict under section 11; the appearance of conflicts is addressed in paragraph 2(1)(c) of the Code.

In such circumstances, the senator might also be advised to send a letter of direction to a senior official of the organization setting out his or her obligations under the Code with respect to government contracts. This would ensure that the organization understands that the senator is to be kept at arms length from any negotiations and discussions with federal officials regarding these matters. A copy of this letter would be included in the senator's public disclosure file, in addition to letters of confirmation from the partnership that it will respect these arrangements.

The Senate Ethics Officer's written opinion confirming the senator's compliance with the Code would be placed in the senator's public file and would be made available for public inspection, pursuant to paragraph 33(1)(e) of the Code.

Finally, the senator's position as a partner would be publicly disclosed as part of the senator's public disclosure summary in accordance with paragraph 33(1)(a) of the Code.

"The test is not the legal requirement. It is beyond that; it is about what is right. It is not about doing the minimum or working around the problems; it is about setting an example. It is not about complacency... it is about going the extra distance that makes the difference. We need to ensure ourselves in our every day actions that we do not accept or tolerate ambiguity when dealing with these subjects. It leads to uncertainty, speculation, lack of trust, and frustration, all of which are non-productive uses of people's energy that gets us into problems."

Alain Belda
CEO, Alcoa, 1999



KEY OBLIGATIONS OF SENATORS UNDER THE CONFLICT OF INTEREST CODE

- 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 10).
- 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 11).
- 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 12).
- Senators are expected to make a **declaration**, orally or in writing, when 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 (section 14). Senators may **not vote**, but may abstain (section 16).
- 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 \$500.00 in value (sections 19 and 20) and these must be publicly declared pursuant to paragraph 33(1)(i).
- 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 22-28).
- Senators are expected to **disclose** their private interests to the Senate Ethics Officer on an annual basis. Those interests required to be publicly disclosed under the Code are then placed on the public record (sections 29-35).
- Senators must report to the Senate Ethics Officer any **material change** to the information in their confidential disclosure statements, within the prescribed time (subsection 30(4)).
- Senators must cooperate with the Senate Ethics Officer with respect to any **inquiry** (subsection 44(12)).

Appendices



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Appendix A

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APPENDIX A

OVERVIEW OF THE CONFLICT OF INTEREST CODE FOR SENATORS

The *Conflict of Interest Code for Senators* was adopted by the Senate on May 18, 2005 as a document separate from, but of equal standing to, the *Rules of the Senate*. It outlines a series of rules that are aimed at fostering transparency, accountability and public confidence in the Senate. These rules apply in addition to the already existing rules and laws governing the conduct of senators.

What follows is a short description of some of the more important aspects of the Code in order to illustrate the nature of the obligations that senators are expected to meet, as well as the responsibilities of the Senate Ethics Officer in the process.

A. Purposes (section 1)

The term “conflict of interest” is not explicitly defined in the Code, but the motivation for adopting a code of conduct is clearly set out in section 1. First, the Code is intended to maintain and enhance public confidence and trust in the integrity of senators and of the Senate. Canadians expect their representatives to make decisions that are in the public interest, rather than in their own private interests.

Second, the Code is intended to provide greater certainty and guidance for senators in dealing with foreseeable, real or apparent conflicts. This is important as a matter of fairness. Conflicts of interest may arise inadvertently despite the best of intentions. Indeed, situations may arise in which there is no real conflict, but rather there is only an apparent conflict. However, the appearance of a conflict may be just as damaging to one’s reputation as a real conflict. Having a clear set of rules and standards is helpful in raising awareness with respect to, not only what would be a real conflict, but also what could be perceived as a conflict.

The third purpose of the Code builds on the second purpose already discussed above in that it refers to the establishment of clear standards on which to measure conduct. But it also highlights the importance of having a transparent system where questions may be addressed by an independent, impartial adviser. The model, in which an independent officer is charged with the responsibility of administering and applying a set of rules that is outlined, either in a code of conduct or in legislation, has been in place for many years and has worked successfully in Canadian provinces and territories.



Sometimes referred to in international circles as the “Canadian” parliamentary ethics model, it has proven to be an effective system because it provides objectivity and credibility to ethics regimes. It is also important because conflict of interest questions are often complex. They are not always easy to resolve and they often require a great deal of time and thought in order to find the best solutions. Having an impartial adviser who reviews these questions and issues on a daily basis and applies a common set of rules and standards to all senators is both in the public interest, as well as in the interests of the Senate as an institution.

B. Principles (section 2)

The Code also contains certain principles set out in section 2 that serve to guide the interpretation of the various provisions of the Code. These principles read as follows:

2. (1) Given that service in Parliament is a public trust, the Senate recognizes and declares that Senators are expected

(a) to remain members of their communities and regions and to continue their activities in those communities and regions while serving the public interest and those they represent to the best of their abilities;

(b) to fulfil their public duties while upholding the highest standards so as to avoid conflicts of interest and maintain and enhance public confidence and trust in the integrity of each Senator and in the Senate; and

(c) 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, to resolve it in a way that protects the public interest.

(2) The Senate further declares that this Code shall be interpreted and administered so that Senators and their families shall be afforded a reasonable expectation of privacy.

The first principle is an important one given the unique role the Senate plays in Canada’s constitutional framework. The Senate’s one hundred and five members are summoned by the Governor General on the advice of the Prime Minister. They are expected to represent regional interests and to reconcile the national interest with regional aspirations. In order to do so, it is key for them to foster a better understanding of the issues that affect the regions they represent. They are able to



do so by remaining connected to their communities and regions. Moreover, senators come from various backgrounds, professions and fields of expertise. This diversity enhances the knowledge and experience they are able to bring to their examination of public policy issues and it is one of the strengths of the Senate.

It is important to note that, unlike Cabinet ministers, senators do not control the public finances and they are constitutionally limited in this regard. As such, there are more restrictions that apply to Cabinet ministers in terms of their outside activities. By contrast, and as already noted above, senators are not only permitted, but they are expected, to continue to be involved and active in their communities and regions in order to better represent regional interests.

Having said that, these outside activities may give rise to situations in which a conflict, or the appearance of a conflict, may develop between a senator's private activities and the public interest. In such cases, paragraph (c) of the principles is important; it indicates that any such conflict or apparent conflict is to be resolved in favour of the public interest.

The second principle outlined in the Code provides that senators are expected to fulfill their public duties while upholding the highest standards in order to avoid conflicts of interest. This recognizes the trust that Canadians have placed in their parliamentarians as they carry out their duties and functions, as well as the high standards that Canadians expect of them.

The third principle makes reference to apparent conflicts. Senators are expected to arrange their private affairs so that, not only real, but also apparent conflicts may be prevented from arising.

The principles of the Code strike a delicate balance between permitting senators to play the unique constitutional role they were intended to play, while ensuring that their private affairs and outside activities do not take precedence over the public interest where these two come into conflict.

C. Opinions and Advice (section 8)

The Senate Ethics Officer provides opinions and advice to senators regarding their obligations under the *Conflict of Interest Code for Senators* pursuant to section 8. Although the Code requires that these opinions and advice be kept confidential, they may be made public by the senator to whom they were given, or by the Senate Ethics



Officer with the senator's written consent (subsection 8(4)). Moreover, some opinions related to contracts with the federal government must be made public under section 33 of the Code.

The importance of this advisory function should not be underestimated. While each senator is responsible for arranging his or her affairs in such a way as to prevent any foreseeable real or apparent conflicts of interest, if a senator has any doubt about whether there may be a conflict or a perceived conflict, the senator is encouraged to consult the Senate Ethics Officer on a confidential basis to resolve the matter. This approach is preventative, not punitive. The focus is not on addressing conflicts of interest once they have arisen, but rather on preventing them from arising.

D. Rules of Conduct

(a) Private Interests (sections 10 to 18)

In the performance of their parliamentary duties and functions, senators are prohibited from acting or attempting to act in any way to further their private interests, or those of a family member, or to improperly further another person's or entity's private interests (section 10). Moreover, they are not to use or attempt to use their position to influence the decisions of others in order to further these same interests (section 11).

The use of, attempt to use, and the conveying of, information that is not generally available to the public to further these private interests is also prohibited (section 12).

The Code sets out what is covered by the phrase "furthering private interests" (section 13). It includes taking action to increase or preserve the value of assets, to eliminate or reduce liabilities, and to become a director or officer in a corporation or organization. However, it excludes, for example, matters of general application and those that apply to a broad class of the public.

A senator is expected to declare, orally or in writing, the general nature of a private interest where the senator has reasonable grounds to believe that he or she or a family member has such an interest in a matter that is before the Senate, or a Senate committee in which the senator is a member. Moreover, the senator is not permitted to vote in such cases (sections 14, 15 and 16).



(b) Gifts and Sponsored Travel (sections 19 and 20)

Senators and their family members are not permitted to accept any gifts or benefits that could reasonably be considered to relate to the senator's position (subsection 19 (1)). An exception is made for gifts or benefits that are expressions of courtesy, protocol or that are within the customary standards of hospitality that generally accompany a senator's position (subsection 19(2)). However, even if the gift or benefit falls under the exception, if its value exceeds \$500, or if the total value of all such gifts or benefits received from one source in one year exceeds \$500, then the senator must file a statement with the Senate Ethics Officer disclosing the nature, value, and source of the gifts or benefits, and the circumstances under which they were received.

This disclosure must occur within thirty days after the receipt of the gift or benefit, or within thirty days after the value of all such gifts or benefits received from the same source in a one year period exceeds \$500, as the case may be (subsection 19(3)).

A senator and guests of the senator may, however, accept sponsored travel that relates to the senator's position. Where the cost of any such travel exceeds \$500, and where the travel is not paid for by the senator, or the guests, or through international and interparliamentary affairs programs recognized by the Parliament of Canada, the Senate, the Government of Canada, or the senator's political party, the trip must, however, be disclosed to the Senate Ethics Officer within thirty days after the end of the trip (section 20).

(c) Government Contracts (sections 22 to 28)

A senator may not be a party, directly or indirectly, to a contract or other business arrangement with the federal government or any federal agency or body under which the senator receives a benefit. There are two exceptions to this rule: (1) the contract or arrangement is in the public interest due to special circumstances; and (2) the contract or arrangement is unlikely to affect the senator's obligations under the *Conflict of Interest Code for Senators*. In the case of either exception, the Senate Ethics Officer must provide a written opinion regarding the matter (section 22). Participation in federal government programs is also permissible if certain conditions are met (section 25).

A senator may own securities in a public corporation that has contracts with the federal government or any federal agency or body unless the interest is so significant



that the Senate Ethics Officer is of the view that it is likely to affect the senator's obligations under the Code (subsection 23(1)). Again, there is a public interest exception in the case of interests in a public corporation (subsection 23(2)) and participation in a federal government program is not considered to be a contract (subsection 23(3)). Moreover, a senator may comply with the Code by placing the securities in a trust under such terms as are set by the Senate Ethics Officer (subsection 23(4)).

A senator is prohibited from having an interest in a partnership or a private corporation that is a party, directly or through a subcontract, to a contract or other business arrangement with the federal government or any federal agency or body under which the partnership or corporation receives a benefit. Again, the two exceptions outlined above (i.e., public interest and obligations not affected under the Code) apply (section 24). Participation in federal government programs is also permissible provided certain conditions are met (section 25). Finally, such an interest is permissible if a trust, with certain specified conditions, is established (section 26).

(d) Disclosure Process (section 29 to 36)

The *Conflict of Interest Code for Senators* requires each senator to submit to the Senate Ethics Officer an annual confidential disclosure statement listing sources of income, assets, liabilities, outside activities, and government contracts pursuant to sections 29 and 30. Senators who held office on the day the Code came into effect were required to submit the statements within one hundred and twenty days after that day and newly appointed senators are required to submit the statements within one hundred and twenty days after being summoned to the Senate. All senators are required to file annually, thereafter, on or before a date to be established by the Senate Ethics Officer with the approval of the Standing Committee on Conflict of Interest for Senators.

The Senate Ethics Officer reviews the information, advises individual senators on possible conflicts, or apparent conflicts, and then recommends measures, if necessary, to ensure senators are in compliance with the provisions of the Code.

Senators must continue to remain in compliance with the Code at all times. This is done by reporting to the Senate Ethics Officer any material changes to the information provided in their confidential disclosure statements within sixty days of any such change occurring (subsection 30(4)). Moreover, and as already noted earlier,

an annual review of the senators' confidential disclosure statements and compliance arrangements is conducted by the Senate Ethics Officer (subsection 29(1)).

Based on the information contained in the confidential disclosure statement and any other additional information provided that may be relevant, the Senate Ethics Officer must prepare a public disclosure summary related to each senator (section 32). These summaries are then made available for public inspection at the Office of the Senate Ethics Officer (section 35).

E. Inquiries

The Senate Ethics Officer may initiate an inquiry to determine whether a senator has complied with his or her obligations under the *Conflict of Interest Code for Senators*: (i) at the direction of the Standing Committee on Conflict of Interest for Senators (subsection 44(1)); (ii) at the request of another senator (subsections 44(2) to (6)); and (iii) where the Officer has reasonable grounds to believe that an inquiry is warranted and has obtained the approval of the committee (subsections 44(7) to (9)).

Inquiries are confidential (subsection 44(11)) and senators are required to cooperate with the Senate Ethics Officer (subsection 44(12)). The Senate Ethics Officer has the power to send for persons, papers, and records, for the purpose of an inquiry (subsection 44(13)).

Once an inquiry is completed, the Officer is required to prepare a report that includes the Officer's recommendations to the Standing Committee on Conflict of Interest for Senators (section 45), which may then report to the Senate. Any appropriate action or sanctions would be determined by the Senate (subsection 46(7)).

F. Committee Review

The Standing Committee on Conflict of Interest for Senators is required to undertake a review of the provisions of the *Conflict of Interest Code for Senators* within three years after the Code came into force (i.e., May 18, 2005), and every five years thereafter. The Committee is required to submit a report to the Senate on this review, including recommendations respecting changes to the Code (section 52).

A complete version of the Code as it existed from May 18, 2005 to May 28, 2008 is reproduced in Appendix D of this Report.

Appendix B

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APPENDIX B

MANDATE AND INDEPENDENCE OF THE SENATE ETHICS OFFICER

The office of the Senate Ethics Officer was established under the *Parliament of Canada Act* (see Appendix C) and the duties and functions of the Senate Ethics Officer are set out under the *Conflict of Interest Code for Senators*.

The primary responsibility of the Officer is to administer, interpret and apply the Code. The most important aspect of his mandate is his advisory function. In this regard, the Senate Ethics Officer provides advice and opinions to senators on an ongoing basis in order to assist them in remaining in compliance with the Code.

A. The Appointment of the Senate Ethics Officer

The Senate Ethics Officer is an independent Officer of the Senate, appointed pursuant to section 20.1 of the *Parliament of Canada Act*. The appointment is made by the Governor in Council after consultation with the leader of every recognized party in the Senate and after approval of the appointment by resolution of the Senate. This method of appointment ensures that the incumbent has the broadest support of the Senate irrespective of party affiliation. Pursuant to subsection 20.2(1) of the Act, he or she is appointed for a renewable term of seven years and may be removed from office, only for cause, by the Governor in Council on address of the Senate. The Senate Ethics Officer has the rank of a deputy head of the Government of Canada and has the control and management of his or her office (subsections 20.4(1) to (5)).

B. The Senate Ethics Officer's Budget

The Senate Ethics Officer operates the office independently of the Senate and its Standing Committee on Internal Economy, Budgets and Administration (subsections 20.4(6) to (8) of the *Parliament of Canada Act*). The 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 then lays it before the House of Commons with the estimates of the government for the fiscal year. The Senate only reviews the Officer's proposed budget as part of the annual review of the Main Estimates.



These aspects of the *Parliament of Canada Act* confer on the Officer a status of independence and autonomy and they provide an effective shield against improper or inappropriate influence.

C. The Senate Ethics Officer and the Standing Committee on Conflict of Interest for Senators

The *Parliament of Canada Act* provides that both the Senate Ethics Officer and the new Conflict of Interest and Ethics Commissioner (whose responsibility concerns members of the House of Commons and public office holders) carry out their duties and responsibilities under the general direction of a committee of each House of Parliament that is designated or established for that purpose. On July 6, 2005, the Senate established the Standing Committee on Conflict of Interest for Senators.

While the Senate Ethics Officer is accountable to the Committee, he is expected to act independently in the discharge of his responsibilities, including advising individual senators on their obligations under the Code, considering and investigating complaints, and submitting inquiry reports to the Committee for the Senate's final determination. With respect to his advisory, disclosure and inquiry functions, the Senate Ethics Officer is ultimately responsible to the Senate and, through his Annual Report, to the public as well.

On the other hand, the Committee is responsible to the Senate for the overall effectiveness of the system. It has an important role to play with respect to any inquiries and investigations that may be undertaken under the Code. Through the Committee, the Senate retains its right to discipline its own members by making final determinations regarding sanctions or penalties where senators have violated the provisions of the Code. The Committee is also responsible for undertaking periodic reviews of, and recommending to the Senate changes to, the Code.

D. Annual Report

Under section 20.7 of the *Parliament of Canada Act*, the Senate Ethics Officer is required, within three months after the end of each fiscal year, to submit a report of his activities to the Speaker of the Senate, who must table the report in the Senate.

Appendix C

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APPENDIX C

Relevant Excerpts from the Parliament of Canada Act, R.S.C. 1985, c. P-1, as am. by S.C. 2004, c.7; S.C. 2006, c. 9, sections 20.1 to 20.7

SENATE ETHICS OFFICER

Appointment	20.1 The Governor in Council shall, by commission under the Great Seal, appoint a Senate Ethics Officer after consultation with the leader of every recognized party in the Senate and after approval of the appointment by resolution of the Senate.
Tenure	20.2 (1) The Senate Ethics Officer holds office during good behaviour for a term of seven years and may be removed for cause by the Governor in Council on address of the Senate. He or she may be reappointed for one or more terms of up to seven years each.
Interim appointment	(2) In the event of the absence or incapacity of the Senate Ethics Officer, or if that office is vacant, the Governor in Council may appoint any qualified person to hold that office in the interim for a term not exceeding six months, and that person shall, while holding office, be paid the salary or other remuneration and expenses that may be fixed by the Governor in Council.
Remuneration	20.3 (1) The Senate Ethics Officer shall be paid the remuneration set by the Governor in Council.
Expenses	(2) The Senate Ethics Officer is entitled to be paid reasonable travel and living expenses incurred in the performance of his or her duties or functions while absent from his or her ordinary place of residence, in the case of a part-time appointment, and ordinary place of work, in the case of a full-time appointment.
Functions – part-time	(3) In the case of a part-time appointment, the Senate Ethics Officer may not accept or hold any office or employment – or carry on any activity – inconsistent with his or her duties and functions under this Act.



Functions – full-time	(4) In the case of a full-time appointment, the Senate Ethics Officer shall engage exclusively in the duties and functions of the Senate Ethics Officer and may not hold any other office under Her Majesty or engage in any other employment for reward.
Deputy head	20.4 (1) The Senate Ethics Officer has the rank of a deputy head of a department of the Government of Canada and has the control and management of the office of the Senate Ethics Officer.
Powers to contract	(2) The Senate Ethics Officer may, in carrying out the work of the office of the Senate Ethics Officer, enter into contracts, memoranda of understanding or other arrangements.
Staff	(3) The Senate Ethics Officer may employ any officers and employees and may engage the services of any agents, advisers and consultants that the Senate Ethics Officer considers necessary for the proper conduct of the work of the office of the Senate Ethics Officer.
Authorization	(4) The Senate Ethics Officer may, subject to the conditions he or she sets, authorize any person to exercise any powers under subsection (2) or (3) on behalf of the Senate Ethics Officer that he or she may determine.
Salaries	(5) The salaries of the officers and employees of the office of the Senate Ethics Officer shall be fixed according to the scale provided by law.
Payment	(6) The salaries of the officers and employees of the office of the Senate Ethics Officer, and any casual expenses connected with the office, shall be paid out of moneys provided by Parliament for that purpose.
Estimates to prepared	(7) Prior to each fiscal year, the Senate Ethics Officer shall cause to be prepared an estimate of the sums that will be required to pay the charges and expenses of the office of the Senate Ethics Officer during the fiscal year.



Inclusion in Government estimates	(8) The estimate referred to in subsection (7) shall be considered by the Speaker of the Senate and then transmitted to the President of the Treasury Board, who shall lay it before the House of Commons with the estimates of the government for the fiscal year.
Duties and functions	20.5 (1) The Senate Ethics Officer shall perform the duties and functions assigned by the Senate for governing the conduct of members of the Senate when carrying out the duties and functions of their office as members of the Senate.
Privileges and immunities	(2) The duties and functions of the Senate Ethics Officer are carried out within the institution of the Senate. The Senate Ethics Officer enjoys the privileges and immunities of the Senate and its members when carrying out those duties and functions.
General direction of committee	(3) The Senate Ethics Officer shall carry out those duties and functions under the general direction of any committee of the Senate that may be designated or established by the Senate for that purpose.
<i>Conflict of Interest Act</i>	(4) For greater certainty, the administration of the <i>Conflict of Interest Act</i> in respect of public office holders who are ministers of the Crown, ministers of state or parliamentary secretaries is not part of the duties and functions of the Senate Ethics Officer or the committee.
Clarification – powers, etc., of the Senate	(5) For greater certainty, this section shall not be interpreted as limiting in any way the powers, privileges, rights and immunities of the Senate or its members.
No summons	20.6 (1) The Senate Ethics Officer, or any person acting on behalf or under the direction of the Senate Ethics Officer, is not a competent or compellable witness in respect of any matter coming to his or her knowledge as a result of exercising any powers or performing any duties or functions of the Senate Ethics Officer under this Act.



Protection	(2) No criminal or civil proceedings lie against the Senate Ethics Officer, or any person acting on behalf or under the direction of the Senate Ethics Officer, for anything done, reported or said in good faith in the exercise or purported exercise of any power, or the performance or purported performance of any duty or function, of the Senate Ethics Officer under this Act.
Clarification	(3) The protection provided under subsections (1) and (2) does not limit any powers, privileges, rights and immunities that the Senate Ethics Officer may otherwise enjoy.
Annual report	20.7 (1) The Senate Ethics Officer shall, within three months after the end of each fiscal year, submit a report on his or her activities under section 20.5 for that year to the Speaker of the Senate, who shall table the report in the Senate.
Confidentiality	(2) The Senate Ethics Officer may not include in the annual report any information that he or she is required to keep confidential.

Appendix D

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APPENDIX D

CONFLICT OF INTEREST CODE FOR SENATORS¹

PURPOSES

1. The purposes of this Code are to
 - (a) maintain and enhance public confidence and trust in the integrity of Senators and the Senate;
 - (b) provide for greater certainty and guidance for Senators when dealing with issues that may present foreseeable real or apparent conflicts of interest; and
 - (c) establish clear standards and a transparent system by which questions relating to proper conduct may be addressed by an independent, nonpartisan adviser.

PRINCIPLES

2. (1) Given that service in Parliament is a public trust, the Senate recognizes and declares that Senators are expected
 - (a) to remain members of their communities and regions and to continue their activities in those communities and regions while serving the public interest and those they represent to the best of their abilities;
 - (b) to fulfil their public duties while upholding the highest standards so as to avoid conflicts of interest and maintain and enhance public confidence and trust in the integrity of each Senator and in the Senate; and
 - (c) 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, to resolve it in a way that protects the public interest.
- (2) The Senate further declares that this Code shall be interpreted and administered so that Senators and their families shall be afforded a reasonable expectation of privacy.

¹What follows is the *Conflict of Interest Code* as it existed between May 18, 2005 and May 28, 2008.



INTERPRETATION

Definitions

3. (1) The following definitions apply in this Code.

“Committee”

« Comité »

“Committee” means the Committee designated or established under section 37.

“common-law partner”

« conjoint de fait »

“common-law partner” means a person who is cohabiting with a Senator in a conjugal relationship, having so cohabited for at least one year.

“Intersessional Authority”

« autorité intersessionnelle »

“Intersessional Authority on Conflict of Interest for Senators” means the committee established by section 41.

“parliamentary duties and functions”

« fonctions parlementaires »

“parliamentary duties and functions” means duties and activities related to the position of Senator, wherever performed, and includes public and official business and partisan matters.

“Senate Ethics Officer”

« conseiller sénatorial en éthique »

“Senate Ethics Officer” means the Senate Ethics Officer appointed under section 20.1 of the Parliament of Canada Act.

“spouse”

« époux »

“spouse” means a person to whom a Senator is married but does not include a person from whom the Senator is separated where all support obligations and family property have been dealt with by a separation agreement or by a court order.

**Family members**

(2) The following are the family members of a Senator for the purposes of this Code:

- (a) a Senator's spouse or common-law partner; and
- (b) a child of a Senator, a child of a Senator's spouse or common-law partner, or a person whom a Senator treats as a child of the family, who
 - (i) has not reached the age of 18 years, or
 - (ii) has reached that age but is primarily dependent on a Senator or a Senator's spouse or common-law partner for financial support.

ACTIVITIES AND JURISDICTION PRESERVED**Assisting the public**

4. Senators are encouraged to continue to assist members of the public as long as their actions are consistent with their obligations under this Code.

Carrying on activities

5. Senators who are not ministers of the Crown may participate in any outside activities, including the following, as long as they are able to fulfil their obligations under this Code:

- (a) engaging in employment or in the practice of a profession;
- (b) carrying on a business;
- (c) being a director or officer in a corporation, association, trade union or not-for profit organization; and
- (d) being a partner in a partnership.

Existing Committee jurisdiction

6. Nothing in this Code affects the jurisdiction of the Standing Senate Committee on Internal Economy, Budgets and Administration.

Role of the Speaker

7. Procedural matters referred to in this Code that are expressly provided for in *The Rules of the Senate* are under the jurisdiction and authority of the Speaker rather than the Senate Ethics Officer.



OPINIONS AND ADVICE

Request for opinion

8. (1) In response to a request in writing from a Senator on any matter respecting the Senator's obligations under this Code, the Senate Ethics Officer shall provide the Senator with a written opinion containing any recommendations that the Senate Ethics Officer considers appropriate.

Opinion binding

(2) An opinion given by the Senate Ethics Officer to a Senator is binding on the Senate Ethics Officer in relation to any subsequent consideration of the subject matter of the opinion as long as all the relevant facts that were known to the Senator were disclosed to the Senate Ethics Officer.

Written advice binding

(3) Any written advice given by the Senate Ethics Officer to a Senator on any matter relating to this Code is binding on the Senate Ethics Officer in relation to any subsequent consideration of the subject matter of the advice as long as all the relevant facts that were known to the Senator were disclosed to the Senate Ethics Officer.

Confidentiality

(4) A written opinion or advice is confidential and may be made public only by the Senator or with his or her written consent.

Committee consideration

(5) A written opinion or advice given by the Senate Ethics Officer under subsection (2) or (3) and relied on by a Senator is conclusive proof that the Senator has fully complied with the Senator's obligations under this Code in any subsequent consideration by the Committee of the subject matter of the opinion or advice as long as all the relevant facts that were known to the Senator were disclosed to the Senate Ethics Officer.

Publication

(6) Nothing in this section prevents the Senate Ethics Officer, subject to the approval of the Committee, from publishing opinions and advice for the guidance of Senators, provided that no details are included that could identify a Senator.

**Guidelines**

9. Subject to the approval of the Committee, the Senate Ethics Officer may publish Guidelines for the assistance of Senators on any matter concerning the interpretation of this Code that the Senate Ethics Officer considers advisable.

RULES OF CONDUCT**Furthering private interests**

10. When performing parliamentary duties and functions, a Senator shall not act or attempt to act in any way to further his or her private interests, or those of a family member, or to improperly further another person's or entity's private interests.

Use of influence

11. A Senator shall not use or attempt to use his or her position as a Senator to influence a decision of another person so as to further the Senator's private interests, or those of a family member, or to improperly further another person's or entity's private interests.

Use of information

12. (1) If as a result of his or her position, a Senator obtains information that is not generally available to the public, the Senator shall not use or attempt to use the information to further the Senator's private interests, or those of a family member, or to improperly further another person's or entity's private interests.

Conveying information

(2) A Senator shall not convey or attempt to convey information referred to in subsection (1) to another person if the Senator knows, or reasonably ought to know, that the information may be used to further the Senator's private interests, or those of a family member, or to improperly further another person's or entity's private interests.

Clarification: furthering private interests

13. (1) In sections 10 to 12, furthering private interests of a person or entity, including the Senator's own private interests, means actions taken by a Senator for the purpose of achieving, directly or indirectly, any of the following:

- (a) an increase in, or the preservation of, the value of the person's or entity's assets;



- (b) the elimination, or reduction in the amount, of the person's or entity's liabilities;
- (c) the acquisition of a financial interest by the person or entity;
- (d) an increase in the person's or entity's income from a contract, a business or a profession;
- (e) an increase in the person's income from employment;
- (f) the person becoming a director or officer in a corporation, association or trade union; or
- (g) the person becoming a partner in a partnership.

Clarification: not furthering private interests

(2) A Senator is not considered to further his or her own private interests or the private interests of another person or entity if the matter in question

- (a) is of general application;
- (b) affects the Senator or the other person or entity as one of a broad class of the public; or
- (c) concerns the remuneration or benefits of the Senator as provided under an Act of Parliament or a resolution of the Senate or of a Senate committee.

Declaration of a private interest: Senate or committee

14. (1) If a Senator has reasonable grounds to believe that he or she, or a family member, has a private interest that might be affected by a matter that is before the Senate or a committee of which the Senator is a member, the Senator shall, on the first occasion at which the Senator is present during consideration of the matter, make a declaration regarding the general nature of the private interest. The declaration can be made orally on the record or in writing to the Clerk of the Senate or the Clerk of the committee, as the case may be. The Speaker of the Senate shall cause the declaration to be recorded in the Journals of the Senate and the Chair of the committee shall, subject to subsection (4), cause the declaration to be recorded in the Minutes of Proceedings of the committee.

Subsequent declaration

(2) If a Senator becomes aware at a later date of a private interest that should have been declared under subsection (1), the Senator shall make the required declaration forthwith.

Declaration recorded

(3) The Clerk of the Senate or the Clerk of the committee, as the case may be, shall send the declaration to the Senate Ethics Officer, who shall, subject to subsection (4), file it with the Senator's public disclosure summary.

**Where declaration *in camera***

(4) In any case in which the declaration was made during an in camera meeting, the Chair of the committee and Senate Ethics Officer shall obtain the consent of the subcommittee on agenda and procedure of the committee concerned before causing the declaration to be recorded in the Minutes of Proceedings of the committee or filing it with the Senator's public disclosure summary, as the case may be.

Declaration of a private interest: other circumstances

(5) In any circumstances other than those in subsection (1) that involve the Senator's parliamentary duties and functions, a Senator who has reasonable grounds to believe that he or she, or a family member, has a private interest that might be affected shall make an oral declaration regarding the general nature of the private interest at the first opportunity.

Debate in the Senate

15. (1) A Senator who has reasonable grounds to believe that he or she, or a family member, has a private interest that might be affected by a matter that is before the Senate may participate in debate on that matter, provided that an oral declaration is made on the record prior to each intervention.

Debate in Committee

(2) A Senator who has reasonable grounds to believe that he or she, or a family member, has a private interest that might be affected by a matter that is before a committee of which the Senator is a member may participate in debate on that matter, provided that a declaration is first made orally on the record.

Prohibition on voting

16. A Senator who has reasonable grounds to believe that he or she, or a family member, has a private interest in a matter before the Senate or a committee of which the Senator is a member shall not vote on that matter, but may abstain.

Procedure

17. If a Senator reasonably believes that another Senator has failed to make a declaration of a private interest as required by section 14 or 15, or that another Senator has voted contrary to the prohibition in section 16, the matter may be raised with the Senate Ethics Officer.

**Clarification: having a private interest**

18. For the purpose of sections 14 to 16, private interest means those interests that can be furthered in subsection 13(1), but does not include the matters listed in subsection 13(2).

Prohibition: gifts and other benefits

19. (1) Neither a Senator, nor a family member, shall accept, directly or indirectly, any gift or other benefit, except compensation authorized by law, that could reasonably be considered to relate to the Senator's position.

Exception

(2) A Senator, and a family member, may, however, accept gifts or other benefits received as a normal expression of courtesy or protocol, or within the customary standards of hospitality that normally accompany the Senator's position.

Statement: gift or other benefit

(3) If a gift or other benefit that is accepted under subsection (2) by a Senator or his or her family members exceeds \$500 in value, or if the total value of all such gifts or benefits received from one source in a 12-month period exceeds \$500, the Senator shall, within 30 days after that value is exceeded, file with the Senate Ethics Officer a statement disclosing the nature and value of the gifts or other benefits, their source and the circumstances under which they were given.

Statement: sponsored travel

20. (1) Notwithstanding subsection 19(1), a Senator may accept, for the Senator and guests of the Senator, sponsored travel that arises from or relates to the Senator's position. If the travel costs of a Senator or any guest exceed \$500 and are not paid personally by the Senator or the guest, and the travel is not paid through the programs for international and interparliamentary affairs of the Parliament of Canada, by the Senate, the Government of Canada, or the Senator's political party, the Senator shall, within 30 days after the end of the trip, file a statement with the Senate Ethics Officer.

Contents of statement

(2) The statement shall disclose the name of the person or organization paying for the trip, the destination or destinations, the purpose and length of the trip, whether or not any guest was also sponsored, and the general nature of the benefits received.

**Duplication**

(3) Any disclosure made in relation to sponsored travel does not need to be disclosed as a gift or other benefit.

Consent of Senate

21. Gifts, other benefits and sponsored travel accepted in compliance with the requirements of sections 19 and 20 are deemed to have received the consent of the Senate thereto for all purposes.

Government contracts

22. A Senator shall not knowingly be a party, directly or through a subcontract, to a contract or other business arrangement with the Government of Canada or any federal agency or body under which the Senator receives a benefit unless the Senate Ethics Officer provides a written opinion that

- (a) due to special circumstances the contract or other business arrangement is in the public interest; or
- (b) the contract or other business arrangement is unlikely to affect the Senator's obligations under this Code.

Public corporations

23. (1) A Senator may own securities in a public corporation that contracts with the Government of Canada or any federal agency or body unless the holdings are so significant that the Senate Ethics Officer provides a written opinion that they are likely to affect the Senator's obligations under this Code.

Public interest

(2) A contract between a public corporation and the Government of Canada or any federal agency or body that, in the Senate Ethics Officer's opinion is in the public interest due to special circumstances, shall not preclude a Senator from holding securities in that public corporation.

Government programs

(3) For the purpose of subsection (1), a public corporation shall not be considered to contract with the Government of Canada or any federal agency or body merely because the corporation participates in a Government program that meets the criteria described in section 25.

**Trust**

(4) If the Senate Ethics Officer is of the opinion that the Senator's obligations under this Code are likely to be affected under the circumstances of subsection (1), the Senator may comply with the Code by placing the securities in a trust under such terms as the Senate Ethics Officer considers appropriate.

Partnerships and private corporations

24. A Senator shall not have an interest in a partnership or in a private corporation that is a party, directly or through a subcontract, to a contract or other business arrangement with the Government of Canada or any federal agency or body under which the partnership or corporation receives a benefit unless the Senate Ethics Officer provides a written opinion that

- (a) due to special circumstances the contract or other business arrangement is in the public interest; or
- (b) the contract or other business arrangement is unlikely to affect the Senator's obligations under this Code.

Clarification: Government programs

25. For the purposes of sections 22 and 24, it is not prohibited to participate in a program operated or funded, in whole or in part, by the Government of Canada or any federal agency or body under which a Senator, or a partnership or private corporation in which a Senator has an interest, receives a benefit if

- (a) the eligibility requirements of the program are met;
- (b) the program is of general application or is available to a broad class of the public;
- (c) there is no preferential treatment with respect to the application; and
- (d) no special benefits are received that are not available to other participants in the program.

Trust

26. Section 24 does not apply if the Senator has entrusted his or her interest in a partnership or private corporation to one or more trustees on all of the following terms:

- (a) the provisions of the trust have been approved by the Senate Ethics Officer;
- (b) the trustees are at arm's length from the Senator and have been approved by the Senate Ethics Officer;
- (c) except as provided in paragraph (d), the trustees may not consult with the Senator with respect to managing the trust, but they may consult with the Senate Ethics Officer;



- (d) the trustees may consult with the Senator, with the approval of the Senate Ethics Officer and in his or her presence, if an extraordinary event is likely to materially affect the trust property;
- (e) in the case of an interest in a corporation, the Senator resigns any position of director or officer in the corporation;
- (f) the trustees provide the Senate Ethics Officer annually with a written report setting out the nature of the trust property, the value of that property, the trust's net income for the preceding year and the trustees' fees, if any; and
- (g) the trustees give the Senator sufficient information to permit the Senator to submit returns as required by the *Income Tax Act* and give the same information to the appropriate taxation authorities.

Pre-existing contracts

27. The rules in sections 22, 23 and 24 do not apply to a contract or other business arrangement that existed before a Senator's appointment to the Senate, but they do apply to its renewal or extension.

Interest acquired by inheritance

28. The rules in sections 22, 23 and 24 do not apply to an interest acquired by inheritance until the first anniversary date of the transfer of legal and beneficial ownership. In special circumstances, the Senate Ethics Officer may extend this time period.

DUTY TO DISCLOSE

Confidential disclosure statement: sitting Senators

29. (1) A Senator who holds office on the day this Code comes into force shall, within 120 days after that day, and annually thereafter on or before the date established by the Senate Ethics Officer under subsection (2), file with the Senate Ethics Officer a confidential statement disclosing the information required by section 30.

Filing date

(2) The date on or before which the annual confidential disclosure statements are required to be filed shall be established by the Senate Ethics Officer following approval by the Committee.

**Confidential disclosure statement: new Senators**

(3) A Senator shall, within 120 days after being summoned to the Senate, and annually thereafter on or before the date established by the Senate Ethics Officer under subsection (2), file with the Senate Ethics Officer a confidential statement disclosing the information required by section 30.

Submission to Committee

(4) Thirty days after the date established under subsection (2), the Senate Ethics Officer shall submit to the Committee the name of any Senator who has not complied with his or her duty to file a confidential disclosure statement.

Errors or Omissions

(5) If, at any time after the date established under subsection (2), the Senate Ethics Officer has reason to believe that a Senator's confidential statement contains an error or omission, the Senate Ethics Officer shall notify the Senator concerned and request the Senator to provide the relevant information.

Response within 60 days

(6) Upon receipt of a request under subsection (5), the Senator shall provide the information within 60 days.

Family members

(7) A Senator may file with the Senate Ethics Officer a confidential disclosure statement relating to the Senator's family members so that the Senator may discuss their interests in relation to the Senator's obligations under this Code and receive advice in that regard.

Confidentiality

(8) The Senate Ethics Officer and all officers, employees, agents, advisers and consultants that may be employed or engaged by the Senate Ethics Officer shall keep all statements confidential.

Initial meeting with Senate Ethics Officer

(9) Senators, and in particular newly-summoned Senators, who may have questions regarding their confidential disclosure duties should make every effort to meet with the Senate Ethics Officer before submitting their confidential disclosure statement.

**Contents of confidential disclosure statement**

30. (1) Subject to subsection (2) regarding excluded matters, and any Guidelines published by the Senate Ethics Officer under section 9, the confidential disclosure statement shall list:

- (a) any corporations, income trusts and trade unions in which the Senator is a director or officer and any partnerships in which the Senator is a partner, including a description of the activities of each entity;
- (b) any associations and not-for-profit organizations in which the Senator is a director, officer or patron, including memberships on advisory boards and any honorary positions;
- (c) the nature but not the amount of any source of income over \$2,000 that the Senator has received in the preceding 12 months and is likely to receive during the next 12 months; for this purpose,
 - (i) a source of income from employment is the employer,
 - (ii) a source of income from a contract is a party with whom the contract is made,
 - (iii) a source of income arising from a business or profession is that business or profession, and
 - (iv) a source of income arising from an investment is that investment;
- (d) the source, nature and value of any contracts or other business arrangements with the Government of Canada or a federal agency or body that the Senator has directly, or through a subcontract;
- (e) the source, nature and value of any contracts, subcontracts or other business arrangements with the Government of Canada or a federal agency or body that the Senator has by virtue of a partnership or a significant interest in a private corporation that the Senator is able to ascertain by making reasonable inquiries;
- (f) the source, nature and value of any contracts or other business arrangements with the Government of Canada or a federal agency or body that a member of the Senator's family has, directly or through a subcontract, or by virtue of a partnership or a significant interest in a private corporation, that the Senator is able to ascertain by making reasonable inquiries;
- (g) information regarding the nature but not the value of any assets and liabilities over \$10,000; and
- (h) any additional information that the Senator believes to be relevant to this Code.

**Excluded matters**

(2) For the purpose of subsection (1), it is not required to disclose properties used by the Senator or family members as residences; mortgages or hypothecs on such residences; household goods; personal effects; deposits with a financial institution; guaranteed investment certificates; financial instruments issued by any Canadian government or agency; and obligations incurred for living expenses that will be discharged in the ordinary course of the Senator's affairs.

Additional excluded matters

(3) The Senate Ethics Officer may, with the approval of the Committee, establish additional matters not required to be disclosed on the basis that they present no potential to interfere with the obligations of a Senator under this Code.

Material change

(4) A Senator shall report in writing any material change to the information relating to the confidential disclosure statement to the Senate Ethics Officer within 60 days after the change.

Meeting with the Senate Ethics Officer

31. After reviewing a Senator's confidential statement, the Senate Ethics Officer may request to meet with the Senator to discuss the statement and the Senator's obligations under this Code.

Public disclosure summary

32. The Senate Ethics Officer shall prepare a public disclosure summary based on each Senator's confidential statement and submit it to the Senator for review.

Contents of public disclosure summary

33. (1) The public disclosure summary shall list
- (a) any corporations, income trusts and trade unions in which the Senator is a director or officer and any partnerships in which the Senator is a partner, including a description of the activities of each entity;
 - (b) any associations and not-for-profit organizations in which the Senator is a director, officer or patron, including memberships on advisory boards and any honorary positions;
 - (c) the source and nature but not the amount of any income that the Senator has received in the preceding 12 months and is likely to receive in the next 12 months that the Senate Ethics Officer has determined could relate to the parliamentary duties and functions of the Senator or could otherwise be relevant;



- (d) the source and nature but not the value of any contracts or other business arrangements with the Government of Canada or a federal agency or body that the Senator has, directly or through a subcontract, including the Senate Ethics Officer's written opinion authorizing them;
- (e) 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 that the Senator has by virtue of a partnership or a significant interest in a private corporation that the Senator is able to ascertain by making reasonable inquiries, including the Senate Ethics Officer's written opinion authorizing them;
- (f) the source and nature but not the value of any contracts or other business arrangements with the Government of Canada or a federal agency or body that a member of the Senator's family has, directly or through a subcontract, or by virtue of a partnership or a significant interest in a private corporation, that the Senator is able to ascertain by making reasonable inquiries;
- (g) information regarding the nature but not the value of any assets and liabilities that the Senate Ethics Officer has determined could relate to the parliamentary duties and functions of the Senator or could otherwise be relevant;
- (h) any declarations of a private interest under section 14, unless the Senate Ethics Officer is of the opinion that the information need not have been declared;
- (i) any statements filed under sections 19 and 20 in relation to gifts and sponsored travel; and
- (j) any statements of material change that pertain to the contents of this summary.

Discretion

- (2) The Senate Ethics Officer need not include in the public disclosure summary information that he or she determines should not be disclosed because
 - (a) the information is not relevant to the purposes of this Code or is inconsequential, or
 - (b) a departure from the general principle of public disclosure is justified in the circumstances.

**Disagreement**

34. In cases of disagreement between a Senator and the Senate Ethics Officer regarding the contents of the public disclosure summary, the Senate Ethics Officer shall refer the disputed matter to the Committee for decision.

Public inspection

35. Each public disclosure summary is to be placed on file at the office of the Senate Ethics Officer and made available for public inspection.

Evasion

36. A Senator shall not take any action that has as its purpose the evasion of the Senator's obligations under this Code.

COMMITTEE**Designation or Establishment**

37. (1) At the beginning of each session, a Committee of the Senate shall be designated or established for the purposes of this Code.

Membership

(2) The Committee shall be composed of five members, three of whom shall constitute a quorum.

No *ex officio* members

(3) The Committee shall have no *ex officio* members.

Election of members

(4) Two of the Committee members shall be elected by secret ballot in the caucus of Government Senators at the opening of the session; two of the Committee members shall be elected by secret ballot in the caucus of Opposition Senators at the opening of the session; the fifth member shall be elected by the majority of the other four members after the election of the last of the other four members.

Presentation and adoption of motion

(5) The Leader of the Government in the Senate, seconded by the Leader of the Opposition in the Senate, shall present a motion on the full membership of the Committee to the Senate, which motion shall be deemed adopted without any debate or vote.

**Chair**

(6) The Chair of the Committee shall be elected by four or more members.

Removal

(7) A member is deemed removed from the Committee as of the time that:

- (a) the Senate Ethics Officer informs the Committee that a request for an inquiry made by the Senator is warranted; or
- (b) the Senator becomes the subject of an inquiry under the Code.

Substitutions

(8) Where a vacancy occurs in the membership of the Committee, the replacement member shall be elected by the same method as the former member being replaced.

Meetings *in camera*

38. (1) Subject to subsection (2), meetings of the Committee shall be held *in camera*.

Meetings in public

(2) At the request of a Senator who is the subject of an investigation, the Committee may hold meetings at which the investigation is being conducted in public.

Attendance

(3) Subject to subsection (4), the Committee may limit attendance at its meetings.

Affected Senator

(4) The Committee shall give notice to a Senator who is the subject of an investigation of all meetings at which the investigation is being conducted, and shall admit the Senator to those meetings, but the Committee may exclude that Senator from those meetings or portions of meetings at which the Committee is considering a draft agenda or a draft report.

Withdrawal

(5) A member of the Committee who is the subject of a matter being considered by the Committee relating to that specific Senator shall withdraw from the Committee during its deliberations.

**Jurisdiction**

39. (1) The Committee is responsible for all matters relating to this Code, including all forms involving Senators that are used in its administration, subject to the general jurisdiction of the Senate.

Senate Ethics Officer

(2) The Senate Ethics Officer shall carry out his or her duties and functions under the general direction of the Committee.

Directives

(3) The Committee may give Directives to the Senate Ethics Officer concerning the interpretation and administration of this Code.

Appeals to the Committee

(4) All decisions of the Senate Ethics Officer may be appealed to the Committee.

Decisions binding

(5) All decisions of the Committee made under subsection (4) are binding on the Committee in relation to any subsequent consideration of the same subject matter as long as all the relevant facts that were known to the Senator were disclosed to the Committee.

Confidentiality

40. All information relating to the private interests of Senators and those of their family members is to be kept confidential, except in accordance with this Code.

INTERSESSIONAL AUTHORITY**Intersessional Authority created**

41. During a period of prorogation or dissolution of Parliament and until the members of a successor Committee are appointed by the Senate, there shall be a committee known as the Senate Intersessional Authority on Conflict of Interest for Senators.

Composition

42. The Intersessional Authority on Conflict of Interest for Senators shall be composed of the members of the Committee.

**General authority**

43. (1) The Senate Ethics Officer shall carry out his or her duties and functions under the general direction of the Intersessional Authority on Conflict of Interest for Senators.

Additional functions

(2) Subject to the rules, direction and control of the Senate and of the Committee, the Intersessional Authority on Conflict of Interest for Senators shall carry out such other of the Committee's duties and functions as the Committee gives to it by resolution.

INQUIRIES AND INVESTIGATIONS**Direction by the Committee**

44. (1) The Committee may direct the Senate Ethics Officer to conduct an inquiry to determine whether a Senator has complied with his or her obligations under this Code.

Request for an inquiry

(2) A Senator who has reasonable grounds to believe that another Senator has not complied with his or her obligations under this Code may request that the Senate Ethics Officer conduct an inquiry into the matter.

Form of request

(3) The request shall be in writing, shall be signed by the requesting Senator, shall identify the alleged non-compliance with this Code and shall set out the reasonable grounds for the belief that the Code has not been complied with.

Request to be sent

(4) The Senate Ethics Officer shall forward the request for an inquiry to the Senator who is the subject of the request and afford the Senator a reasonable opportunity to respond.

Preliminary review

(5) After a preliminary review to determine whether or not an inquiry is warranted, the Senate Ethics Officer shall notify both the requesting Senator and the Senator who is the subject of the request of his or her decision.

**If inquiry warranted**

(6) If the Senate Ethics Officer's decision under subsection (5) is that an inquiry is warranted, the Senate Ethics Officer shall so inform the Committee.

Receipt of information

(7) If, after receiving significant evidence, the Senate Ethics Officer believes that an inquiry may be warranted to determine whether a Senator has complied with his or her obligations under this Code, the Senate Ethics Officer shall provide the Senator written notice of his or her concerns and any documentation upon which those concerns are based, and shall afford the Senator a reasonable opportunity to address the issues.

Committee to approve

(8) Following the measures taken in subsection (7), if the Senate Ethics Officer has reasonable grounds to believe that an inquiry is warranted to determine whether the Senator has complied with his or her obligations under this Code, the Senate Ethics Officer shall request the Committee to approve the inquiry, and may proceed when approval has been received.

Notice

(9) Once approval to conduct an inquiry has been received under subsection (8), the Senate Ethics Officer shall provide the Senator concerned with his or her reasons for the opinion that an inquiry is warranted.

Respect for the inquiry process

(10) Once a request for an inquiry has been made, or direction or approval for an inquiry has been given, Senators should respect the process established by this Code.

Inquiry to be confidential

(11) The Senate Ethics Officer shall conduct a confidential inquiry as promptly as the circumstances permit, provided that at all appropriate stages throughout the inquiry the Senate Ethics Officer shall give the Senator a reasonable opportunity to be present and to make representations to the Senate Ethics Officer in writing or in person, by counsel or by any other representative.

Cooperation

(12) Senators shall cooperate without delay with the Senate Ethics Officer with respect to any inquiry.

**Powers of Senate Ethics Officer**

(13) In carrying out an inquiry, the Senate Ethics Officer may send for persons, papers, things and records, which measures may be enforced by the Senate acting on the recommendation of the Committee following a request from the Senate Ethics Officer.

Report to the Committee

45. (1) Following an inquiry the Senate Ethics Officer shall report confidentially in writing to the Committee.

Contents of report

(2) The Senate Ethics Officer may make findings and recommendations, including:

- (a) that the complaint appears to be unfounded and should be dismissed;
- (b) that the request for an inquiry was frivolous or vexatious or was not made in good faith, or that there were no grounds or insufficient grounds to warrant an inquiry or the continuation of an inquiry;
- (c) that the complaint appears to be founded and that remedial action has been agreed to by the Senator involved; or
- (d) that the complaint appears to be founded, but that no remedial action was available or agreed to by the Senator involved.

Bad faith

(3) Where the Senate Ethics Officer makes a finding that the complaint or request for an inquiry was frivolous or vexatious or was not made in good faith, he or she may recommend that action be considered against the person who made the complaint or request.

Mitigation

(4) If the Senate Ethics Officer concludes that a Senator has not complied with an obligation under this Code but that the Senator took all reasonable measures to prevent the non-compliance, or that the non-compliance was trivial or occurred through inadvertence or an error in judgement made in good faith, the Senate Ethics Officer shall so state in the report and may recommend that no sanction be imposed.

General recommendations

(5) The Senate Ethics Officer may include in the report any recommendations arising from the matter that concern the general interpretation of this Code.

**Reasons**

(6) The Senate Ethics Officer shall include in the report reasons and any supporting documentation for any findings and recommendations.

Consideration of report

46. (1) The Committee shall take into consideration a report received from the Senate Ethics Officer under section 45 as promptly as circumstances permit.

Due process

(2) The Committee shall provide, without delay, a copy of the report of the Senate Ethics Officer to the Senator who was the subject of the inquiry, and shall afford that Senator the opportunity to be heard by the Committee.

Investigation

(3) In considering a report, the Committee may:

- (a) conduct an investigation; or
- (b) direct that the Senate Ethics Officer's inquiry be continued and refer the report back to the Senate Ethics Officer for such further information as the Committee specifies.

Committee report

(4) Subject to subsection (5), following its consideration under this section of a report of the Senate Ethics Officer, the Committee shall report to the Senate.

No report required

(5) Where the Committee finds that a complaint against a Senator was unfounded, the Committee is not required to report to the Senate unless the Senator concerned requests that it do so.

Contents of report

(6) In its report to the Senate, the Committee shall report the fact of the inquiry and give its findings with respect thereto, its recommendations if any, and its reasons and the supporting documentation for any findings or recommendations.

Remedial action

(7) The Committee may recommend that the Senator be ordered to take specific action or be sanctioned.

**Anonymity**

(8) Where the Committee finds that a complaint is unfounded and reports to the Senate, its report may, at the Senator's request, keep the Senator's name anonymous in order to protect the Senator's reputation.

Suspension of investigation or inquiry: Act of Parliament

47. (1) The Committee or the Senate Ethics Officer may suspend the investigation or inquiry if

- (a) there are reasonable grounds to believe that the Senator has committed an offence under an Act of Parliament in relation to the same subject matter, in which case the Committee or Senate Ethics Officer, subject to subsection (4), shall refer the matter to the proper authorities; or
- (b) it is discovered that
 - (i) the subject matter under investigation or inquiry is also the subject matter of an investigation to determine if an offence under an Act of Parliament has been committed, or
 - (ii) a charge has been laid with respect to that subject matter.

Investigation or inquiry continued

(2) If the Committee or the Senate Ethics Officer has suspended the investigation or inquiry, it may resume once the other investigation or charge regarding the same subject matter has been finally disposed of.

Suspension of investigation or inquiry: other laws

(3) The Committee or the Senate Ethics Officer may suspend the investigation or inquiry and subject to subsection (4), refer the matter to the proper authorities if there are reasonable grounds to believe that the Senator has committed an offence under the law of a Canadian province or territory in relation to the same subject matter, and may continue the investigation or inquiry when any actions arising from the referral have been completed.

Advice of Committee

(4) The Senate Ethics Officer shall seek the advice of the Committee before making a referral to the proper authorities.

Notice for motion to adopt

48. (1) A motion that the Senate adopt a report referred to in subsection 46(4) shall be put pursuant to the notice provisions of paragraph 58(1)(g) of the Rules of the Senate.

**Motion**

(2) A motion to adopt a report referred to in subsection 46(4) shall be deemed to have been moved on the fifth sitting day subsequent to the presentation of the report if the motion has not yet been moved.

Senator may speak

(3) After a motion to adopt a report has been moved, or has been deemed to have been moved, no vote may be held for at least five sitting days, or until the Senator who is the subject of the report has spoken to the motion for its adoption, whichever is the sooner.

Right to speak last

(4) The Senator who is the subject of the report may exercise the right of final reply.

Senate vote

(5) If a motion for the adoption of a report has not been put to a vote by the 15th sitting day after the motion was moved or deemed to have been moved, the Speaker shall immediately put all necessary questions to dispose of the matter when the item is called.

Referral back

(6) The Senate may refer any report back to the Committee for further consideration.

MISCELLANEOUS**Privacy to be minimally impaired**

49. In interpreting and administering this Code, reasonable expectations of privacy shall be impaired as minimally as possible.

Confidentiality

50. The Senate Ethics Officer and all officers, employees, agents, advisers and consultants that may be employed or engaged by the Senate Ethics Officer shall keep confidential all matters required to be kept confidential under this Code. Failure to do so shall constitute behaviour sufficient to justify either or both of the following

- (a) a resolution by the Senate under subsection 20.2(1) of the *Parliament of Canada Act* requesting the Governor in Council to remove the Senate Ethics Officer from office;



- (b) dismissal of any officers, employees, agents, advisers or consultants involved.

Retention of documents

51. (1) The Senate Ethics Officer shall retain all confidential documents relating to a Senator for a period of 12 months after he or she ceases to be a Senator, after which the documents shall be destroyed, subject to subsection (2), unless there is an inquiry in progress under this Code concerning them or a charge has been laid against the Senator and the documents may relate to that matter.

(2) At a Senator's request, confidential documents originating with the Senator may be returned to the Senator instead of being destroyed.

Committee review

52. The Committee shall, within three years after the coming into force of this Code and every five years thereafter, undertake a comprehensive review of its provisions and operation, and shall submit a report to the Senate thereon, including a statement of any changes the Committee recommends.

Appendix E

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APPENDIX E

FINANCIAL INFORMATION

van Berkom & Ritz

CHARTERED ACCOUNTANTS

100-1750 COURTWOOD CRES., OTTAWA, ON K2C 2B5 T: 613.828.8282 F: 613.721.8504

AUDITORS' REPORT ON SUMMARIZED FINANCIAL STATEMENTS

To Mr. Jean T. Fournier, Senate Ethics Officer:

The accompanying summarized statements of operations, financial position and equity of Canada are derived from the complete financial statements of the Office of the Senate Ethics Officer as at March 31, 2008 and 2007 and for the years then ended on which we expressed an opinion without reservation in our report dated April 29, 2008. The fair summarization of the complete financial statements is the responsibility of the Office's management. Our responsibility, in accordance with the applicable Assurance Guideline of The Canadian Institute of Chartered Accountants, is to report on the summarized financial statements.

In our opinion, the accompanying financial statements fairly summarize, in all material respects, the related complete financial statements in accordance with the criteria described in the Guideline referred to above.

These summarized financial statements do not contain all the disclosures required by Canadian generally accepted accounting principles. Readers are cautioned that these statements may not be appropriate for their purposes. For more information on the Office's financial position, results of operations and cash flows, reference should be made to the related complete financial statements.

VAN BERKOM & RITZ

Ottawa, Ontario
April 29, 2008

Chartered Accountants
Licensed Public Accountants



Office of the Senate Ethics Officer
Summarized Financial Statements

As at March 31 and for the year then ended
(in dollars)

SUMMARIZED STATEMENT OF OPERATIONS

	2008	2007
OPERATING EXPENSES		
Salaries and employee benefits	687,265	890,326
Accommodation	69,326	83,738
Professional and special services	30,991	42,284
Amortization	26,672	24,514
Communication	22,880	16,954
Utilities, materials and supplies	12,391	10,809
Travel	8,602	9,271
TOTAL COST OF OPERATIONS	858,127	1,077,896



SUMMARIZED STATEMENT OF FINANCIAL POSITION

	2008	2007
ASSETS		
Financial assets		
Accounts receivable and advances	47,561	12,997
Total financial assets	47,561	12,997
Non-financial assets		
Tangible capital assets	61,008	85,305
Total non-financial assets	61,008	85,305
TOTAL	108,569	98,302
LIABILITIES		
Accounts payable and accrued liabilities	81,970	150,602
Vacation pay and compensatory leave	36,164	58,045
Employee severance benefits	133,489	246,377
	251,623	455,024
EQUITY OF CANADA	(143,054)	(356,722)
TOTAL	108,569	98,302

SUMMARIZED STATEMENT OF EQUITY OF CANADA

	2008	2007
EQUITY OF CANADA, BEGINNING OF YEAR	(356,722)	(195,111)
Total cost of operations	(858,127)	(1,077,986)
Services provided without charge from other government departments	99,587	132,869
Current year appropriations used	972,208	783,416
EQUITY OF CANADA, END OF YEAR	(143,054)	(356,722)

Appendix F

'07
'08



APPENDIX F

PROPOSED AMENDMENTS TO THE CODE: RELEVANT EXCERPTS FROM THE SENATE ETHICS OFFICER'S SUBMISSION TO THE STANDING COMMITTEE ON CONFLICT OF INTEREST FOR SENATORS, JANUARY 29, 2008

Thank you for inviting me to participate in the review of the provisions of the *Conflict of Interest Code for Senators* (the Code) by the Standing Committee on Conflict of Interest for Senators (the Committee). The Code, which came into effect in 2005, reflects a concern on the part of the Senate to ensure that Senators uphold the “highest standards so as to avoid conflicts of interest and maintain and enhance public confidence and trust in the integrity of each Senator and in the Senate”, a principle that is set out in paragraph 2(1)(b) of the Code. The process in which you are engaged is an important and welcome step in providing the public with the assurance that Senators are continuing to improve, strengthen and build on the existing system. As was noted by the Standing Senate Committee on Rules, Procedures and the Rights of Parliament in its Third Report dated May 11, 2005, the conflict of interest regime in the Senate is a ‘work in progress’.

Indeed, I consider the review as an important opportunity to clarify and build on the existing arrangements in order to enhance credibility in the conflict of interest system in the Senate. It is an opportunity to address some of the issues that have arisen in the course of the application and administration of a conflict of interest code that is still relatively new.

As you know, section 52 of the Code requires a “comprehensive review” of its provisions within the first three years of its coming into force. The next review is scheduled to take place five years after the first. For this reason, I have given serious thought to this first review, based on the Office’s first two years of operation. While it is not for me to dictate the Committee’s recommendations, it is my hope that the issues I am bringing to the Committee’s attention will assist it in its deliberations and that it will act on my proposals to clarify the existing arrangements.

The measures I am recommending involve, in my view, modest adjustments to the Code that, if adopted, would enhance the current system. I also believe that they would increase the confidence of both the public and of Senators in the current system. I regard this confidence as essential if the existing system for regulating the

conduct of Senators is to be effective. In the words of Sir Philip Mawer, the Parliamentary Commissioner for Standards of the House of Commons (2002-2007) in the United Kingdom:

One of the principal challenges facing any Standards Commissioner – and one principal requirement if they are to be effective in the post – is to retain the confidence of both the public and MPs in the way they discharge their role. The public must be confident of the Commissioner's independence and integrity, and their (sic) willingness to hold erring Members to account. MPs must also believe in the Commissioner's integrity and in the Commissioner's capacity to understand the particular character of the House of Commons and to treat them fairly, confidentially and with good judgment.

The Key Elements in the System

What is the nature of the existing conflict of interest regime in the Senate? Put simply, there are three elements.

(1) The Code

The first of these is the Code. The Code articulates three broad principles of public duty, along with a number of specific rules of conduct. One of its purposes is to assist Senators by providing advice and guidance to them regarding conflicts of interest and appropriate conduct and, in so doing, provide the transparency and accountability necessary to reinforce public confidence in the manner in which Senators perform their parliamentary duties. As noted earlier, the Code is still evolving, and the Senate is ultimately responsible for ensuring that the Code reflects the standards of the day.

(2) The Senate Ethics Officer

The second element in the system is the Senate Ethics Officer. His appointment is approved by resolution of the Senate and he is an Officer of the Senate. While he is accountable to the Committee, he is expected to act independently in the discharge of his responsibilities, including advising individual Senators on their obligations under the Code, considering and investigating complaints, and submitting inquiry reports to the Committee for the Senate's final determination. In his advisory, disclosure and inquiry functions, the Senate Ethics Officer is ultimately responsible to the Senate and, through his Annual Report, to the public as well.



(3) The Standing Committee on Conflict of Interest for Senators

The third element in the system is the Standing Committee on Conflict of Interest for Senators. The Committee is responsible to the Senate for the overall effectiveness of the system and provides “general direction” to the Senate Ethics Officer. The Committee has an important role to play with respect to any inquiries and investigations that may be undertaken under the Code. Through the Committee, the Senate retains its right to discipline its own Members by making final determinations regarding sanctions or penalties where Senators have violated the provisions of the Code. The Committee is also responsible for undertaking periodic reviews of, and recommending to the Senate changes to, the Code. In a sense, the Committee is the conscience of the Code.

A Solid Foundation

As already noted in my first two Annual Reports, the fundamental structure of the current system on conflict of interest in the Senate is, in my view, sound. The system, for the most part, is working well and is a solid foundation on which to continue to build. Standards in the Senate are generally high. Indeed, the overwhelming majority of Senators seek to, and in practice do, uphold high standards of propriety and do cooperate with the Senate Ethics Officer. Members of the Committee and the staff of Senators have been largely supportive and, when you look at the overall record to date, I think it stands comparison with any country.

Having said that, within any system of rules, particularly when new rules are first introduced, there will always be people who, for one reason or another, are reluctant to offer their support or to act in a helpful, open and timely manner. Nervousness, reticence, resistance and even personal criticisms are not uncommon in such situations. I am pleased to note that as Senators’ understanding and comfort level with the new rules are increasing, attitudes are changing for the better and cooperation continues to improve.

Therefore, and as already mentioned above, I am of the view that only modest adjustments are necessary to the current system and that the various proposals I am bringing forward at this time provide a unique opportunity to continue to build the effectiveness and the credibility of the Senate’s Conflict of Interest Code.



Submission to the Committee

Issue 1: The Roles and Responsibilities of the Senate Ethics Officer

The roles and responsibilities of the Senate Ethics Officer are, arguably, not as clearly defined as they should be. Yet, ensuring good governance in any institutional setting necessarily requires clarity.

Under the present system, the application and interpretation of the Code as it relates to individual Senators is the sole responsibility of the Senate Ethics Officer. He is expected to exercise independent judgment in advising Senators of their obligations under the Code and in investigating complaints and submitting his findings to the Committee for its consideration and for the Senate's final determination.

However, a plain reading of the Code may leave the reader with a false impression regarding the role the Senate Ethics Officer is expected to carry out. Certain provisions are being interpreted as suggesting that the Senate Ethics Officer's advice to Senators in individual cases, as well as the findings from his investigations of complaints, are subject to review, change and approval by the Committee. Interesting descriptions have been used by outside observers to describe the position of the Senate Ethics Officer, such as "supervised, superintended, controlled, managed, governed, overseen, semi-independent, lapdog..." In a recent publication, the Senate Ethics Officer was described as operating "under the penumbra of a committee of the Senate..." In practice, however, this is not the case since, as you know, the Senate Ethics Officer operates very much at arms length from the Committee in the application and interpretation of the Code as it relates to individual Senators.

This misconception may be amplified by the fact that, in the Code, there is some overlap in the areas of responsibility of the Committee and the Senate Ethics Officer, for example, sections 9 and subsection 39(3). This is of importance because the public perception in this regard has a serious impact on the credibility and legitimacy of the Office, as noted earlier. This, in turn, has an impact on a Senator's ability to rely on the opinions and advice of the Senate Ethics Officer in any given matter, particularly where the issue has become public and the Senator's reputation is at issue.

With respect to any areas of overlap in the functions of the Committee and the Senate Ethics Officer, it seems clear that the two must necessarily work together to



deal with these matters in light of the responsibilities each is required to discharge. But these areas of overlap should not lead to confusion about the Senate Ethics Officer's roles and responsibilities, particularly with respect to his opinions and advice to individual Senators.

The lack of clarity with respect to the responsibilities of the Senate Ethics Officer is a serious matter, in my view. As long as the Code's governance arrangements remain ambiguous and the present confusion persists, questions and concerns will continue to be raised about the adequacy of the conflict of interest regime currently in place in the Senate, undermining the effectiveness of the present system.

This ambiguity raises suspicion about political or outside influence, and reasonable doubts about the independence, fairness and accountability of the process. In the absence of clarity, the work of the office runs the risk of being discredited over time and may no longer command public confidence. Moreover, the impartiality and credibility of the advice given to Senators is undermined and will be of little value in protecting them against unjustified complaints or attacks on their conduct.

Other Canadian Jurisdictions

One of the primary reasons the legislated ethics regimes adopted by provincial and territorial assemblies over the last twenty years have been so successful is that the roles and responsibilities of Conflict, Ethics or Integrity Commissioners had been well defined from the outset. Commissioners have been free to form opinions as they consider appropriate, in a fully transparent manner, without outside influence or coercion, or the appearance of outside influence or coercion. This approach has also been adopted federally by the House of Commons and is one which is often referred to in international circles as the "Canadian Parliamentary Ethics Model". The clarity of the governance arrangements in other Canadian jurisdictions inspires trust and credibility in their ethics regimes, and this trust and credibility is essential to the Senate ethics regime as well.

Recommendations

In order to address the questions that have been raised regarding the roles and responsibilities of the Senate Ethics Officer, I would recommend that the Code be amended to make explicit what is now the practice, namely that the application and interpretation of the Code as it relates to individual Senators is the sole responsibility of the Senate Ethics Officer.



Moreover, I would recommend the clarification or removal of some of the provisions that are largely responsible for the current confusion and misconceptions, for example subsection 8(5). This provision reads as follows:

(5) A written opinion or advice given by the Senate Ethics Officer under subsection (2) or (3) and relied on by a Senator is conclusive proof that the Senator has fully complied with the Senator's obligations under this Code **in any subsequent consideration by the Committee of the subject matter of the opinion or advice** as long as all the relevant facts were known to the Senator were disclosed to the Senate Ethics Officer. [*Emphasis added*]

Subsections 39(3) and 39(4) are also examples of this. Subsection 39(3) states: "The Committee may give Directives to the Senate Ethics Officer concerning the interpretation and administration of this Code".

Subsection 39(4) provides: "All decisions of the Senate Ethics Officer may be appealed to the Committee".

These three provisions should be clarified or removed to ensure that the independence of the Senate Ethics Officer is beyond question in the application and interpretation of the Code as it relates to individual Senators.

No such provisions are found in the *Conflict of Interest Code for Members of the House of Commons* (the House Code) and, not surprisingly, no questions or concerns have been raised regarding the role and responsibilities of the Conflict of Interest and Ethics Commissioner. The criticism, often unjustified, which the former federal Ethics Counsellor had to endure illustrates well the impossible situation of not having apparent, as well as real, independence.

Issue 2: Annual Disclosure Meetings between Senators and the Senate Ethics Officer: A Shared Responsibility

As you are already aware, section 31 of the Code authorizes the Senate Ethics Officer to "request" a meeting with a Senator to discuss the Senator's confidential disclosure statement and the Senator's obligations under the Code. It specifically provides as follows:

31. After reviewing a Senator's confidential statement, the Senate Ethics Officer may request to meet with the Senator to discuss the statement and the Senator's obligations under this Code.



In my view, the annual disclosure process is very much a shared responsibility. Each Senator is required to file a confidential disclosure statement, while the Senate Ethics Officer is required to review each Senator's statement. The Senate Ethics Officer is then required to prepare a public disclosure summary based on this information, for each Senator's review pursuant to section 32 of the Code. The preparation of this document requires that the Senate Ethics Officer make a reasonable effort to satisfy himself that each Senator's disclosure is adequate, current and clear. A face-to-face meeting is often the best venue within which to do this. Yet, under section 31 of the Code, while the Senate Ethics Officer may request a meeting with a Senator, there is no corresponding obligation on the part of the Senator in question to agree to such a meeting.

This could lead to a situation in which the Senate Ethics Officer would have to prepare certain documents and provide advice without the benefit of obtaining the necessary clarification and additional information that may be required. This could prove to be highly problematic for both the Senator concerned as well as the Senate Ethics Officer and could ultimately undermine the integrity of the system.

In my experience, a face-to-face meeting at least once a year is highly beneficial both for individual Senators, as well as for me in the discharge of my duties and responsibilities.

As part of the disclosure process, such a meeting allows the opportunity to clarify inconsistencies and ambiguities, as well as to expand on any matters that require more thought and attention. But quite apart from the disclosure process, an annual meeting also provides the opportunity to discuss other areas of the Code in which a Senator may have some doubt about the best course of action, or to signal a matter that could be, or could become at a later date, relevant or possibly even problematic under the Code.

Conflict of interest issues are not always easily resolved. They may involve different levels of complexity depending upon the particular fact situation. A face-to-face meeting to discuss a complex issue is often the most effective and efficient way to elicit the relevant facts and information required for a proper resolution of the matter. While these meetings may vary in length of time, they are always useful in permitting a constructive mutual exchange, which, in my view, is invaluable. Moreover, an annual meeting is an opportunity for me to receive regular feedback from Senators and for Senators to provide me with their thoughts and suggestions for improvements or new approaches to the system in order to meet our objectives.



A further consideration is that Senators are very busy people and cannot be expected to be aware of all the subtleties and nuances in the interpretation and application of the Code in each individual case. This is another reason for my attaching great importance to advice, consultations and the gathering of information through annual face-to-face meetings. This is key to prevention and, as Senate Ethics Officer, I have always viewed prevention, through annual meetings, as preferable to cure.

Other Canadian Jurisdictions

It is interesting to note that annual meetings between ethics commissioners and members of the legislative bodies are considered essential in most other jurisdictions in Canada. In eight of these jurisdictions, (Ontario, Alberta, British Columbia, Manitoba, N.W.T., Nunavut, P.E.I. and New Brunswick), an annual meeting between the ethics commissioner and the members is statutorily required. For example, this is the case in Ontario (subsection 20(3) of the *Member's Integrity Act*, 1994), in Alberta (section 13 of the *Conflicts of Interest Act*, 1991) and in British Columbia (subsection 16(3) of the *Members' Conflict of Interest Act*, 1996) – the three leading jurisdictions in the area of conflict of interest that have over fifteen years of experience with a conflict of interest regime. These provisions read as follows:

Members' Integrity Act (Ontario)

20.(3) After filing the private disclosure statement, the member, and the member's spouse if available, shall meet with the Commissioner to ensure that adequate disclosure has been made and to obtain advice on the member's obligations under this Act.

Conflicts of Interest Act (Alberta)

13. The Ethics Commissioner shall, as soon as practicable after a Member has filed a disclosure statement, meet with the Member and the Member's spouse or adult interdependent partner, if available, to ensure that the Member has made adequate disclosure and to advise about the Member's obligations under this Act.

Members' Conflict of Interest Act (British Columbia)

16.(3) After filing a disclosure statement, the member, and the member's spouse if the spouse is available, must meet with the commissioner to ensure that adequate disclosure has been made and to obtain advice from the commissioner on the member's obligations under this Act, and the commissioner may recommend the manner by which the member will comply with those obligations.



In one other jurisdiction, an annual consultation between the member and the commissioner is required. Two other jurisdictions (at the federal level – the House Code, and in Newfoundland) leave the matter to the discretion of the commissioner who may require a meeting if he or she considers it necessary. Appendix A contains a complete list of the provisions in the provincial and territorial legislation in Canada on conflict of interest pertaining to annual meetings. It is clear from an examination of these provisions, as well as the practices in the provincial and territorial ethics offices, that these annual meetings have proven to be a key ingredient to the success of these offices over the last twenty years.

Since my appointment, I have sought to accentuate the positive and focus on the promotion of good conduct and high standards. I have also placed a strong emphasis on prevention through advice, education and personal contact. In my view, this approach is preferable to a reactive, complaint-driven process which is based on enforcement, inquiries and investigations. It is an effective combination of disclosure, prevention and enforcement that will best serve the public interest.

Recommendation

For all of the above reasons, I would recommend that the Committee consider amending section 31 of the Code to require that each Senator and the Senate Ethics Officer meet annually to discuss and review the Senator's confidential statement, the public disclosure summary and the Senator's obligations under the Code. In this respect the Committee may wish to consider the following phraseology:

31. An annual meeting shall take place between each Senator and the Senate Ethics Officer to discuss and review the Senator's confidential statement, the public disclosure summary and the Senator's obligations under this Code.

In contrast with most provisions on annual meetings in conflict of interest legislation across Canada, the suggested wording does not place an obligation on one party alone to meet the other. Rather, it reflects the fact that the annual disclosure process is a shared responsibility and that, in recognition of that reality, both parties would agree to meet annually for their own mutual interest and benefit.

Issue 3: Declarations of Private Interest (section 15)

The third matter involves an issue that has come up from time to time concerning the proper interpretation of one of the provisions of the Senate Code, namely section



15. Subsection 15(1) provides that a Senator who has reasonable grounds to believe that he or she, or a family member, has a private interest in a matter that could be affected by a matter that is before the Senate may participate in debate on the matter, provided that an oral declaration is first made on the record prior to each intervention. Subsection (2) essentially provides a similar rule where a Senator believes, on reasonable grounds, that he or she has an interest in a matter that is before a committee of which the Senator is a member. In other words, the Senator, under such circumstances, may participate in debate in committee on the matter, provided that an oral declaration is first made on the record.

Some critics have interpreted section 15 as authorizing Senators to promote the interests of entities on whose boards they sit or in which they have an interest. My interpretation of this provision is that, when read with sections 10 and 11 of the Code, section 15 cannot authorize a Senator to engage in this conduct. Indeed, several Senators have consulted with me on this matter and, ultimately, all chose to refrain from debating the matter in which they had declared a private interest. In fact, since the establishment of the office in 2005, no Senator who has made a declaration of a private interest pursuant to section 14 of the Senate Code has subsequently proceeded to engage in debate on the matter.

Having said that, I would question the necessity and usefulness of section 15. This section is certainly misleading on its face. It appears to be inconsistent, and is difficult to reconcile, with sections 10 and 11. And although this matter has not posed any real challenges in light of the caution that Senators have exercised in this regard, I am nonetheless concerned about the perception that it leaves in the minds of Canadians about the strength of the Code on this issue, particularly given the other concerns that I have outlined in this letter. This perception – or misconception – is strengthened further by the fact that the Senate is, to my knowledge, only one of two jurisdictions in all of Canada that authorizes its members to debate a matter in which they have a private interest, rather than requiring them to refrain from doing so.

Recommendation

In my opinion, serious questions will continue to be raised on this issue unless it is addressed in some fashion. Therefore, in the absence of a compelling reason to retain section 15 in its present form, I would recommend amending it to prohibit Senators from debating a matter in which they have a private interest within the meaning of subsection 13(1) of the Senate Code. In other words, they would be precluded from both debating the matter and voting on it.



APPENDIX A

Annual Meetings with legislators

Relevant extracts from Conflict of Interest Legislation¹ and Rules in Other Canadian Jurisdictions²

Ontario (1988) – Members’ Integrity Act, 1994

20.(3) After filing the private disclosure statement, the member, and the member’s spouse if available, shall meet with the Commissioner to ensure that adequate disclosure has been made and to obtain advice on the member’s obligations under this Act.

British Columbia (1990) – Members’ Conflict of Interest Act

16.(3) After filing a disclosure statement, the member, and the member’s spouse if the spouse is available, must meet with the commissioner to ensure that adequate disclosure has been made and to obtain advice from the commissioner on the member’s obligations under this Act, and the commissioner may recommend the manner by which the member will comply with those obligations.

Nova Scotia (1991) – Members and Public Employees Disclosure Act

– There are no provisions for annual meetings with members.

Alberta (1992) – Conflicts of Interest Act

13. The Ethics Commissioner shall, as soon as practicable after a Member has filed a disclosure statement, meet with the Member and the Member’s spouse or adult interdependent partner, if available, to ensure that the Member has made adequate disclosure and to advise about the Member’s obligations under this Act.

Newfoundland and Labrador (1993) – House of Assembly Act

36.(6) After reviewing the disclosure statement received from a member the commissioner may require that the member meet with the commissioner to ensure that adequate disclosure has been made and to discuss the member’s obligations under this Part.

¹ The provisions reproduced herewith reflect the current state of the law.

² The jurisdictions are listed in chronological order according to the dates on which each ethics commissioner’s office was first established.



38.(1) Upon reviewing the disclosure statement received from the member, and after considering information received during a meeting with the member, the commissioner shall advise the member whether steps need be taken to ensure that the member's obligation under this Part are fulfilled.

Saskatchewan (1994) – *Members' Conflict of Interest Act*

11.(5) After filing a disclosure statement pursuant to this section, the member, and the member's spouse if available, shall consult with the commissioner:

- (a) to ensure that adequate disclosure has been made; or
- (b) to obtain advice and direction on the member's obligations under this Act.

Quebec (1996) – *An Act Respecting the National Assembly*

– There are no provisions for annual meetings with members.

Northwest Territories (1998) – *Legislative Assembly and Executive Council Act*

88. After filing a disclosure statement, a member shall, as soon as is reasonably practicable, meet with the Conflict of Interest Commissioner to ensure that adequate disclosure has been made and to obtain advice from the Conflict of Interest Commissioner with respect to the member's obligations under this Part.

Prince Edward Island (1999) – *Conflict of Interest Act*

25.(4) After filing a private disclosure statement or a revised private disclosure statement the member shall meet with the Commissioner to ensure that adequate disclosure has been made and to receive instruction regarding the member's obligations pursuant to this Act.

New Brunswick (2000) – *Members' Conflict of Interest Act*

18.(6) After a private disclosure statement is filed under this section, the Commissioner shall consult with the member, and the member's spouse, if available, to ensure that adequate disclosure has been made and to provide advice on the member's obligations under this Act.

19.(1.1) Where a member fails to consult with the Commissioner under subsection 18(6), the Commissioner shall request the member to appear for consultation by a date specified by the Commissioner.

(2) Where a member fails to file a private disclosure statement by the date specified by the Commissioner under subsection (1) or fails to appear for consultation by the date specified by the Commissioner under subsection (1.1), the



Commissioner shall prepare a report with the name of the member concerned and file it with the Speaker, who shall table the report before the Assembly if it is then sitting, or if it is not sitting, within fifteen days after it next sits.

Nunavut (2000) – *Integrity Act*

34.(1) A member shall meet, at least annually, with the Integrity Commissioner to obtain advice on the member's obligations under this Act.

Manitoba (2002) – *Legislative Assembly and Executive Council Conflict of Interest Act*

11.1(1) Before filing a disclosure statement under section 11, or within 60 days after doing so, every member and minister shall meet with the commissioner to ensure that adequate disclosure is made and to obtain any advice about the member's or minister's obligations under this Act. The spouse or common-law partner of the member or minister may also attend the meeting with the commissioner and may otherwise seek the commissioner's advice.

Yukon Territory (2002) – *Conflict of Interest (Members and Ministers) Act*

7.(3) Every member may review with the commission their disclosure statement and any subsequently filed amendments to the statement.

House of Commons (2004) – *Conflict of Interest Code for Members of the House of Commons*

22. After reviewing a Member's statement filed under section 20 or subsection 21(3), the Commissioner may require that the Member meet with the Commissioner, and may request the attendance of any of the members of the Member's family, if available, to ensure that adequate disclosure has been made and to discuss the Member's obligations under this Code.

Appendix G

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APPENDIX G

CHRONOLOGY OF KEY EVENTS

October 23, 2002	“Proposals to amend the Parliament of Canada Act (Ethics Commissioner) and other Acts as a consequence” and “Proposals to amend the Rules of the Senate and the Standing Orders of the House of Commons to implement the 1997 Milliken-Oliver Report” were tabled by the then Leader of the Government in the Senate.
February 4, 2003	The proposals were referred to the Standing Senate Committee on Rules, Procedures and the Rights of Parliament.
April 10, 2003	The Standing Senate Committee on Rules, Procedures and the Rights of Parliament tabled its Report on the Proposals.
October 2, 2003	Bill C-34, <i>An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence</i> , was introduced in the Senate.
October 27, 2003	Bill C-34 was referred to the Standing Senate Committee on Rules, Procedures and the Rights of Parliament.
November 3, 2003	The Standing Senate Committee on Rules, Procedures and the Rights of Parliament tabled its report on Bill C-34.
November 12, 2003	Parliament was prorogued and Bill C-34 died on the <i>Order Paper</i> .
February 11, 2004	Bill C-4, <i>An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence</i> , formerly Bill C-34, was introduced in the Senate.
February 13, 2004	Order of Reference to the Standing Senate Committee on Rules, Procedures and the Rights of Parliament for the consideration of a code of conduct for Senators.



February 26, 2004	Bill C-4 was referred to the Standing Senate Committee on Rules, Procedures and the Rights of Parliament.
March 23, 2004	The Standing Senate Committee on Rules, Procedures and the Rights of Parliament tabled its report on Bill C-4.
March 31, 2004	Bill C-4 received Royal Assent.
February 24, 2005	Motion to approve the appointment of Mr. Jean T. Fournier as Senate Ethics Officer (SEO) was debated in the Senate. Mr. Fournier appeared before the Senate sitting in Committee of the Whole. Motion to approve the appointment was adopted that day.
February 25, 2005	Governor in Council appointment of Mr. Jean T. Fournier as the first Senate Ethics Officer effective April 1, 2005.
April 1, 2005	Mr. Fournier assumed his duties along with Louise Dalphy, Executive Assistant.
May 11, 2005	The Standing Senate Committee on Rules, Procedures and the Rights of Parliament tabled its Third Report recommending the adoption of a <i>Conflict of Interest Code for Senators</i> .
May 18, 2005	The <i>Conflict of Interest Code for Senators</i> was adopted by the Senate.
July 6, 2005	The Standing Committee on Conflict of Interest for Senators was established in accordance with subsection 20.5(3) of the <i>Parliament of Canada Act</i> .
September 15, 2005	Deadline for senators to submit their annual Confidential Disclosure Statements for the first annual review (2005-06) to the SEO.
October 2005 to April 2006	The SEO reviewed the Confidential Disclosure Statements submitted by senators to identify potential conflicts of interest and to determine the compliance measures required in each case. The SEO also prepared public disclosure summaries.

May 9, 2006	Public Disclosure Summaries were placed in the Public Registry located at the office of the Senate Ethics Officer and made available for public inspection.
June 20, 2006	Tabling of the first Annual Report of the Senate Ethics Officer.
September 6, 2006	Remarks by the SEO before the Standing Senate Committee on Legal and Constitutional Affairs on Bill C-2, the <i>Federal Accountability Act</i> , as it affected the office of the Senate Ethics Officer.
October 20, 2006	Deadline for senators to submit their annual Confidential Disclosure Statements for the second annual review (2006-07) to the SEO.
December 12, 2006	Bill C-2, the <i>Federal Accountability Act</i> , received Royal Assent.
November 2006 to April 2007	The SEO reviewed the Confidential Disclosure Statements submitted by senators to identify potential conflicts of interest and to determine the compliance measures required in each case. The SEO also prepared public disclosure summaries.
June 7, 2007	Tabling of the second Annual Report of the Senate Ethics Officer.
November 2, 2007	Deadline for senators to submit their annual Confidential Disclosure Statements (2007-2008) to the SEO.
November 2007 to April 2008	The SEO reviewed the Confidential Disclosure Statements submitted by senators to identify potential conflicts of interest and to determine the compliance measures in each case. The SEO also prepared public disclosure summaries.
January 29, 2008	Submission by the Senate Ethics Officer to the Standing Committee on Conflict of Interest for Senators regarding the review of the Code.

Appendix H

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APPENDIX H

EMERGENCE OF A DISTINCTIVE CANADIAN PARLIAMENTARY ETHICS MODEL: 1988-2008 REMARKS BY JEAN T. FOURNIER, SENATE ETHICS OFFICER

I am pleased to be here with you today to share some thoughts on a subject that recently provoked this comment from a respected editorialist. Here is what he had to say: *“public trust and ethics in government is non-negotiable, it is a pre-requisite of decent democratic government.”*

For those of us who are involved in ethics within a legislative context, the basic principle with which we work on a daily basis is that elected members should serve the public, not private, interest when they take office. Specifically, they are not to use their public office for private gain. When they have outside activities or interests, as do most legislators, they are expected to arrange their private affairs in a manner that ensures that, in the event a conflict of interest arises, the conflict is resolved in a way that protects the public interest. And as we have all come to appreciate, nothing gets the media machine more revved up than ethical failures of public figures.

The Canadian federal political arena has lagged behind other countries as well as provincial and territorial governments in establishing parliamentary rules of conduct for parliamentarians. This is largely attributable not only to a lack of political will and consensus, but also the absence of ethics scandals matching what some might call the high drama of those in the United States, the United Kingdom or France from the ‘60s to the ‘90s.

The U.S. Congress adopted ethics rules in the 1960s. The U.S. Senate established its own Select Committee on Standards and Conduct in 1964 and the House of Representatives followed in 1967 with the creation of the Committee on Standards of Official Conduct. In 1988, the French government established under legislation an

This is a revised version of the presentation I made to the annual conference hosted by the Council on Governmental Ethics Laws (COGEL) which was held in Victoria in September 2007. COGEL is a professional association for governmental agencies, organizations, and individuals with responsibilities or interests in governmental ethics, elections, campaign finance, lobby laws and freedom of information. Membership is drawn principally from groups or individuals from the United States and Canada, with some European, Australian, and Latin American members as well.



independent “Commission pour la Transparence financière de la vie publique” and its responsibilities were expanded in 1995 to include the declarations of personal assets by members of both Houses. In the United Kingdom, the House of Commons adopted a code of conduct for Members of Parliament in 1995 and appointed that year an independent Parliamentary Commissioner for Standards of the House of Commons. The House of Lords followed in 2001 with the introduction of a code of conduct for the Lords. While there are no formal codes of conduct or commissioners in the Australian federal parliament, registers of interests were established by resolution of the House of Representatives and the Senate in 1984 and 1994 respectively.

This year marks the 20th anniversary of the emergence of the Canadian parliamentary ethics model, which originated in Ontario in 1988. Over the subsequent two decades, every province and territory as well as both Houses of Parliament have adopted conflict of interest or ethics legislation. These fifteen jurisdictions have established independent Officers of Parliament or the Legislature to administer, interpret or apply rules regarding the proper behaviour of parliamentarians. While there are some differences in terms of the relationships of independent commissioners with legislatures and individual legislators, and variations on the rules of conduct, the objective is the same: to promote greater public confidence and trust in the integrity of parliamentarians.*

While those of us involved in these endeavours are justifiably proud of what has been accomplished, many of our fellow citizens are only vaguely aware of the parliamentary ethics regimes that have been established in their country. This then is a welcome opportunity to provide some historical context and highlight, from a practitioner’s perspective, some of the distinguishing features of the Canadian model.

Attempts to introduce rules of conduct for parliamentarians at the federal level go back to 1973 – when Watergate was erupting in the US – with the publication of a “Green Paper” or discussion paper entitled “Members of Parliament and Conflict of Interest”. This was followed by numerous studies, reports, conferences and parliamentary hearings. Legislation was introduced in 1978, 1988, 1989, 1991, 1993 and 2003, but all died on the *Order Paper*. Nothing concrete came of any of these initiatives as regards to individual parliamentarians, even though conflict of interest guidelines for Cabinet Ministers and Parliamentary Secretaries had been in place since 1964.

*The tables, attached as Appendix A and B, provide an overview of the offices of Independent Ethics Commissioners in Canada and in select countries.



In her October 2000 Report on Values and Ethics in the Public Sector, the Auditor General of Canada was sharply critical of the federal government's failure to address ethics and accountability in government. She took the unusual step of calling upon federal parliamentarians to show "ethical leadership" and set an example as to the norms of acceptable behaviour.

It was finally in 2002 that issues of parliamentary ethics and integrity received sustained attention at the federal level and we begin to see real progress. In that year, reacting to a series of events faced by the government of Prime Minister Jean Chrétien during the last years of his ten years in office – including the so-called sponsorship scandal – the government released an "Eight-Point Plan for Ethics in Government" which included a code of conduct for Senators and Members of Parliament.

The draft proposal would have created a single commissioner with responsibility for both the Senate and the House of Commons, along with a code of conduct covering both Houses. Defending their independence, Senators opposed the proposal, arguing that the Senate was a constitutionally separate House of Parliament and therefore should have its own ethics commissioner and rules of conduct as is the case in all Westminster parliaments with two chambers, as well as the U.S. Congress. The following year, Prime Minister Chrétien introduced Bill C-34 allowing the Senate to choose its own commissioner and to develop its own code. However, Bill C-34 died on the *Order Paper* when Parliament was prorogued, and Prime Minister Chrétien resigned shortly thereafter.

In late 2003, on his first day in office, Prime Minister Paul Martin declared that he would "change how things work in Ottawa" and announced a comprehensive package of ethics reforms which included a commitment to reintroduce Bill C-34. The new Bill (C-4) passed quickly. The House of Commons and the Senate appointed their own commissioner and adopted a conflict of interest code in 2004 and 2005 respectively. It had taken some thirty years from the publication of the original "Green Paper" on conflict of interests for members of Parliament for a codification of ethical standards to be confirmed. It had not been an easy journey, and there would still be some potholes on the road ahead, at least in the House.

The new Ethics Commissioner for the House of Commons, who also had responsibility for public office holders, including ministers, soon became embroiled in political controversy. He conducted several complex and high profile inquiries and resigned after only three years in office, following personal criticism by the recently-elected Conservative Prime Minister, Stephen Harper, and after being found in contempt of the House of Commons. Mr. Shapiro's successor, Mary Dawson, was appointed in July 2007.



My appointment as the first Senate Ethics Officer took effect in April 2005.

The ethics regimes of the Senate and House of Commons are largely modeled after those put in place in the provinces and territories. They share most of the distinctive characteristics of the Canadian parliamentary ethics model which is based on four important cornerstones:

- Independence of the commissioner
- Specific rules of conduct
- Accountability of the legislature
- An emphasis on advice and prevention

Independence of the Commissioner

Canada's first independent ethics commissioner was appointed in Ontario twenty years ago. Following a series of political scandals in 1988, the government of the day asked the Honourable John Black Aird, a former Lieutenant Governor, to recommend new rules of conduct for members of the Legislature and new mechanisms for implementing and enforcing these rules. His report led to the establishment under statute of an independent commissioner with responsibility for both ministers and members of the Ontario legislature, and to the adoption of rules of conduct.

For Mr. Aird, the most important element of the new system was the independence of the commissioner. As he made clear in his report *"...the keystone to a new system is the appointment of one person as a Commissioner of Compliance to perform these and other functions...Obviously, the individual filling the role must be seen by the public as independent and authoritative. I therefore believe that he or she should be chosen by the Legislature..."* In a sense, Mr. Aird may be rightly described as the godfather of the Canadian parliamentary ethics model and the independent ethics commissioner in particular. Other provinces quickly followed Ontario's lead, including British Columbia in 1990, Nova Scotia in 1991 and Alberta the following year.

While the precise title may vary in the different jurisdictions, an integrity commissioner, a conflict of interest commissioner, an ethics officer, or a jurisconsult are to be found today in every province and territory, as well as federally in both Houses of Parliament, with broadly similar status, duties and powers. However, they all share one crucial common characteristic: each is independent.

This independence – possibly the most distinguishing feature of the Canadian parliamentary ethics model – is considered to be essential in order to ensure that he or she is free to form opinions and provide considered advice as they see fit in a fully impartial and transparent manner, without outside influence or coercion, or perhaps more importantly, without the appearance of outside influence or coercion.



This independence is vital if the commissioner is to have credibility and to retain the confidence of both the public and parliamentarians in the way he or she discharges their role. In the words of the Honourable H.A.D. Oliver, British Columbia's long-serving Commissioner: *"I regard that absolute independence as vitally necessary to the proper functioning of Conflict, Ethics or Integrity Commissioners, if uncomplimentary canine comparisons in the media are to be avoided"*.

The independence of commissioners derives from such fundamentals as the legislation creating the office, the appointment process, the security of tenure, financial autonomy and reporting relationships.

Using my own position as an example, my office was established under the *Parliament of Canada Act* and I am an independent Officer of the Senate. My primary responsibility is to administer, interpret and apply the *Conflict of Interest Code for Senators* (the Code). I was appointed following a motion of the Senate moved by the then-Leader of the Government in the Senate, the Honourable Jack Austin, P.C., Q.C., and seconded by the then-Leader of the Opposition in the Senate, the Honourable Noël Kinsella. This method of appointment ensures that the incumbent has the broadest support of the Senate, irrespective of party affiliation. My office has a renewable seven year term and removal from office can only be for cause, by the Governor in Council on address of the Senate.

The Senate Ethics Officer has the rank of a deputy head of the Government of Canada and has the control and management of his office. He has the responsibility for preparing the estimate of the budget required to pay the charges and expenses of the office. This estimate is separate from the estimate 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 may review the Officer's proposed budget as a part of the annual review of the Main Estimates. These and other aspects of the *Parliament of Canada Act* confer on the officer a status of independence and autonomy, and provide an effective shield against improper or inappropriate influence.

This Act provides that the Senate Ethics Officer, and the new Conflict of Interest and Ethics Commissioner, whose responsibility concerns Members of the House of Commons and public office holders, each carries out their duties and responsibilities under the general direction of a committee of each House of Parliament designated for that purpose. However, the application and interpretation of the Code as it relates to individual Senators, is my sole responsibility.



In particular, I am expected to act independently in the discharge of my responsibilities, including advising individual Senators on their obligations under the Code, considering and investigating complaints, and submitting inquiry reports to the Standing Committee on Conflict of Interest for Senators (the Committee) for the Senate's final determination. I also review the operations of the Code and make recommendations to the Committee for changes to the Code. While broadly accountable to the Committee, I am ultimately responsible to the Senate as a whole, and through my Annual Report, to the general public as well.

The duties and functions of the Senate Ethics Officer are set out in the Code. First, I provide confidential advice and opinions to individual senators on an ongoing basis, in order to assist them in remaining in compliance with the requirements of the Code. I consider this advisory function to be the most important aspect of my mandate, and senators are encouraged to seek my advice as often as possible prior to acting, especially in cases of doubt or confusion. This approach, sometimes referred to as "preventative political medicine", is an effective means of preventing conflicts from arising and is much preferred over cleaning up collateral damage after the fact. Last year, I provided over three hundred opinions and advice, both formal and informal, of varying degrees of complexity.

Second, my office is responsible for the annual disclosure process under the Code, including the maintenance of the Public Registry. Senators are required to disclose, annually, their sources of income, assets, liabilities, outside activities and federal government contracts. The Code also requires that Senators report ongoing changes to their circumstances in order to ensure that their confidential and public files are updated and contain accurate information (for example: gifts and benefits, sponsored travel, assets and liabilities, etc.). This information is reviewed by my office with respect to foreseeable conflicts, both real and perceived. Measures are then recommended, if necessary, to ensure that senators are in compliance with the Code. On the basis of the information provided, I prepare a public disclosure summary for each senator. The summaries are placed in the Public Registry along with any statements of gifts, benefits or sponsored travel or declarations of a private interest that senators may have filed with my office throughout the year.

Third, I may conduct an inquiry in order to determine if a senator has complied with his or her obligations, in accordance with the relevant provisions of the Code. In carrying out an inquiry, the Senate Ethics Officer may send for persons, papers and records, and Senators are expected to cooperate with the Senate Ethics Officer in this regard. Since my appointment, it has not been necessary for me to undertake any inquiries under the Code which, in my opinion, is directly related to the advisory aspect of my duties and functions. As is the view of other ethics commissioners in



Canada, I firmly believe that the more requests for opinions and advice in advance, the fewer inquiries are required.

Fourth, I am required, within three months after the end of each fiscal year, to submit a report of my activities to the Speaker of the Senate, who must table the report in the Senate. The report is an important opportunity to provide the public with information about how the system works, including the role of my office. Last year, my Annual Report provided twenty examples of the various compliance measures which senators typically might be required to follow to meet their obligations under the Code. This is intended to assist the public in better understanding how the Code works in practice, and in promoting public confidence and respect for senators, and for the Senate as an institution.

Specific Rules of Conduct

In Canada, all jurisdictions have rules of conduct (sometimes referred to as codes) which typically set out standards of behaviour for members of Parliament and the legislatures. Although there are differences between jurisdictions, the codes establish rules governing a broad range of issues such as the furthering of private interests, the use of influence, insider information, the receipt of gifts and other benefits, sponsored travel, government contracts, the declaration of a private interest and the requirements of the annual disclosure process, including the placing of information on file for public inspection.

In all provinces and territories, these rules are enshrined in legislation, while at the federal level, the Senate and House of Commons Codes are part of the Standing Orders of each body. Codes in Ontario, Alberta and at the federal level include both a set of broad principles and a list of specific rules of conduct. The principles can be applied generally and are often helpful in providing guidance in the day to day interpretation of the rules of conduct. Statements of principles are sometimes criticized as too vague and inexact, and not that helpful. I, however, disagree, having found in my experience, that broad and clear principles combined with specific and simple rules of conduct can establish reasonable expectations for people in public life, and provide them the guidance needed to make intelligent decisions on organizing both their private affairs and public life.

In the United States, by comparison, brevity and simplicity are missing in action. Congressional codes are typically based on a vast and complex compilation that covers all possible outcomes and focus on enforcement and compliance. The inherent difficulty with this approach is that the rules rarely address all possible situations that may arise, and can create the impression that public officials are either all dishonest or too thick to know what is proper. Another issue with that type



of regime is the challenge of conveying detailed guidance and information to busy legislators and keeping them up to date on evolving rules and interpretations. In my experience, few members take the time to become familiar with the rules where existing codes, guides and manuals are seen as overly complex.

By way of illustration, the Senate Code is based on three broad principles and nine specific rules of conduct.

- The Code's first principle states that senators are expected to continue to be active in their communities and regions, while at the same time serving the public interest.
- The second principle states that senators are expected to fulfill their public duties while upholding the highest standards in order to avoid conflicts of interest.
- The third principle makes reference to apparent conflicts. Senators are expected to arrange their private affairs so that, not only real, but also apparent conflicts may be prevented from arising.

The Code then builds from these overarching principles and establishes a succinct set of rules with respect to such matters as previously mentioned: gifts and other benefits, sponsored travel, contracts with the federal government, outside activities, use of influence, insider information, furthering private interests, declarations of a private interest, and annual and ongoing disclosure requirements.*

All things considered, the Senate Code is relatively straightforward, as are the rules of conduct found in other Canadian jurisdictions. It is the application of the Code to individual cases and in particular circumstances, that is not always easy. Therein is situated one of the key challenges of my job and that of my colleagues in other jurisdictions.

The Senate's rules regarding gifts are a good example of how succinct its rules of conduct are. The Code states that senators may not accept any gift or other benefit that could reasonably be considered to relate to their positions, except when received as a *"normal expression of courtesy or protocol, or within the customary standards of hospitality that normally accompany that senator's position"*. Gifts or benefits that are acceptable under the Code must be declared to the Senate Ethics Officer if they exceed five hundred dollars in value and these must be publicly declared.

The Code does not try to foresee every possible problem regarding gifts, but when a question arises, the Senate Ethics Officer has a firm basis for giving advice through the principles, as well as careful analysis of the Code and of each Senator's

*A list of the key rules of conduct that apply to senators under the Code is attached as Appendix C. Additional rules are also found in the *Criminal Code*, the *Parliament of Canada Act* and the *Rules of the Senate*.



circumstances. This approach avoids the danger which arises when countless detailed rules are laid down and accumulate layers of complexity and interpretation as individual cases are considered over time. If principles and rules are not kept as simple as possible, how can we expect parliamentarians, in the middle of their busy lives, to ensure compliance?

Just by way of comparison, the Senate and House of Commons Codes are some twenty pages respectively, in French and English. In the United Kingdom, the Code of Conduct and Guide of the House of Commons cover some forty pages. Compare that to the Codes of Conduct and Rules of the U.S. Senate and House of Representatives which are over five hundred pages long!

Accountability of the Legislature

In every province and territory as well as in both Houses of Parliament, either the legislature itself or a committee of the legislature is an important element in the regulation of the standards of conduct of parliamentarians.

With respect to inquiries to determine whether a member has violated his or her obligations under the Code, the legislature receives and considers the reports prepared by the commissioner and determines any appropriate action or sanction. This reflects the fact that in Canada, as in most other countries, legislatures are ultimately responsible for the disciplining of their members with the authority derived from long-standing parliamentary tradition and law. In the United States, for example, the authority of each chamber to determine its rules and punish its members is explicitly referred to in Article 1 of the United States Constitution. When inquiries are carried out by an independent commissioner, as is the case in Canada, this ensures that discipline is no longer a matter for parliamentarians looking after their own. This engenders greater trust in the system by both the public and parliamentarians.

The legislature is also responsible for undertaking periodic reviews of the codes of conduct and approving changes. This is an important task as, over time, public expectations of what constitutes acceptable behaviour of parliamentarians will evolve and change. In all jurisdictions, commissioners are called upon to contribute to the review process and, in some cases, they are the driving forces behind the amendments that are ultimately adopted by the legislatures. In some jurisdictions, legislatures have established special committees to consider the budgets, service plans and annual reports of Legislative Officers. Commissioners routinely appear before such committees to provide information and reply to questions regarding the activities of their offices.



Some legislatures play an important role in the selection of new commissioners. In all cases, commissioners are appointed by resolution of the legislatures and can only be removed by a vote of that body.

Again, taking the Senate as an example, it has a Committee of 5 senators of senior standing. Selection to this Committee is by secret ballot which gives individual senators a greater say in choosing its members, and ensures that those members have significant authority in carrying out their important task. This Committee is responsible to the Senate for the overall effectiveness of the system. It has an important role to play with respect to any inquiries and investigations that may be undertaken under the Code, although such inquiries are a rare occurrence. Through the Committee, the Senate retains its right to discipline its own Members by making final determination regarding sanctions or penalties when Senators have violated the provisions of the Code.

The Committee is also responsible for undertaking periodic comprehensive reviews of, and recommending changes to, the Code. In a sense, the Committee is the conscience of the Code. It is ultimately responsible to the Senate for the Code and the overall shape and results of the system. As the person responsible for the administration, interpretation and application of the Code on a day-to-day basis, I bring to the Committee's attention issues of concern and submit proposals to clarify and strengthen the Code.

Another function of the Committee is to provide "general direction" to the Senate Ethics Officer who is broadly accountable to the Committee, although in practice, the interpretation and application of the Code as it relates to individual senators is, and has been, my sole responsibility. Meetings often cover matters of a general or administrative nature. Last year, I met the Committee on two occasions, once to discuss my Annual Report following its tabling in the Senate, and on another occasion, to discuss my Submission to the Committee regarding the Review of the Code.

An Emphasis on Advice and Prevention

Bookending the independence issue is the other key distinguishing characteristic of the Canadian parliamentary model, which is the advisory aspect of the Commissioner's role. All commissioners attach great importance to encouraging members to seek their advice as often as possible, especially in cases of doubt, prior to taking action.

The Honourable Bert Oliver of B.C. explained his role this way: *"By far the greatest portion of the Commissioner's time is taken up by informal, confidential meetings*



with Members...to discuss Members' problems or potential problems...or to provide assistance to Members in identifying potential future problems not readily observable at first glance with a view to their avoidance." In Canada, over the last twenty years, this approach has been found to be an effective means of preventing conflicts from arising. Moreover, there have only been 11 investigations in the provinces and territories, in the last three years. To quote Robert Clark, a former successful commissioner from Alberta, the role of a commissioner is *"90% priest and 10% policeman"*. I agree with both statements, and have followed a similar approach in the Senate.

From the very beginning, my way of dealing with issues has been preventative, not punitive. The advice I provide may be of a formal nature, or in response to requests for advice of a more informal nature through telephone conversations and e-mail exchanges. These informal discussions may be useful in order to provide senators with an initial sense of the issues and concerns that may arise if a particular course of action is taken.

I also provide advice to senators through the annual disclosure process which provides me with the opportunity of meeting individual senators face-to-face at least once a year. Along with my colleagues in other jurisdictions, I have found that these meetings are not only helpful in the context of the disclosure process, but they also provide an opportunity to raise and discuss questions and concerns regarding obligations that senators are required to meet under the Code. These meetings allow for a constructive mutual exchange and provide an opportunity for a senator to signal a matter that may be coming forward that could be problematic. Moreover, a face-to-face meeting to discuss a complex issue, no matter its duration, is often the most effective and efficient way to elicit facts and information required for a proper resolution of the matter.

Last year, as noted earlier, I provided over three hundred opinions and advice of varying degrees of complexity. The sheer volume of requests for advice illustrates that senators are availing themselves of the advisory services that the office provides. Prevention, here as elsewhere, is preferable to cure. Prevention is not only in the interest of senators, but it is also in the public interest.

The number of requests for advice is also reflective of the level of trust and confidence that has developed between senators and the office. It is a trust relationship where senators feel comfortable in disclosing information, both personal and financial, and in seeking my advice. This aspect of my work occupies the largest part of my time, more so than the enforcement function which inevitably draws the greatest media attention. The opinions and advice that I provide are



confidential, although the option is there for them to be made public by the senator in question, or by me at the request of the senator.

Conclusion

These four building blocks of Canada's parliamentary ethics regime: independence of the commissioner, specific rules of conduct, accountability of the legislature along with an emphasis on advice and prevention, have been validated by two decades of experience as being effective measures to raise the level of ethical behaviour of parliamentarians. Even though Canada lagged well behind other countries in introducing legislative ethics rules, the countrywide efforts over the past twenty years have, for the most part, been remarkably successful in preventing serious conflict of interest scandals. This is especially true in those jurisdictions which pioneered the introduction of the Canadian parliamentary ethics model in the early 1990's and have the longest experience with independent ethics commissioners, namely Ontario, British Columbia and Alberta. Parliamentarians in these provinces have been largely free of the discredit brought on by major conflict of interest revelations.

While the Canadian parliamentary ethics model is young and should be considered a "work in progress", it is noteworthy that countries with which Canada often compares itself on parliamentary matters have taken an interest in the Canadian experience, and in some cases, have drawn inspiration from it. As ethics reforms for parliamentarians have been enacted in many countries in the course of the last decade, we are witnessing a growing trend towards the introduction of systems which combine one or more of the four elements of the Canadian approach.

Even our friends in the United States are adopting some elements of the Canadian parliamentary ethics model. In March 2008, the U.S. House of Representatives passed legislation (H. Res. 895) to strengthen congressional ethics enforcement with the establishment of a new Office of Congressional Ethics, consisting of an outside panel of six members. House Speaker Nancy Pelosi stated: *"This will bring greater accountability and transparency to the ethics enforcement process by requiring, for the first time in history, an independent review of alleged ethics violations by individuals who are not Members of Congress"*. Until then, the House system had been entirely peer-driven and committee-based, and the House had tenaciously and consistently resisted calls for an independent and depoliticized form of ethics regulation of the kind that has emerged in Canada over the last twenty years.

Canada is now considered a world leader in the field of parliamentary ethics, but we must be careful not to become complacent. Ethics codes and institutional models are not static and must, over time, adjust as public expectations of the behaviour of



parliamentarians change and, as we learn from the experience of others involved in conflict of interest, both domestically and in other jurisdictions. Moreover, Canadians expect a rising standard of ethical conduct from their parliamentarians and public office holders.

We should therefore expect and welcome the fact that as our experience in the field of parliamentary ethics matures, questions will continuously arise on such issues as whether public disclosure requirements are adequate; whether the current rules of conduct reflect public expectations, etc. Responding to these and other questions can be facilitated by conferences such as this one. It provides an opportunity for those of us who are daily called upon to provide guidance and counsel to members of Parliament and legislatures to compare experiences. Within the Canadian context, the annual gathering of the Canadian Conflict of Interest Network (CCOIN) is very constructive, and here at COGEL, the participation of international ethics practitioners contributes additional valuable perspectives.

I want to thank the conference organizers for the opportunity to share Canada's experience in developing its parliamentary ethics regime over the last twenty years. The issue is a timely one as there is growing attention to parliamentary ethics in many countries. While parliamentarians have an important role to play in the periodic reviews of the rules governing themselves, the ability to learn about "best practices" at fora such as COGEL allows each of us to take fresh knowledge and practical experience back home and make valuable contributions to strengthening the important systems upon which both parliamentarians, and the public so heavily depend. Thank you.



Appendix A

OFFICES OF INDEPENDENT ETHICS COMMISSIONERS IN CANADA*

	Date of Establishment	Annual Disclosure	Annual Meeting	Public Registry	Principles included in Code**
Ontario	1988	Yes	Statutorily required	Yes	Yes
British Columbia	1990	Yes	Statutorily required	Yes	No
Nova Scotia	1991	Yes	Not required	Yes	Yes
Alberta	1992	Yes	Statutorily required	Yes	Yes
Newfoundland and Labrador	1993	Yes	At the discretion of the Commissioner	Yes	No
Saskatchewan	1994	Yes	Consultation required	Yes	No
Québec	1996	No	Not required	No	No
NWT	1998	Yes	Statutorily required	Yes	Yes
P.E.I.	1999	Yes	Statutorily required	Yes	No
New Brunswick	2000	Yes	Statutorily required	Yes	No
Nunavut	2000	Yes	Statutorily required	Yes	Yes
Manitoba	2002	Yes	Statutorily required	Yes	No
Yukon	2002	Yes	Not required	Yes	No
House of Commons	2004	Yes	At the discretion of the Commissioner	Yes	Yes
Senate	2005	Yes	At the request of the Senate Ethics Officer	Yes	Yes

* All jurisdictions have independent commissioners and rules or codes of conduct

** Also referred to as preamble or purposes



Appendix B

PARLIAMENTARY ETHICS REGIMES IN SELECT COUNTRIES

	Independent Commissioners	Date of Establishment	Rules of Conduct	Annual Meeting	Public Disclosure
Australia: • Senate • House of Representatives	No No	N/A N/A	No No	No No	Yes Yes
Canada: • Senate • House of Commons	Yes Yes	2005 2004	Yes Yes	Yes Yes	Yes Yes
France: • Senate • National Assembly	Single Commissioner	1995	No	No	No
United Kingdom: • House of Lords • House of Commons	No Yes	N/A 1995	Yes Yes	No No	Yes Yes
United States: • Senate • House of Representatives	No No	N/A N/A	Yes Yes	No No	No No

Appendix C

KEY RULES OF CONDUCT OF SENATORS UNDER THE CONFLICT OF INTEREST CODE

- 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 10).
- 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 11).
- 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 12).
- Senators are expected to make a **declaration**, orally or in writing, when 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 (section 14). [Senators may **participate** in debate on that matter if a declaration is first made orally on the record; they may **not vote**, but may abstain (sections 15 and 16)].
- 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 \$500.00 in value (sections 19 and 20) and these must be publicly declared pursuant to paragraph 33(1)(i).
- 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 22-28).
- Senators are expected to **disclose** their private interests to the Senate Ethics Officer on an annual basis and those interests required to be publicly disclosed under the Code are then placed on the public record (sections 29-35).



- Senators must report to the Senate Ethics Officer any **material change** to the information in their confidential disclosure statements, within the prescribed time (subsection 30(4)).
- Senators must cooperate with the Senate Ethics Officer with respect to any **inquiry** (subsection 44(12)).

Appendix I

'07
'08

WEDNESDAY May 28, 2008

Le MERCREDI 28 mai 2008

The Standing Committee on Conflict of Interest for Senators has the honour to present its

Le Comité permanent sur les conflits d'intérêts des sénateurs a l'honneur de présenter son

FOURTH REPORT

QUATRIÈME RAPPORT

Your committee, which is responsible on its own initiative for all matters relating to the *Conflict of Interest Code for Senators*, pursuant to rule 86(1)(r)(ii) of the *Rules of the Senate*, has undertaken, in accordance with section 52 of the Code, a comprehensive review of its provisions and operation, and is pleased to report as follows:

Votre comité, qui assume de sa propre initiative la responsabilité des questions ayant trait au *Code régissant les conflits d'intérêts des sénateurs* conformément au sous-alinéa 86(1)(r)(ii) du *Règlement du Sénat*, a procédé, conformément à l'article 52 du code, à un examen exhaustif de ses dispositions et de son application, et a le plaisir de faire rapport de ce qui suit :

In the spring of 2007, your committee commenced the comprehensive review of the provisions and operation of the Code as provided for and required by section 52 thereof. Your committee invited senators, the Clerk of the Senate, the Law Clerk and Parliamentary Counsel, and the Senate Ethics Officer to submit their comments and suggestions in respect of their experiences with the Code, its provisions and its implementation. Over the last months, your committee held numerous meetings and worked intensively on various suggestions and viewpoints and considered proposed drafts. In May 2008, your committee undertook to consult all senators to obtain their views on proposed amendments.

Au printemps 2007, votre comité a entrepris un examen exhaustif des dispositions et de l'application du code, comme le prévoit son article 52. Il a invité les sénateurs, le greffier du Sénat, le légiste et conseiller parlementaire, et le conseiller sénatorial en éthique à présenter leurs commentaires et leurs suggestions concernant leur expérience avec le code, ses dispositions et sa mise en œuvre. Au cours des derniers mois, votre comité a tenu de nombreuses réunions et a travaillé intensément sur divers points de vue et suggestions, puis a examiné des projets de modification. En mai 2008, il a entrepris de consulter tous les sénateurs pour obtenir leurs points de vue sur les modifications proposées.

Your committee notes that general satisfaction was expressed with regard to the provisions and operation of the Code and on the proposed amendments thereto. These are aimed to adjust, improve and refine the provisions of the Code. Two amendments in particular require express mention. The first is that a senator who has declared a private interest will have to abstain from debate in the Senate and in committee, and withdraw from committee proceedings. The second is that the

Votre comité a noté un sentiment général de satisfaction quant aux dispositions et à l'application du code et aux modifications qui y sont proposées. Ces dernières visent à ajuster, à améliorer et à peaufiner les dispositions du code. Deux modifications en particulier méritent d'être signalées. La première prévoit que le sénateur qui a déclaré des intérêts personnels doit s'abstenir de participer au débat au Sénat et en comité et doit se retirer des délibérations des comités. La seconde reconnaît

independence of the Senate Ethics Officer in advising senators about the Code as it relates to their particular circumstances is expressly affirmed.

Your committee notes with appreciation the relationship senators, your committee and members thereof, and the Senate Ethics Officer have established since the adoption of the Code. Your committee believes that such collaboration is an essential component for the success of all conflict of interest regimes.

The Code, with the recommended changes, is attached as Appendix “A” to this report. Your committee recommends that the Code, as amended, come into force upon the adoption of this report. For ease of reference, an executive summary is also attached, as Appendix “B”, which identifies where amendments have been made and the nature of those amendments.

Your committee believes that consequential amendments and adjustments will have to be made to the *Rules of the Senate*. Your committee recommends, therefore, that the Standing Committee on Rules, Procedures and the Rights of Parliament undertake a review of possible amendments to the *Rules of the Senate* in order to repeal rules 65(4) and 94(1), to incorporate within the *Rules of the Senate* those elements of the Code on which points of order should be able to be raised, and to provide for the institutional consequences of a breach of the Code.

Respectfully submitted,

expressément l’indépendance du conseiller sénatorial en éthique lorsqu’il conseille les sénateurs sur l’application du code à leur situation particulière.

Votre comité se réjouit de la relation que les sénateurs, votre comité et ses membres ainsi que le conseiller sénatorial en éthique ont bâtie depuis l’adoption du code. Il est d’avis qu’une telle collaboration est indispensable pour assurer le succès de tout régime portant sur les conflits d’intérêts.

Le code, y compris les modifications recommandées, est reproduit à l’annexe A du présent rapport. Votre comité recommande que le code, dans sa version modifiée, entre en vigueur dès l’adoption de ce rapport. Par souci de commodité, un sommaire – intitulé « annexe B » – est également joint au rapport et présente les modifications apportées au code et une explication de celles-ci.

Votre comité estime qu’il faudra apporter en conséquence des modifications et rectifications au *Règlement du Sénat*. Il recommande donc que le Comité permanent du Règlement, de la procédure et des droits du Parlement procède à un examen des modifications éventuelles à apporter au *Règlement du Sénat* afin d’abroger les paragraphes 65(4) et 94(1), d’intégrer au *Règlement du Sénat* les éléments du code pouvant faire l’objet d’un rappel au Règlement, et de prévoir les conséquences institutionnelles associées à l’inobservation du code.

Respectueusement soumis,

Le président,

(Original signed by chair / Original signé par le président)

SERGE JOYAL, P.C./C.P.
Chair



**CONFLICT OF INTEREST
CODE FOR SENATORS**

**CODE RÉGISSANT
LES CONFLITS D'INTÉRÊTS
DES SÉNATEURS**

As adopted by the Senate on

Tel qu'adopté par le Sénat le

**CONFLICT OF INTEREST CODE
FOR SENATORS**

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**CONFLICT OF INTEREST CODE
FOR SENATORS
PURPOSES**

Purposes

1. The purposes of this Code are to

- (a) maintain and enhance public confidence and trust in the integrity of Senators and the Senate;
- (b) provide for greater certainty and guidance for Senators when dealing with issues that may present foreseeable real or apparent conflicts of interest; and
- (c) establish clear standards and a transparent system by which questions relating to proper conduct may be addressed by an independent, non-partisan adviser.

PRINCIPLES

Principles

2. (1) Given that service in Parliament is a public trust, the Senate recognizes and declares that Senators are expected

- (a) to remain members of their communities and regions and to continue their activities in those communities and regions while serving the public interest and those they represent to the best of their abilities;
- (b) to fulfil their public duties while upholding the highest standards so as to avoid conflicts of interest and maintain and enhance public confidence and trust in the integrity of each Senator and in the Senate; and
- (c) 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, to resolve it in a way that protects the public interest.

Privacy

(2) The Senate further declares that this Code shall be interpreted and administered so that Senators and their families shall be afforded a reasonable expectation of privacy.

INTERPRETATION

Definitions

3. (1) The following definitions apply in this Code.

**CODE RÉGISSANT LES CONFLITS D'INTÉRÊTS
DES SÉNATEURS
OBJET**

Objet

1. Le présent code a pour objet :

- a) de préserver et d'accroître la confiance du public dans l'intégrité des sénateurs et du Sénat;
- b) de mieux éclairer et guider les sénateurs lorsqu'ils traitent de questions susceptibles d'engendrer des conflits d'intérêts réels ou apparents qui sont prévisibles;
- c) d'établir des normes claires et un mécanisme transparent à l'aide desquels un conseiller indépendant et impartial peut traiter les questions d'ordre déontologique.

PRINCIPES

Principes

2. (1) Vu que le service parlementaire est un mandat d'intérêt public, le Sénat reconnaît et déclare qu'on s'attend à ce que les sénateurs :

- a) continuent à faire partie intégrante de leurs communautés et régions et y poursuivent leurs activités tout en servant, au mieux de leurs moyens, l'intérêt public et les personnes qu'ils représentent;
- b) remplissent leur charge publique selon les normes les plus élevées de façon à éviter les conflits d'intérêts et à préserver et accroître la confiance du public dans l'intégrité de chaque sénateur et envers le Sénat;
- c) prennent les mesures nécessaires en ce qui touche leurs affaires personnelles pour éviter les conflits d'intérêts réels ou apparents qui sont prévisibles, mais, dans l'éventualité d'un tel conflit, le règlent de manière à protéger l'intérêt public.

Respect de la vie privée

(2) Le Sénat déclare en outre que le présent code doit être interprété et appliqué de manière que les sénateurs et leur famille puissent raisonnablement s'attendre au respect de leur vie privée.

DÉFINITIONS ET INTERPRÉTATION

Définitions

3. (1) Les définitions qui suivent s'appliquent au présent code.

“Committee”

« Comité »

“Committee” means the Committee designated or established under section 35.

“common-law partner”

« conjoint de fait »

“common-law partner” means a person who is cohabiting with a Senator in a conjugal relationship, having so cohabited for at least one year.

“Intersessional Authority”

« autorité intersessionnelle »

“Intersessional Authority on Conflict of Interest for Senators” means the committee established by section 38.

“parliamentary duties and functions”

« fonctions parlementaires »

“parliamentary duties and functions” means duties and activities related to the position of Senator, wherever performed, and includes public and official business and partisan matters.

“Senate Ethics Officer”

« conseiller sénatorial en éthique »

“Senate Ethics Officer” means the Senate Ethics Officer appointed under section 20.1 of the *Parliament of Canada Act*.

“spouse”

« époux »

“spouse” means a person to whom a Senator is married but does not include a person from whom the Senator is separated where all support obligations and family property have been dealt with by a separation agreement or by a court order.

Family members

(2) The following are the family members of a Senator for the purposes of this Code:

- (a) a Senator's spouse or common-law partner; and
- (b) a child of a Senator, a child of a Senator's spouse or common-law partner, or a person whom a Senator treats as a child of the family, who
 - (i) has not reached the age of 18 years, or
 - (ii) has reached that age but is primarily dependent on a Senator or a Senator's spouse or common-law partner for financial support.

« autorité intersessionnelle »

“Intersessional Authority”

« autorité intersessionnelle chargée des conflits d'intérêts des sénateurs » Le comité constitué par l'article 38.

« Comité »

“Committee”

« Comité » Le comité constitué ou désigné aux termes de l'article 35.

« conjoint de fait »

“common-law partner”

« conjoint de fait » La personne qui vit avec le sénateur dans une relation conjugale depuis au moins un an.

« conseiller sénatorial en éthique »

“Senate Ethics Officer”

« conseiller sénatorial en éthique » Le conseiller sénatorial en éthique nommé au titre de l'article 20.1 de la *Loi sur le Parlement du Canada*.

« époux »

“spouse”

« époux » La personne à qui le sénateur est marié. Est exclue de la présente définition la personne dont le sénateur est séparé dans le cas où les obligations alimentaires et les biens familiaux ont fait l'objet d'un accord de séparation ou d'une ordonnance judiciaire.

« fonctions parlementaires »

“parliamentary duties and functions”

« fonctions parlementaires » Obligations et activités se rattachant à la charge de sénateur, où qu'elles soient exécutées, y compris les engagements publics et officiels et les questions partisans.

Membre de la famille

(2) Pour l'application du présent code, est un membre de la famille du sénateur :

- a) son époux ou conjoint de fait;
- b) son propre enfant ou celui de son époux ou conjoint de fait, ou toute personne que le sénateur traite comme un enfant de la famille, qui :
 - (i) n'a pas atteint l'âge de 18 ans,
 - (ii) étant âgé de 18 ans ou plus, dépend principalement, pour son soutien financier, du sénateur ou de son époux ou conjoint de fait.

ACTIVITIES AND JURISDICTION PRESERVED

Assisting the public

4. Senators are encouraged to continue to assist members of the public as long as their actions are consistent with their obligations under this Code.

Carrying on activities

5. Senators who are not ministers of the Crown may participate in any outside activities, including the following, as long as they are able to fulfil their obligations under this Code:

- (a) engaging in employment or in the practice of a profession;
- (b) carrying on a business;
- (c) being a director or officer in a corporation, association, trade union or not-for-profit organization; and
- (d) being a partner in a partnership.

Existing committee jurisdiction

6. Nothing in this Code affects the jurisdiction of the Standing Senate Committee on Internal Economy, Budgets and Administration.

Role of the Speaker

7. Procedural matters referred to in this Code that are expressly provided for in the *Rules of the Senate* are under the jurisdiction and authority of the Speaker rather than the Senate Ethics Officer.

RULES OF CONDUCT

Furthering private interests

8. When performing parliamentary duties and functions, a Senator shall not act or attempt to act in any way to further his or her private interests, or those of a family member, or to improperly further another person's or entity's private interests.

Use of influence

9. A Senator shall not use or attempt to use his or her position as a Senator to influence a decision of another person so as to further the Senator's private interests, or those of a family member, or to improperly further another person's or entity's private interests.

Use of information

10. (1) If as a result of his or her position, a Senator obtains information that is not generally available to the public, the Senator shall not use or attempt to use the

POURSUITE DES ACTIVITÉS ET MAINTIEN DE LA COMPÉTENCE

Aide au public

4. Les sénateurs sont encouragés à continuer de prêter assistance aux membres du public, dans la mesure où ces activités sont compatibles avec leurs obligations aux termes du présent code.

Poursuite des activités

5. Les sénateurs qui ne sont pas ministres fédéraux peuvent participer à des activités externes, y compris les suivantes, pourvu qu'ils soient en mesure de s'acquitter de leurs obligations aux termes du présent code :

- a) occuper un emploi ou exercer une profession;
- b) exploiter une entreprise;
- c) être dirigeant ou administrateur d'une personne morale, d'une association, d'un syndicat ou d'un organisme à but non lucratif;
- d) être associé d'une société de personnes.

Maintien de la compétence du comité

6. Le présent code ne porte pas atteinte à la compétence du Comité sénatorial permanent de la régie interne, des budgets et de l'administration.

Rôle du Président

7. Les questions de procédure mentionnées dans le présent code qui sont expressément prévues dans le *Règlement du Sénat* relèvent de la compétence du Président du Sénat et non de celle du conseiller sénatorial en éthique.

RÈGLES DE DÉONTOLOGIE

Intérêts personnels exclus

8. Dans l'exercice de ses fonctions parlementaires, le sénateur ne peut agir ou tenter d'agir de façon à favoriser ses intérêts personnels ou ceux d'un membre de sa famille, ou encore, d'une façon irrégulière, ceux de toute autre personne ou entité.

Exercice d'influence

9. Le sénateur ne peut se prévaloir de sa charge, ou tenter de le faire, pour influencer la décision d'une autre personne de façon à favoriser ses intérêts personnels ou ceux d'un membre de sa famille, ou encore, d'une façon irrégulière, ceux de toute autre personne ou entité.

Utilisation de renseignements

10. (1) Le sénateur qui, dans le cadre de sa charge, obtient des renseignements qui ne sont pas généralement à la disposition du public ne peut les utiliser ou tenter de les

information to further the Senator's private interests, or those of a family member, or to improperly further another person's or entity's private interests.

Conveying information

(2) A Senator shall not convey or attempt to convey information referred to in subsection (1) to another person if the Senator knows, or reasonably ought to know, that the information may be used to further the Senator's private interests, or those of a family member, or to improperly further another person's or entity's private interests.

Clarification: furthering private interests

11. (1) In sections 8 to 10, furthering private interests of a person or entity, including the Senator's own private interests, means actions taken by a Senator for the purpose of achieving, directly or indirectly, any of the following:

- (a) an increase in, or the preservation of, the value of the person's or entity's assets;
- (b) the elimination, or reduction in the amount, of the person's or entity's liabilities;
- (c) the acquisition of a financial interest by the person or entity;
- (d) an increase in the person's or entity's income from a contract, a business or a profession;
- (e) an increase in the person's income from employment;
- (f) the person becoming a director or officer in a corporation, association, trade union or not-for-profit organization; or
- (g) the person becoming a partner in a partnership.

Clarification: not furthering private interests

(2) A Senator is not considered to further his or her own private interests or the private interests of another person or entity if the matter in question

- (a) is of general application;
- (b) affects the Senator or the other person or entity as one of a broad class of the public; or
- (c) concerns the remuneration or benefits of the Senator as provided under an Act of Parliament or a resolution of the Senate or of a Senate committee.

utiliser pour favoriser ses intérêts personnels ou ceux d'un membre de sa famille, ou encore, d'une façon irrégulière, ceux de toute autre personne ou entité.

Communication de renseignements

(2) Le sénateur ne peut communiquer ou tenter de communiquer à autrui les renseignements visés au paragraphe (1) s'il sait ou devrait raisonnablement savoir que ces renseignements peuvent servir à favoriser ses intérêts personnels ou ceux d'un membre de sa famille, ou encore, d'une façon irrégulière, ceux de toute autre personne ou entité.

Précision : favoriser les intérêts personnels

11. (1) Aux articles 8 à 10, sont considérés comme favorisant les intérêts personnels d'une personne ou d'une entité, y compris les propres intérêts personnels du sénateur, les actes posés par celui-ci dans le but de produire, directement ou indirectement, l'un ou l'autre des résultats suivants :

- a) augmenter ou préserver la valeur de l'actif de la personne ou de l'entité;
- b) éliminer le passif de la personne ou de l'entité ou en réduire la valeur;
- c) procurer un intérêt financier à la personne ou à l'entité;
- d) augmenter le revenu de la personne ou de l'entité provenant d'un contrat, d'une entreprise ou d'une profession;
- e) augmenter le revenu de la personne provenant d'un emploi;
- f) faire de la personne un dirigeant ou un administrateur d'une personne morale, d'une association, d'un syndicat ou d'un organisme à but non lucratif;
- g) faire de la personne un associé d'une société de personnes.

Précision : exceptions

(2) Le sénateur n'est pas considéré comme agissant de façon à favoriser ses propres intérêts personnels ou ceux d'une autre personne ou entité si la question en cause, selon le cas :

- a) est d'application générale;
- b) s'applique au sénateur ou à l'autre personne ou entité en tant que membre d'une vaste catégorie de personnes;
- c) a trait à la rémunération ou aux avantages accordés au sénateur au titre d'une loi fédérale ou par une résolution du Sénat ou d'un comité de celui-ci.

Declaration of a private interest: Senate or committee

12. (1) If a Senator has reasonable grounds to believe that he or she, or a family member, has a private interest that might be affected by a matter that is before the Senate or a committee of which the Senator is a member, the Senator shall, on the first occasion at which the Senator is present during consideration of the matter, make a declaration regarding the general nature of the private interest. The declaration can be made orally on the record or in writing to the Clerk of the Senate or the Clerk of the committee, as the case may be. The Speaker of the Senate shall cause the declaration to be recorded in the *Journals of the Senate* and the Chair of the committee shall, subject to subsection (4), cause the declaration to be recorded in the Minutes of Proceedings of the committee.

Subsequent declaration

(2) If a Senator becomes aware at a later date of a private interest that should have been declared under subsection (1), the Senator shall make the required declaration forthwith.

Declaration recorded

(3) The Clerk of the Senate or the Clerk of the committee, as the case may be, shall send the declaration to the Senate Ethics Officer who, subject to subsection (4) and paragraph 31(1)(h), shall file it with the Senator's public disclosure summary.

Where declaration *in camera*

(4) In any case in which the declaration was made during an *in camera* meeting, the Chair of the committee and Senate Ethics Officer shall obtain the consent of the subcommittee on agenda and procedure of the committee concerned before causing the declaration to be recorded in the Minutes of Proceedings of the committee or filing it with the Senator's public disclosure summary, as the case may be.

Further declaration

(5) A declaration made *in camera* that, in compliance with subsection (4), has been neither recorded nor filed with the Senator's public disclosure summary is only valid in respect of the proceeding during which the declaration was made or the matter that the declaration concerned was discussed, and the Senator shall make a further declaration at the first possible opportunity.

Declaration of a private interest: other circumstances

(6) In any circumstances other than those in subsection (1) that involve the Senator's parliamentary duties and functions, a Senator who has reasonable grounds to believe

Déclaration des intérêts personnels devant le Sénat ou un comité

12. (1) Lorsque le sénateur assiste à l'étude d'une question dont le Sénat ou un comité dont il est membre est saisi, il est tenu de déclarer dans les plus brefs délais la nature générale des intérêts personnels qu'il croit, pour des motifs raisonnables, que lui-même ou un membre de sa famille a dans cette question et qui pourraient être visés. Cette déclaration peut être faite soit verbalement pour inscription au compte rendu, soit par écrit auprès du greffier du Sénat ou du greffier du comité, selon le cas. Le Président du Sénat fait inscrire la déclaration dans les *Journaux du Sénat* et, sous réserve du paragraphe (4), le président du comité la fait consigner au procès-verbal de la séance du comité.

Déclaration subséquente

(2) S'il se rend compte ultérieurement de l'existence d'intérêts personnels qui auraient dû être déclarés conformément au paragraphe (1), le sénateur doit faire sans délai la déclaration requise.

Déclaration consignée

(3) Le greffier du Sénat ou le greffier du comité, selon le cas, envoie la déclaration au conseiller sénatorial en éthique qui, sous réserve du paragraphe (4) et de l'alinéa 31(1)h), la classe avec le résumé public du sénateur.

Déclaration faite à huis clos

(4) Dans le cas où la déclaration du sénateur est faite pendant une séance à huis clos, le président du comité et le conseiller sénatorial en éthique obtiennent le consentement du sous-comité du programme et de la procédure du comité visé avant de faire consigner la déclaration au procès-verbal de la séance du comité ou de la classer avec le résumé public du sénateur, selon le cas.

Autre déclaration

(5) La déclaration faite à huis clos qui, en application du paragraphe (4), n'a pas été consignée et classée avec le résumé public du sénateur n'est valable qu'à l'égard des travaux au cours desquels elle a été faite ou pendant lesquels la question visée a été discutée, et le sénateur fait une autre déclaration dans les plus brefs délais.

Déclaration des intérêts personnels : autres cas

(6) Dans les cas non prévus au paragraphe (1) qui mettent en cause ses fonctions parlementaires, le sénateur est tenu, s'il a des motifs raisonnables de croire que lui-même ou un

that he or she, or a family member, has a private interest that might be affected shall make an oral declaration regarding the general nature of the private interest at the first opportunity.

Declaration of retraction

(7) A Senator may, by declaration made under this section, retract a previous declaration, in which case the Senator may participate in debate or other deliberations and vote on the matter in respect of which the previous declaration was made.

Debate in the Senate

13. (1) A Senator who has made a declaration under section 12 regarding a matter that is before the Senate may not participate in debate or any other deliberations in the Senate with respect to that matter.

Debate in committee where Senator is member

(2) A Senator who has made a declaration under section 12 regarding a matter that is before a committee of the Senate of which the Senator is a member may not participate in debate or any other deliberations in the committee on the matter, and must withdraw from the committee for the duration of those proceedings, but the Senator need not resign from the committee.

Debate in committee where Senator is not member

(3) A Senator who has reasonable grounds to believe that he or she, or a family member, has a private interest that might be affected by a matter that is before a committee of the Senate of which the Senator is not a member may not participate in debate or any other deliberations in the committee on the matter, and must withdraw from the committee for the duration of those proceedings.

Debate where Senator has not yet declared

(4) A Senator who is required by section 12 to make a declaration but has not yet done so may not participate in debate or any other deliberations on the matter and, in the case of committee proceedings, the Senator must withdraw from the committee for the duration of those proceedings.

Prohibition on voting

14. A Senator who has made a declaration under section 12, or a Senator who is required to make such a declaration but has not yet done so, may not vote on the matter but may abstain.

Procedure

15. If a Senator reasonably believes that another Senator has failed to make a declaration of a private interest as required by section 12 or has failed to comply with section 13 or 14, the matter may be raised with the Senate Ethics Officer.

membre de sa famille a des intérêts personnels qui pourraient être visés, de déclarer verbalement dans les plus brefs délais la nature générale de ces intérêts.

Rétractation

(7) Le sénateur peut, au moyen d'une déclaration faite aux termes du présent article, rétracter une déclaration antérieure, auquel cas il peut prendre part au débat ou aux autres délibérations sur la question qui faisait l'objet de cette déclaration antérieure et voter sur cette question.

Débat au Sénat

13. (1) Le sénateur qui a fait la déclaration exigée à l'article 12 relativement à une question dont est saisi le Sénat ne peut prendre part au débat ou aux autres délibérations sur cette question au Sénat.

Débat dans un comité dont le sénateur est membre

(2) Le sénateur qui a fait la déclaration exigée à l'article 12 relativement à une question dont est saisi un comité du Sénat dont il est membre ne peut prendre part au débat ou aux autres délibérations du comité sur cette question et il est tenu de se retirer du comité pendant toute la durée de ces délibérations; il n'a cependant pas à remettre sa démission du comité.

Débat dans un comité dont le sénateur n'est pas membre

(3) Le sénateur qui a des motifs raisonnables de croire que lui ou un membre de sa famille a des intérêts personnels qui pourraient être visés par une question dont est saisi un comité du Sénat dont il n'est pas membre ne peut prendre part au débat ou aux autres délibérations du comité sur cette question et il est tenu de se retirer du comité pendant toute la durée de ces délibérations.

Débat avant la déclaration du sénateur

(4) Le sénateur qui doit faire la déclaration prévue à l'article 12 mais qui ne l'a pas encore faite ne peut prendre part au débat ou aux autres délibérations sur la question et, dans le cas des délibérations d'un comité, il est tenu de se retirer du comité pendant toute la durée de ces délibérations.

Interdiction de voter

14. Le sénateur qui a fait la déclaration exigée à l'article 12 ou qui doit faire une telle déclaration mais ne l'a pas encore faite ne peut voter sur la question, mais il peut s'abstenir.

Procédure

15. Si un sénateur a des motifs raisonnables de croire qu'un autre sénateur soit a omis de faire une déclaration d'intérêts personnels exigée par l'article 12 ou ne s'est pas conformé aux articles 13 ou 14, la question peut être soulevée auprès du conseiller sénatorial en éthique.

Clarification: having a private interest

16. For the purpose of sections 12 to 14, private interest means those interests that can be furthered in subsection 11(1), but does not include the matters listed in subsection 11(2).

Prohibition: gifts and other benefits

17. (1) Neither a Senator, nor a family member, shall accept, directly or indirectly, any gift or other benefit, except compensation authorized by law, that could reasonably be considered to relate to the Senator's position.

Exception

(2) A Senator, and a family member, may, however, accept gifts or other benefits received as a normal expression of courtesy or protocol, or within the customary standards of hospitality that normally accompany the Senator's position.

Statement: gift or other benefit

(3) If a gift or other benefit that is accepted under subsection (2) by a Senator or his or her family members exceeds \$500 in value, or if the total value of all such gifts or benefits received from one source in a 12-month period exceeds \$500, the Senator shall, within 30 days after the gift or benefit is received or after that total value is exceeded, as the case may be, file with the Senate Ethics Officer a statement disclosing the nature and value of the gifts or other benefits, their source and the circumstances under which they were given.

Statement: sponsored travel

18. (1) Notwithstanding subsection 17(1), a Senator may accept, for the Senator and guests of the Senator, sponsored travel that arises from or relates to the Senator's position. If the travel costs of a Senator or any guest exceed \$500 and are not paid personally by the Senator or the guest, and the travel is not paid through the programs for international and interparliamentary affairs of the Parliament of Canada, by the Senate, the Government of Canada or the Senator's political party, the Senator shall, within 30 days after the end of the trip, file a statement with the Senate Ethics Officer.

Contents of statement

(2) The statement shall disclose the name of the person or organization paying for the trip, the destination or destinations, the purpose and length of the trip, whether or not any guest was also sponsored, and the general nature of the benefits received.

Précision : avoir des intérêts personnels

16. Pour l'application des articles 12 à 14, « intérêts personnels » s'entend des intérêts qui peuvent être favorisés de la façon décrite au paragraphe 11(1), mais ne vise pas les questions mentionnées au paragraphe 11(2).

Interdiction : cadeaux et autres avantages

17. (1) Le sénateur et les membres de sa famille ne peuvent, directement ou indirectement, accepter de cadeaux ou d'autres avantages qui pourraient raisonnablement être considérés comme ayant un rapport avec la charge du sénateur, sauf s'il s'agit d'une rémunération autorisée par la loi.

Exception

(2) Le sénateur et les membres de sa famille peuvent toutefois accepter les cadeaux ou autres avantages qui sont des marques normales de courtoisie ou de protocole ou des marques d'accueil habituellement reçues dans le cadre de la charge du sénateur.

Déclaration : cadeaux et autres avantages

(3) Si un cadeau ou autre avantage accepté par le sénateur ou un membre de sa famille en vertu du paragraphe (2) a une valeur supérieure à 500 \$ ou si, sur une période de 12 mois, la valeur totale de tels cadeaux ou avantages de même provenance excède 500 \$, le sénateur est tenu de déposer auprès du conseiller sénatorial en éthique, dans les 30 jours suivant la date à laquelle le cadeau ou l'avantage est reçu ou la date à laquelle cette valeur limite est dépassée, selon le cas, une déclaration indiquant la nature et la valeur de chaque cadeau ou avantage, sa provenance et les circonstances dans lesquelles il a été donné.

Déclaration : voyages parrainés

18. (1) Malgré le paragraphe 17(1), le sénateur peut accepter, pour lui-même et ses invités, des offres de voyages parrainés liés à sa charge de sénateur ou découlant de celle-ci. Si les frais payables pour tout voyage que le sénateur ou un invité effectue dépassent 500 \$ et ne sont pas pris en charge par l'un ou l'autre et que le voyage n'est pas payé par l'entremise des programmes des affaires internationales et interparlementaires du Parlement du Canada ou par le Sénat, le gouvernement du Canada ou le parti politique du sénateur, ce dernier est tenu de déposer auprès du conseiller sénatorial en éthique une déclaration faisant état du voyage, dans les 30 jours qui en suivent la fin.

Contenu de la déclaration

(2) La déclaration indique le nom de la personne ou de l'organisme qui paie les frais du voyage, la ou les destinations, le but et la durée du voyage, le fait qu'un invité était ou non également parrainé, ainsi que la nature générale des avantages reçus.

Duplication

(3) Any disclosure made in relation to sponsored travel does not need to be disclosed as a gift or other benefit.

Consent of Senate

19. Gifts, other benefits and sponsored travel accepted in compliance with the requirements of sections 17 and 18 are deemed to have received the consent of the Senate thereto for all purposes.

Government contracts

20. A Senator shall not knowingly be a party, directly or through a subcontract, to a contract or other business arrangement with the Government of Canada or any federal agency or body under which the Senator receives a benefit unless the Senate Ethics Officer provides a written opinion that

- (a) due to special circumstances the contract or other business arrangement is in the public interest; or
- (b) the contract or other business arrangement is unlikely to affect the Senator's obligations under this Code.

Public corporations

21. (1) A Senator may own securities in a public corporation that contracts with the Government of Canada or any federal agency or body unless the holdings are so significant that the Senate Ethics Officer provides a written opinion that they are likely to affect the Senator's obligations under this Code.

Public interest

(2) A contract between a public corporation and the Government of Canada or any federal agency or body that, in the Senate Ethics Officer's opinion, is in the public interest due to special circumstances, shall not preclude a Senator from holding securities in that public corporation.

Government programs

(3) For the purpose of subsection (1), a public corporation shall not be considered to contract with the Government of Canada or any federal agency or body merely because the corporation participates in a Government program that meets the criteria described in section 23.

Trust

(4) If the Senate Ethics Officer is of the opinion that the Senator's obligations under this Code are likely to be affected under the circumstances of subsection (1), the

Une seule déclaration

(3) Le voyage parrainé qui a fait l'objet d'une déclaration n'a pas à être déclaré de nouveau en tant que cadeau ou autre avantage.

Consentement du Sénat

19. Les cadeaux et autres avantages et les voyages parrainés acceptés en conformité avec les articles 17 et 18 sont réputés, à toutes fins utiles, avoir fait l'objet du consentement du Sénat.

Contrats du gouvernement

20. Le sénateur ne peut sciemment être partie, directement ou par voie de sous-contrat, à un contrat ou autre entente commerciale conclus avec le gouvernement du Canada ou une agence ou un organisme fédéral qui lui procurent un avantage, sauf si le conseiller sénatorial en éthique donne son avis par écrit indiquant, selon le cas :

- a) que le contrat ou l'entente est dans l'intérêt public en raison de circonstances spéciales;
- b) que le sénateur risque peu, du fait de ce contrat ou de cette entente, de manquer à ses obligations aux termes du présent code.

Sociétés publiques

21. (1) Le sénateur peut posséder des titres dans une société publique qui est partie à des contrats avec le gouvernement du Canada ou une agence ou un organisme fédéral, sauf si, vu l'importance de la quantité de ces titres, le conseiller sénatorial en éthique donne son avis par écrit indiquant qu'il y a un risque que le sénateur manque à ses obligations aux termes du présent code.

Intérêt public

(2) Le contrat entre une société publique et le gouvernement du Canada ou une agence ou un organisme fédéral qui, de l'avis du conseiller sénatorial en éthique, est dans l'intérêt public en raison de circonstances spéciales n'empêche pas le sénateur de détenir des titres dans cette société.

Programmes gouvernementaux

(3) Pour l'application du paragraphe (1), une société publique n'est pas considérée comme étant partie à des contrats avec le gouvernement du Canada ou une agence ou un organisme fédéral du seul fait qu'elle participe à un programme gouvernemental qui répond aux critères visés à l'article 23.

Fiducie

(4) Si le conseiller sénatorial en éthique estime qu'il y a un risque que le sénateur manque à ses obligations aux termes du présent code dans les circonstances exposées au

Senator may comply with the Code by placing the securities in a trust under such terms as the Senate Ethics Officer considers appropriate.

Partnerships and private corporations

22. A Senator shall not have an interest in a partnership or in a private corporation that is a party, directly or through a subcontract, to a contract or other business arrangement with the Government of Canada or any federal agency or body under which the partnership or corporation receives a benefit unless the Senate Ethics Officer provides a written opinion that

- (a) due to special circumstances the contract or other business arrangement is in the public interest; or
- (b) the contract or other business arrangement is unlikely to affect the Senator's obligations under this Code.

Clarification: Government programs

23. For the purposes of sections 20 and 22, it is not prohibited to participate in a program operated or funded, in whole or in part, by the Government of Canada or any federal agency or body under which a Senator, or a partnership or private corporation in which a Senator has an interest, receives a benefit if

- (a) the eligibility requirements of the program are met;
- (b) the program is of general application or is available to a broad class of the public;
- (c) there is no preferential treatment with respect to the application; and
- (d) no special benefits are received that are not available to other participants in the program.

Trust

24. Section 22 does not apply if the Senator has entrusted his or her interest in a partnership or private corporation to one or more trustees on all of the following terms:

- (a) the provisions of the trust have been approved by the Senate Ethics Officer;
- (b) the trustees are at arm's length from the Senator and have been approved by the Senate Ethics Officer;
- (c) except as provided in paragraph (d), the trustees may not consult with the Senator with respect to managing the trust, but they may consult with the Senate Ethics Officer;

paragraphe (1), le sénateur peut se conformer au présent code en mettant ses titres en fiducie, selon les modalités que le conseiller sénatorial en éthique juge indiquées.

Sociétés de personnes et sociétés privées

22. Le sénateur ne peut détenir un intérêt dans une société de personnes ou une société privée qui est partie, directement ou par voie de sous-contrat, à un contrat ou autre entente commerciale conclus avec le gouvernement du Canada ou une agence ou un organisme fédéral qui procurent un avantage à cette société, sauf si le conseiller sénatorial en éthique donne son avis par écrit indiquant, selon le cas :

- a) que le contrat ou l'entente est dans l'intérêt public en raison de circonstances spéciales;
- b) que le sénateur risque peu, du fait de ce contrat ou de cette entente, de manquer à ses obligations aux termes du présent code.

Précision : programmes gouvernementaux

23. Pour l'application des articles 20 et 22, il n'est pas interdit de participer à un programme qui est géré ou financé, en tout ou en partie, par le gouvernement du Canada ou une agence ou un organisme fédéral et qui procure un avantage au sénateur ou à une société de personnes ou une société privée dans laquelle celui-ci a un intérêt, si les conditions suivantes sont respectées :

- a) les critères d'admissibilité du programme sont respectés;
- b) le programme est d'application générale ou est accessible à une vaste catégorie de personnes;
- c) la demande de participation ne fait l'objet d'aucun traitement de faveur;
- d) il n'est reçu aucun avantage particulier auquel les autres participants au programme n'ont pas droit.

Fiducie

24. L'article 22 ne s'applique pas si le sénateur a mis en fiducie auprès d'un ou de plusieurs fiduciaires l'intérêt qu'il détient dans une société de personnes ou une société privée, pourvu que les conditions suivantes soient respectées :

- a) le conseiller sénatorial en éthique a approuvé les modalités de la fiducie;
- b) les fiduciaires n'ont aucun lien de dépendance avec le sénateur et ont reçu l'agrément du conseiller sénatorial en éthique;
- c) sauf dans le cas prévu à l'alinéa d), les fiduciaires ne peuvent consulter le sénateur sur la gestion de la fiducie, mais ils peuvent consulter le conseiller sénatorial en éthique;

- (d) the trustees may consult with the Senator, with the approval of the Senate Ethics Officer and in his or her presence, if an extraordinary event is likely to materially affect the trust property;
- (e) in the case of an interest in a corporation, the Senator resigns any position of director or officer in the corporation;
- (f) the trustees provide the Senate Ethics Officer annually with a written report setting out the nature of the trust property, the value of that property, the trust's net income for the preceding year and the trustees' fees, if any; and
- (g) the trustees give the Senator sufficient information to permit the Senator to submit returns as required by the *Income Tax Act* and give the same information to the appropriate taxation authorities.

Pre-existing contracts

25. The rules in sections 20, 21 and 22 do not apply to a contract or other business arrangement that existed before a Senator's appointment to the Senate, but they do apply to its renewal or extension.

Interest acquired by inheritance

26. The rules in sections 20, 21 and 22 do not apply to an interest acquired by inheritance until the first anniversary date of the transfer of legal and beneficial ownership. In special circumstances, the Senate Ethics Officer may extend this time period.

DUTY TO DISCLOSE

Confidential disclosure statement: sitting Senators

27. (1) Every Senator shall file annually, on or before the date applicable to the Senator as established by the Senate Ethics Officer under subsection (2), a confidential statement disclosing the information required by section 28.

Filing date

(2) The date or dates on or before which the annual confidential disclosure statements are required to be filed shall be established by the Senate Ethics Officer following approval by the Committee.

Confidential disclosure statement: new Senators

(3) Within 120 days after being summoned to the Senate, a Senator shall file a confidential statement disclosing the information required by section 28.

- d) les fiduciaires peuvent consulter le sénateur, avec l'autorisation du conseiller sénatorial en éthique et en sa présence, s'il survient un événement extraordinaire susceptible d'avoir des répercussions importantes sur l'actif de la fiducie;
- e) s'il s'agit d'un intérêt dans une personne morale, le sénateur démissionne de tout poste d'administrateur ou de dirigeant de celle-ci;
- f) les fiduciaires remettent chaque année au conseiller sénatorial en éthique un rapport écrit qui précise la nature et la valeur de l'actif de la fiducie, le revenu net de celle-ci pour l'année précédente et, le cas échéant, leurs honoraires;
- g) les fiduciaires donnent au sénateur des renseignements suffisants pour lui permettre de produire les déclarations requises par la *Loi de l'impôt sur le revenu* et fournissent les mêmes renseignements aux autorités fiscales compétentes.

Contrats préexistants

25. Les règles prévues aux articles 20, 21 et 22 ne s'appliquent pas aux contrats et autres ententes commerciales conclus avant la nomination du sénateur au Sénat, mais ils s'appliquent à leur renouvellement ou prolongation.

Intérêts acquis par succession

26. Les règles prévues aux articles 20, 21 et 22 ne s'appliquent pas aux intérêts acquis par succession avant la date du premier anniversaire du transfert du droit de propriété, y compris le droit de propriété en common law et en equity. Le conseiller sénatorial en éthique peut prolonger cette période dans des circonstances spéciales.

OBLIGATION DE DÉCLARER

Déclaration confidentielle : sénateurs en poste

27. (1) Le sénateur dépose tous les ans, au plus tard à la date qui lui est applicable fixée par le conseiller sénatorial en éthique conformément au paragraphe (2), une déclaration confidentielle faisant état des renseignements exigés par l'article 28.

Date de dépôt

(2) Le conseiller sénatorial en éthique fixe, avec l'approbation du Comité, la ou les dates limites auxquelles les déclarations confidentielles annuelles doivent être déposées.

Déclaration confidentielle : nouveaux sénateurs

(3) Dans les 120 jours suivant sa nomination au Sénat, le sénateur dépose une déclaration confidentielle faisant état des renseignements exigés par l'article 28.

Submission to Committee

(4) Thirty days after the date established under subsection (2), the Senate Ethics Officer shall submit to the Committee the name of any Senator who has not complied with his or her duty to file a confidential disclosure statement.

Errors or omissions

(5) If, at any time after the date established under subsection (2), the Senate Ethics Officer has reason to believe that a Senator's confidential disclosure statement contains an error or omission, the Senate Ethics Officer shall notify the Senator concerned and request the Senator to provide the relevant information.

Response within 60 days

(6) Upon receipt of a request under subsection (5), the Senator shall provide the information within 60 days.

Family members

(7) A Senator may file with the Senate Ethics Officer a confidential disclosure statement relating to the Senator's family members so that the Senator may discuss their interests in relation to the Senator's obligations under this Code and receive advice in that regard.

Confidentiality

(8) The Senate Ethics Officer and all officers, employees, agents, advisers and consultants that may be employed or engaged by the Senate Ethics Officer shall keep all disclosure statements confidential.

Initial meeting with Senate Ethics Officer

(9) Senators, and in particular newly-summoned Senators, who may have questions regarding their confidential disclosure duties should make every effort to meet with the Senate Ethics Officer before submitting their confidential disclosure statement.

Contents of confidential disclosure statement

28. (1) Subject to subsection (2) regarding excluded matters, and any Guidelines published by the Senate Ethics Officer under section 43, the confidential disclosure statement shall list:

- (a) any corporations, income trusts and trade unions in which the Senator is a director or officer and any partnerships in which the Senator is a partner, including a description of the activities of each entity;

Nom à transmettre au Comité

(4) Trente jours après la date fixée conformément au paragraphe (2), le conseiller sénatorial en éthique transmet au Comité le nom de tout sénateur qui n'a pas acquitté son obligation de déposer une déclaration confidentielle.

Erreurs ou omissions

(5) Si, après la date fixée conformément au paragraphe (2), le conseiller sénatorial en éthique a des raisons de croire que la déclaration confidentielle d'un sénateur comporte des erreurs ou des omissions, il en avise le sénateur et lui demande de fournir les renseignements nécessaires.

Réponse dans les 60 jours

(6) Le sénateur est tenu de fournir les renseignements nécessaires dans les 60 jours suivant la réception de la demande visée au paragraphe (5).

Membres de la famille

(7) Le sénateur peut déposer auprès du conseiller sénatorial en éthique une déclaration confidentielle des intérêts personnels des membres de sa famille afin qu'il puisse en discuter dans le contexte de ses obligations aux termes du présent code et recevoir des conseils à cet égard.

Confidentialité

(8) Le conseiller sénatorial en éthique ainsi que les agents, employés, mandataires, conseillers et experts dont il retient les services sont tenus d'assurer la confidentialité de toutes les déclarations.

Rencontre initiale avec le conseiller sénatorial en éthique

(9) Les sénateurs, et en particulier les sénateurs récemment nommés, qui ont des questions sur leurs obligations en matière de déclaration confidentielle devraient prendre les dispositions voulues pour rencontrer le conseiller sénatorial en éthique avant de lui soumettre leur déclaration confidentielle.

Contenu de la déclaration confidentielle

28. (1) Sous réserve du paragraphe (2) — portant sur les éléments exclus — et des lignes directrices publiées par le conseiller sénatorial en éthique en vertu de l'article 43, la déclaration confidentielle fait état de ce qui suit :

- a) les noms des personnes morales, des fiducies de revenu et des syndicats au sein desquels le sénateur occupe un poste de dirigeant ou d'administrateur, et les noms des sociétés de personnes dont le sénateur est un associé, ainsi qu'une description des activités de chaque entité;

(b) any associations and not-for-profit organizations in which the Senator is a director, officer or patron, including memberships on advisory boards and any honorary positions;

(c) the nature but not the amount of any source of income over \$2,000 that the Senator has received in the preceding 12 months and is likely to receive during the next 12 months; for this purpose,

(i) a source of income from employment is the employer,

(ii) a source of income from a contract is a party with whom the contract is made,

(iii) a source of income arising from a business or profession is that business or profession, and

(iv) a source of income arising from an investment is that investment;

(d) the source, nature and value of any contracts or other business arrangements with the Government of Canada or a federal agency or body that the Senator has directly, or through a subcontract;

(e) the source, nature and value of any contracts, subcontracts or other business arrangements with the Government of Canada or a federal agency or body that the Senator has by virtue of a partnership or a significant interest in a private corporation that the Senator is able to ascertain by making reasonable inquiries;

(f) the source, nature and value of any contracts or other business arrangements with the Government of Canada or a federal agency or body that a member of the Senator's family has, directly or through a subcontract, or by virtue of a partnership or a significant interest in a private corporation, that the Senator is able to ascertain by making reasonable inquiries;

(g) information regarding the nature but not the value of any assets and liabilities over \$10,000; and

(h) any additional information that the Senator believes to be relevant to this Code.

Excluded matters

(2) For the purpose of subsection (1), it is not required to disclose properties used by the Senator or family members as residences; mortgages or hypothecs on such residences; household goods; personal effects; deposits with a financial institution; guaranteed investment certificates; financial

b) les noms des associations et des organismes à but non lucratif dont le sénateur est un dirigeant, administrateur ou bienfaiteur, ou dans lesquels il est membre d'un conseil consultatif ou occupe un poste à titre honoraire;

c) la nature, mais non le montant, de toute source de revenus de plus de 2 000 \$ que le sénateur a reçus au cours des douze mois précédents et qu'il recevra vraisemblablement au cours des douze mois suivants; à cet égard :

(i) la source de revenus provenant d'un emploi est l'employeur,

(ii) la source de revenus provenant d'un contrat est le titulaire du contrat,

(iii) la source de revenus provenant d'une entreprise ou d'une profession est cette entreprise ou cette profession,

(iv) la source de revenus provenant d'un placement est ce placement;

d) la source, la nature et la valeur de tout contrat ou autre entente commerciale avec le gouvernement du Canada ou une agence ou un organisme fédéral auquel le sénateur est partie, directement ou par voie de sous-contrat;

e) la source, la nature et la valeur de tout contrat, sous-contrat ou autre entente commerciale avec le gouvernement du Canada ou une agence ou un organisme fédéral auquel le sénateur est partie du fait qu'il est membre d'une société de personnes ou a un intérêt important dans une société privée, dont il peut établir l'existence par des démarches raisonnables;

f) la source, la nature et la valeur de tout contrat ou autre entente commerciale avec le gouvernement du Canada ou une agence ou un organisme fédéral auquel un membre de la famille du sénateur est partie, directement ou par voie de sous-contrat, ou du fait qu'il est membre d'une société de personnes ou a un intérêt important dans une société privée, dont le sénateur peut établir l'existence par des démarches raisonnables;

g) des renseignements sur la nature, mais non la valeur, des éléments d'actif et de passif de plus de 10 000 \$;

h) tout autre renseignement que le sénateur estime pertinent aux fins du présent code.

Éléments exclus

(2) Pour l'application du paragraphe (1), il n'est pas obligatoire de déclarer les biens utilisés par le sénateur ou les membres de sa famille comme résidences, les hypothèques grevant ces résidences, les biens ménagers, les effets personnels, les dépôts auprès d'une institution financière,

instruments issued by any Canadian government or agency; and obligations incurred for living expenses that will be discharged in the ordinary course of the Senator's affairs.

Additional excluded matters

(3) The Senate Ethics Officer may, with the approval of the Committee, establish additional matters not required to be disclosed on the basis that they present no potential to interfere with the obligations of a Senator under this Code.

Material change

(4) A Senator shall report in writing any material change to the information relating to the confidential disclosure statement to the Senate Ethics Officer within 60 days after the change.

Meeting with Senate Ethics Officer

29. (1) After reviewing a Senator's confidential disclosure statement, the Senate Ethics Officer may request to meet with the Senator to discuss the statement and the Senator's obligations under this Code.

Necessary meeting

(2) If, pursuant to a request made under subsection (1), the Senate Ethics Officer advises the Senator that the meeting is necessary in order for the Senate Ethics Officer to carry out his or her duties and functions under the Code, the Senator shall meet with the Senate Ethics Officer.

Public disclosure summary

30. The Senate Ethics Officer shall prepare a public disclosure summary based on each Senator's confidential disclosure statement and submit it to the Senator for review.

Contents of public disclosure summary

31. (1) The public disclosure summary shall list

- (a) any corporations, income trusts and trade unions in which the Senator is a director or officer and any partnerships in which the Senator is a partner, including a description of the activities of each entity;
- (b) any associations and not-for-profit organizations in which the Senator is a director, officer or patron, including memberships on advisory boards and any honorary positions;
- (c) the source and nature but not the amount of any income that the Senator has received in the preceding 12 months and is likely to receive in the next 12 months that the Senate Ethics Officer has

les certificats de placement garantis, les instruments financiers délivrés par tout gouvernement ou agence au Canada, ainsi que les obligations liées aux frais de subsistance qui seront acquittées dans le cours normal des activités du sénateur.

Autres éléments exclus

(3) Le conseiller sénatorial en éthique peut, avec l'approbation du Comité, prévoir d'autres éléments à exclure de la déclaration confidentielle au motif qu'ils ne présentent aucun risque d'entraver les obligations du sénateur aux termes du présent code.

Changement important

(4) Le sénateur déclare par écrit au conseiller sénatorial en éthique tout changement important des renseignements contenus dans sa déclaration confidentielle, dans les 60 jours suivant le changement.

Rencontre avec le conseiller sénatorial en éthique

29. (1) Après avoir examiné la déclaration confidentielle du sénateur, le conseiller sénatorial en éthique peut demander de le rencontrer afin de discuter de la déclaration et des obligations de celui-ci aux termes du présent code.

Rencontre nécessaire

(2) Si, à la suite d'une demande faite en vertu du paragraphe (1), le conseiller sénatorial en éthique avise le sénateur que la rencontre est nécessaire pour permettre au conseiller d'exercer ses fonctions aux termes du présent code, le sénateur est tenu de le rencontrer.

Résumé public

30. Le conseiller sénatorial en éthique établit, à partir de la déclaration confidentielle du sénateur, un résumé public qu'il soumet à l'examen de celui-ci.

Contenu du résumé public

31. (1) Le résumé public fait état de ce qui suit :

- a) les noms des personnes morales, des fiducies de revenu et des syndicats au sein desquels le sénateur occupe un poste de dirigeant ou d'administrateur, et les noms des sociétés de personnes dont le sénateur est un associé, ainsi qu'une description des activités de chaque entité;
- b) les noms des associations et des organismes à but non lucratif dont le sénateur est un dirigeant, administrateur ou bienfaiteur, ou dans lesquels il est membre d'un conseil consultatif ou occupe un poste à titre honoraire;
- c) la source et la nature, mais non le montant, de tout revenu que le sénateur a reçu au cours des douze mois précédents et recevra vraisemblablement au cours des douze mois suivants et qui, de l'avis du

determined could relate to the parliamentary duties and functions of the Senator or could otherwise be relevant;

(d) the source and nature but not the value of any contracts or other business arrangements with the Government of Canada or a federal agency or body that the Senator has, directly or through a subcontract, including the Senate Ethics Officer's written opinion authorizing them;

(e) 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 that the Senator has by virtue of a partnership or a significant interest in a private corporation that the Senator is able to ascertain by making reasonable inquiries, including the Senate Ethics Officer's written opinion authorizing them;

(f) the source and nature but not the value of any contracts or other business arrangements with the Government of Canada or a federal agency or body that a member of the Senator's family has, directly or through a subcontract, or by virtue of a partnership or a significant interest in a private corporation, that the Senator is able to ascertain by making reasonable inquiries;

(g) information regarding the nature but not the value of any assets and liabilities that the Senate Ethics Officer has determined could relate to the parliamentary duties and functions of the Senator or could otherwise be relevant;

(h) any declarations of a private interest under section 12, unless the Senator has since retracted the declaration;

(i) any statements filed under sections 17 and 18 in relation to gifts and sponsored travel; and

(j) any statements of material change that pertain to the contents of this summary.

Discretion

(2) The Senate Ethics Officer need not include in the public disclosure summary information that he or she determines should not be disclosed because

(a) the information is not relevant to the purposes of this Code or is inconsequential, or

conseiller sénatorial en éthique, pourrait se rapporter aux fonctions parlementaires du sénateur ou être autrement pertinent;

d) la source et la nature, mais non la valeur, de tout contrat ou autre entente commerciale avec le gouvernement du Canada ou une agence ou un organisme fédéral auquel le sénateur est partie, directement ou par voie de sous-contrat, ainsi que l'avis écrit dans lequel le conseiller sénatorial en éthique donne son autorisation;

e) la source et la nature, mais non la valeur, de tout contrat, sous-contrat ou autre entente commerciale avec le gouvernement du Canada ou une agence ou un organisme fédéral auquel le sénateur est partie du fait qu'il est membre d'une société de personnes ou a un intérêt important dans une société privée, dont il peut établir l'existence par des démarches raisonnables, ainsi que l'avis écrit dans lequel le conseiller sénatorial en éthique donne son autorisation;

f) la source et la nature, mais non la valeur, de tout contrat ou autre entente commerciale avec le gouvernement du Canada ou une agence ou un organisme fédéral auquel un membre de la famille du sénateur est partie, directement ou par voie de sous-contrat, ou du fait qu'il est membre d'une société de personnes ou a un intérêt important dans une société privée, dont le sénateur peut établir l'existence par des démarches raisonnables;

g) des renseignements sur la nature, mais non la valeur, des éléments d'actif et de passif qui, de l'avis du conseiller sénatorial en éthique, pourraient se rapporter aux fonctions parlementaires du sénateur ou être autrement pertinents;

h) les déclarations d'intérêts personnels visées à l'article 12, sauf celles que le sénateur a par la suite rétractées;

i) les déclarations déposées conformément aux articles 17 et 18 à l'égard des cadeaux et des voyages parrainés;

j) une déclaration de tout changement important des renseignements contenus dans le résumé public.

Discretion

(2) Le conseiller sénatorial en éthique n'a pas à inclure dans le résumé public les renseignements qui, à son avis, ne devraient pas y figurer pour l'une ou l'autre des raisons suivantes :

a) ces renseignements ne sont pas pertinents pour l'application du présent code ou sont sans importance;

(b) a departure from the general principle of public disclosure is justified in the circumstances.

Disagreement

32. In cases of disagreement between a Senator and the Senate Ethics Officer regarding the contents of the public disclosure summary, the Senate Ethics Officer shall refer the disputed matter to the Committee for decision.

Public inspection

33. (1) Each public disclosure summary is to be placed on file at the office of the Senate Ethics Officer and made available for public inspection.

Removal of file from registry

(2) A public disclosure file shall be removed from the public registry at the time that the Senator concerned ceases to be a Senator.

Evasion

34. A Senator shall not take any action that has as its purpose the evasion of the Senator's obligations under this Code.

COMMITTEE

Designation or establishment

35. (1) At the beginning of each session, a Committee of the Senate shall be designated or established for the purposes of this Code.

Membership

(2) The Committee shall be composed of five members, three of whom shall constitute a quorum.

No *ex officio* members

(3) The Committee shall have no *ex officio* members.

Election of members

(4) Two of the Committee members shall be elected by secret ballot in the caucus of Government Senators at the opening of the session; two of the Committee members shall be elected by secret ballot in the caucus of Opposition Senators at the opening of the session; the fifth member shall be elected by the majority of the other four members after the election of the last of the other four members.

Presentation and adoption of motion

(5) The Leader of the Government in the Senate, seconded by the Leader of the Opposition in the Senate, shall present a motion on the full membership of the Committee to the Senate, which motion shall be deemed adopted without any debate or vote.

Chair

(6) The Chair of the Committee shall be elected by four or more members.

b) une dérogation au principe de déclaration publique se justifie en l'espèce.

Désaccord

32. En cas de désaccord entre le sénateur et le conseiller sénatorial en éthique au sujet du contenu du résumé public, ce dernier soumet la question au Comité pour décision.

Examen public

33. (1) Le résumé public est conservé au bureau du conseiller sénatorial en éthique et est mis à la disposition du public pour examen.

Retrait du dossier

(2) Le dossier du résumé public du sénateur est retiré du registre public au moment où celui-ci cesse d'exercer ses fonctions de sénateur.

Interdiction de contourner les obligations

34. Le sénateur ne peut prendre aucune mesure visant à contourner les obligations qui lui incombent aux termes du présent code.

COMITÉ

Constitution ou désignation

35. (1) Au début de chaque session, un comité du Sénat est constitué ou désigné pour l'application du présent code.

Composition

(2) Le Comité est composé de cinq membres, dont trois constituent le quorum.

Aucun membre d'office

(3) Le Comité ne compte aucun membre d'office.

Élection des membres

(4) Au début de la session, deux membres du Comité sont élus par scrutin secret par les sénateurs du caucus du gouvernement et deux membres sont élus par scrutin secret par les sénateurs du caucus de l'opposition; le cinquième membre est élu par une majorité des quatre autres membres après l'élection du dernier de ceux-ci.

Présentation et adoption de la motion

(5) Le leader du gouvernement au Sénat, avec l'accord du leader de l'opposition au Sénat, présente au Sénat une motion concernant la composition du Comité, laquelle motion est réputée adoptée sans débat ni vote.

Président

(6) Le président du Comité est élu par au moins quatre membres de celui-ci.

Removal

(7) A member is deemed removed from the Committee as of the time that

- (a) the Senate Ethics Officer informs the Committee that a request for an inquiry made by the Senator is warranted; or
- (b) the Senator becomes the subject of an inquiry under the Code.

Substitutions

(8) Where a vacancy occurs in the membership of the Committee, the replacement member shall be elected by the same method as the former member being replaced.

Meetings in camera

36. (1) Subject to subsection (2), meetings of the Committee shall be held *in camera*.

Meetings in public

(2) At the request of a Senator who is the subject of an investigation, the Committee may hold meetings at which the investigation is being conducted in public.

Attendance

(3) Subject to subsection (4), the Committee may limit attendance at its meetings.

Affected Senator

(4) The Committee shall give notice to a Senator who is the subject of an investigation of all meetings at which the investigation is being conducted, and shall admit the Senator to those meetings, but the Committee may exclude that Senator from those meetings or portions of meetings at which the Committee is considering a draft agenda or a draft report.

Withdrawal

(5) A member of the Committee who is the subject of a matter being considered by the Committee relating to that specific Senator shall withdraw from the Committee during its deliberations.

Jurisdiction

37. (1) Subject to subsection 41(2) and to the general jurisdiction of the Senate, the Committee is responsible for all matters relating to this Code, including all forms involving Senators that are used in its administration.

General directives

(2) The Committee may, after consultation with the Senate Ethics Officer, give general directives to the Senate Ethics Officer concerning the interpretation, application and

Révocation

(7) Un membre du Comité est réputé révoqué dès que, selon le cas :

- a) le conseiller sénatorial en éthique informe le Comité que la demande d'enquête présentée par ce sénateur est justifiée;
- b) ce sénateur fait l'objet d'une enquête aux termes du présent code.

Remplaçant

(8) En cas de vacance au sein du Comité, le remplaçant est élu de la même façon que le membre qu'il remplace.

Séances à huis clos

36. (1) Sous réserve du paragraphe (2), le Comité siège à huis clos.

Séances publiques

(2) Le Comité peut, à la demande du sénateur qui fait l'objet d'une enquête, tenir des séances publiques qui sont consacrées à l'enquête.

Participation

(3) Sous réserve du paragraphe (4), le Comité peut limiter le nombre de participants à ses séances.

Sénateur visé

(4) Le Comité donne au sénateur qui fait l'objet d'une enquête un avis de toutes les séances consacrées à l'enquête et lui permet d'y assister. Il peut toutefois exclure le sénateur des séances ou parties de celles-ci pendant lesquelles il examine un projet d'ordre du jour ou un projet de rapport.

Retrait

(5) Tout membre du Comité qui est directement visé par une question dont est saisi le Comité est tenu de se retirer du Comité pendant les délibérations de celui-ci.

Compétence

37. (1) Sous réserve du paragraphe 41(2) et de la compétence générale du Sénat, le Comité est chargé de toutes les questions ayant trait au présent code, y compris les formulaires à remplir par les sénateurs pour l'application de celui-ci.

Directives générales

(2) Le Comité peut, après consultation du conseiller sénatorial en éthique, donner au conseiller des directives générales en ce qui concerne l'interprétation et l'application

administration of the Code, but not concerning its interpretation and application as it relates to an individual Senator's particular circumstances.

INTERSESSIONAL AUTHORITY

Intersessional Authority created

38. During a period of prorogation or dissolution of Parliament and until the members of a successor Committee are appointed by the Senate, there shall be a committee known as the Senate Intersessional Authority on Conflict of Interest for Senators.

Composition

39. The Intersessional Authority on Conflict of Interest for Senators shall be composed of the members of the Committee.

General authority

40. (1) The Senate Ethics Officer shall carry out his or her duties and functions under the general direction of the Intersessional Authority on Conflict of Interest for Senators.

Additional functions

(2) Subject to the rules, direction and control of the Senate and of the Committee, the Intersessional Authority on Conflict of Interest for Senators shall carry out such other of the Committee's duties and functions as the Committee gives to it by resolution.

SENATE ETHICS OFFICER

Senate Ethics Officer

41. (1) The Senate Ethics Officer is an independent officer who performs the duties and functions assigned by the Senate under this Code.

Independent status

(2) The Senate Ethics Officer shall carry out his or her duties and functions under the general direction of the Committee, but is independent in interpreting and applying this Code as it relates to an individual Senator's particular circumstances.

OPINIONS AND ADVICE

Request for opinion

42. (1) In response to a request in writing from a Senator on any matter respecting the Senator's obligations under this Code, the Senate Ethics Officer shall provide the Senator with a written opinion containing any recommendations that the Senate Ethics Officer considers appropriate.

du présent code, mais non en ce qui concerne l'interprétation de celui-ci et son application à la situation particulière d'un sénateur.

AUTORITÉ INTERSESSIONNELLE

Constitution d'une autorité intersessionnelle

38. En cas de prorogation ou de dissolution du Parlement, un comité appelé « autorité intersessionnelle chargée des conflits d'intérêts des sénateurs » est établi jusqu'à ce que le Sénat constitue le nouveau Comité.

Composition

39. L'autorité intersessionnelle chargée des conflits d'intérêts des sénateurs est composée des membres du Comité.

Direction générale

40. (1) Le conseiller sénatorial en éthique exerce ses fonctions sous la direction générale de l'autorité intersessionnelle chargée des conflits d'intérêts des sénateurs.

Autres fonctions

(2) Sous réserve de l'autorité et des règles du Sénat et du Comité, l'autorité intersessionnelle chargée des conflits d'intérêts des sénateurs exerce toute autre fonction du Comité que celui-ci lui délègue par voie de résolution.

CONSEILLER SÉNATORIAL EN ÉTHIQUE

Conseiller sénatorial en éthique

41. (1) Le conseiller sénatorial en éthique est un haut fonctionnaire indépendant qui exerce les fonctions que lui confie le Sénat dans le cadre du présent code.

Statut indépendant

(2) Le conseiller sénatorial en éthique exerce ses fonctions sous l'autorité générale du Comité, mais il est indépendant lorsqu'il interprète le présent code et l'applique à la situation particulière d'un sénateur.

AVIS ET CONSEILS

Demande d'avis

42. (1) Sur demande écrite d'un sénateur, le conseiller sénatorial en éthique lui remet un avis écrit, assorti des recommandations qu'il juge indiquées, sur toute question concernant les obligations du sénateur aux termes du présent code.

Opinion binding

(2) An opinion given by the Senate Ethics Officer to a Senator is binding on the Senate Ethics Officer in relation to any subsequent consideration of the subject matter of the opinion as long as all the relevant facts that were known to the Senator were disclosed to the Senate Ethics Officer.

Written advice binding

(3) Any written advice given by the Senate Ethics Officer to a Senator on any matter relating to this Code is binding on the Senate Ethics Officer in relation to any subsequent consideration of the subject matter of the advice as long as all the relevant facts that were known to the Senator were disclosed to the Senate Ethics Officer.

Confidentiality

(4) A written opinion or advice is confidential and may be made public only by the Senator or with his or her written consent.

Proof of compliance

(5) A written opinion or advice given by the Senate Ethics Officer to a Senator under this section and relied upon by that Senator is conclusive proof that the Senator has fully complied with the Senator's obligations under this Code as long as all the relevant facts that were known to the Senator were disclosed to the Senate Ethics Officer.

Publication

(6) Nothing in this section prevents the Senate Ethics Officer, subject to the approval of the Committee, from publishing opinions and advice for the guidance of Senators, provided that no details are included that could identify a Senator.

Guidelines

43. Subject to the approval of the Committee, the Senate Ethics Officer may publish guidelines for the assistance of Senators on any matter concerning the interpretation of this Code that the Senate Ethics Officer considers advisable.

INQUIRIES AND INVESTIGATIONS**Direction by the Committee**

44. (1) The Committee may direct the Senate Ethics Officer to conduct an inquiry to determine whether a Senator has complied with his or her obligations under this Code.

Request for an inquiry

(2) A Senator who has reasonable grounds to believe that another Senator has not complied with his or her obligations under this Code may request that the Senate Ethics Officer conduct an inquiry into the matter.

Valeur de l'avis

(2) L'avis donné au sénateur par le conseiller sénatorial en éthique lie ce dernier lors de tout examen ultérieur de la question qui en fait l'objet, dans la mesure où tous les faits pertinents dont le sénateur avait connaissance lui ont été communiqués.

Valeur des conseils

(3) Les conseils que le conseiller sénatorial en éthique donne par écrit au sénateur au sujet d'une question relative au présent code lient le conseiller lors de tout examen ultérieur de la même question, dans la mesure où tous les faits pertinents dont le sénateur avait connaissance lui ont été communiqués.

Confidentialité

(4) Tout avis ou conseil écrit est confidentiel et ne peut être rendu public que par le sénateur ou avec son consentement écrit.

Preuve de conformité

(5) Les avis ou conseils du conseiller sénatorial en éthique donnés par écrit à un sénateur conformément au présent article et sur lesquels s'appuie ce sénateur sont une preuve concluante qu'il s'est acquitté de toutes ses obligations aux termes du présent code, dans la mesure où tous les faits pertinents dont il avait connaissance ont été communiqués au conseiller.

Publication

(6) Le présent article n'empêche pas le conseiller sénatorial en éthique, sous réserve de l'approbation du Comité, de publier des avis et des conseils pour guider les sénateurs, à la condition toutefois de ne pas révéler de détails qui permettraient d'identifier un sénateur.

Lignes directrices

43. Sous réserve de l'approbation du Comité, le conseiller sénatorial en éthique peut, pour aider les sénateurs, publier des lignes directrices sur toute question concernant l'interprétation du présent code qu'il estime indiquée.

ENQUÊTES**Ordre du Comité**

44. (1) Le Comité peut ordonner au conseiller sénatorial en éthique de faire une enquête pour déterminer si un sénateur a respecté ses obligations aux termes du présent code.

Demande d'enquête

(2) Le sénateur qui a des motifs raisonnables de croire qu'un autre sénateur n'a pas respecté ses obligations aux termes du présent code peut demander au conseiller sénatorial en éthique de faire une enquête.

Form of request

(3) The request shall be in writing, shall be signed by the requesting Senator, shall identify the alleged non-compliance with this Code and shall set out the reasonable grounds for the belief that the Code has not been complied with.

Request to be sent

(4) The Senate Ethics Officer shall forward the request for an inquiry to the Senator who is the subject of the request and afford the Senator a reasonable opportunity to respond.

Preliminary review

(5) After a preliminary review to determine whether or not an inquiry is warranted, the Senate Ethics Officer shall notify both the requesting Senator and the Senator who is the subject of the request of his or her decision.

If inquiry warranted

(6) If the Senate Ethics Officer's decision under subsection (5) is that an inquiry is warranted, the Senate Ethics Officer shall so inform the Committee.

Receipt of information

(7) If, after receiving significant evidence, the Senate Ethics Officer believes that an inquiry may be warranted to determine whether a Senator has complied with his or her obligations under this Code, the Senate Ethics Officer shall provide the Senator written notice of his or her concerns and any documentation upon which those concerns are based, and shall afford the Senator a reasonable opportunity to address the issues.

Committee to approve

(8) Following the measures taken in subsection (7), if the Senate Ethics Officer has reasonable grounds to believe that an inquiry is warranted to determine whether the Senator has complied with his or her obligations under this Code, the Senate Ethics Officer shall request the Committee to approve the inquiry, and may proceed when approval has been received.

Notice

(9) Once approval to conduct an inquiry has been received under subsection (8), the Senate Ethics Officer shall provide the Senator concerned with his or her reasons for the opinion that an inquiry is warranted.

Respect for the inquiry process

(10) Once a request for an inquiry has been made, or direction or approval for an inquiry has been given, Senators should respect the process established by this Code.

Forme de la demande

(3) La demande d'enquête est présentée par écrit et signée par le sénateur qui en est l'auteur et elle énonce le manquement reproché et les motifs raisonnables invoqués à l'appui.

Transmission de la demande

(4) Le conseiller sénatorial en éthique transmet la demande d'enquête au sénateur qui en fait l'objet et lui accorde la possibilité d'y répondre.

Examen préliminaire

(5) Le conseiller sénatorial en éthique fait un examen préliminaire pour déterminer si une enquête est justifiée et il communique sa décision à la fois au sénateur qui a demandé l'enquête et au sénateur qui en fait l'objet.

Enquête justifiée

(6) Si le conseiller sénatorial en éthique détermine aux termes du paragraphe (5) qu'une enquête est justifiée, il avise le Comité de sa décision.

Réception de renseignements

(7) Si, après réception d'une preuve importante, le conseiller sénatorial en éthique croit qu'une enquête peut être nécessaire pour déterminer si un sénateur a respecté ses obligations aux termes du présent code, il remet au sénateur un avis écrit de ses préoccupations et toute documentation sur laquelle elles sont fondées, et lui accorde la possibilité de présenter son point de vue à cet égard.

Approbation du Comité

(8) Si, à la suite des mesures prises selon le paragraphe (7), le conseiller sénatorial en éthique a des motifs raisonnables de croire qu'une enquête s'impose pour déterminer si un sénateur a respecté ses obligations aux termes du présent code, il demande au Comité d'autoriser l'enquête et peut commencer l'enquête dès réception de l'autorisation.

Avis

(9) Après avoir reçu, aux termes du paragraphe (8), l'autorisation de faire enquête, le conseiller sénatorial en éthique remet au sénateur visé les motifs pour lesquels il estime qu'une enquête est justifiée.

Respect du processus

(10) Après qu'une demande d'enquête a été présentée ou que l'ordre ou l'autorisation de faire enquête a été donné, les sénateurs devraient respecter le processus établi par le présent code.

Inquiry to be confidential

(11) The Senate Ethics Officer shall conduct a confidential inquiry as promptly as the circumstances permit, provided that at all appropriate stages throughout the inquiry the Senate Ethics Officer shall give the Senator a reasonable opportunity to be present and to make representations to the Senate Ethics Officer in writing or in person, by counsel or by any other representative.

Cooperation

(12) Senators shall cooperate without delay with the Senate Ethics Officer with respect to any inquiry.

Powers of Senate Ethics Officer

(13) In carrying out an inquiry, the Senate Ethics Officer may send for persons, papers, things and records, which measures may be enforced by the Senate acting on the recommendation of the Committee following a request from the Senate Ethics Officer.

Report to the Committee

45. (1) Following an inquiry the Senate Ethics Officer shall report confidentially in writing to the Committee.

Contents of report

(2) The Senate Ethics Officer may make findings and recommendations, including

- (a) that the complaint appears to be unfounded and should be dismissed;
- (b) that the request for an inquiry was frivolous or vexatious or was not made in good faith, or that there were no grounds or insufficient grounds to warrant an inquiry or the continuation of an inquiry;
- (c) that the complaint appears to be founded and that remedial action has been agreed to by the Senator involved; or
- (d) that the complaint appears to be founded, but that no remedial action was available or agreed to by the Senator involved.

Bad faith

(3) Where the Senate Ethics Officer makes a finding that the complaint or request for an inquiry was frivolous or vexatious or was not made in good faith, he or she may recommend that action be considered against the person who made the complaint or request.

Mitigation

(4) If the Senate Ethics Officer concludes that a Senator has not complied with an obligation under this Code but that the Senator took all reasonable measures to prevent the non-compliance, or that the non-compliance was trivial or

Enquête confidentielle

(11) Le conseiller sénatorial en éthique mène l'enquête de façon confidentielle, aussi rapidement que les circonstances le permettent, en donnant au sénateur, à toutes les étapes de l'enquête, la possibilité d'être présent et de lui faire valoir ses arguments par écrit ou en personne ou par l'entremise d'un conseiller ou autre représentant.

Collaboration

(12) Les sénateurs sont tenus de collaborer sans tarder avec le conseiller sénatorial en éthique dans toute enquête.

Pouvoirs du conseiller sénatorial en éthique

(13) Lors de son enquête, le conseiller sénatorial en éthique peut convoquer des personnes et faire produire des documents, des objets et des dossiers, lesquelles mesures peuvent être mises à exécution par le Sénat sur la recommandation du Comité par suite d'une demande à cet effet du conseiller sénatorial en éthique.

Rapport au Comité

45. (1) À la suite d'une enquête, le conseiller sénatorial en éthique présente par écrit un rapport confidentiel au Comité.

Contenu du rapport

(2) Le conseiller sénatorial en éthique peut formuler des conclusions et recommandations dans son rapport, en indiquant notamment, selon le cas :

- a) que la plainte semble non fondée et devrait être rejetée;
- b) que la demande d'enquête est frivole ou vexatoire ou n'a pas été présentée de bonne foi, ou qu'aucun motif ou aucun motif suffisant ne justifie la tenue ou la poursuite d'une enquête;
- c) que la plainte semble fondée et que le sénateur visé a accepté de prendre des mesures correctives;
- d) que la plainte semble fondée, mais qu'aucune mesure corrective n'était possible ou n'a été acceptée par le sénateur visé.

Mauvaise foi

(3) Lorsque le conseiller sénatorial en éthique conclut que la plainte ou la demande d'enquête est frivole ou vexatoire ou n'a pas été présentée de bonne foi, il peut recommander que soit envisagée la prise de mesures à l'encontre de la personne qui a fait la demande ou la plainte.

Facteurs atténuants

(4) Si le conseiller sénatorial en éthique conclut que le sénateur n'a pas respecté une obligation prévue au présent code, mais qu'il a pris toutes les précautions raisonnables pour éviter d'y contrevenir, ou que le manquement est sans

occurred through inadvertence or an error in judgement made in good faith, the Senate Ethics Officer shall so state in the report and may recommend that no sanction be imposed.

General recommendations

(5) The Senate Ethics Officer may include in the report any recommendations arising from the matter that concern the general interpretation of this Code.

Reasons

(6) The Senate Ethics Officer shall include in the report reasons and any supporting documentation for any findings and recommendations.

Consideration of report

46. (1) The Committee shall take into consideration a report received from the Senate Ethics Officer under section 45 as promptly as circumstances permit.

Due process

(2) The Committee shall provide, without delay, a copy of the report of the Senate Ethics Officer to the Senator who was the subject of the inquiry, and shall afford that Senator the opportunity to be heard by the Committee.

Investigation

- (3) In considering a report, the Committee may
- (a) conduct an investigation; or
 - (b) direct that the Senate Ethics Officer's inquiry be continued and refer the report back to the Senate Ethics Officer for such further information as the Committee specifies.

Committee report

(4) Subject to subsection (5), following its consideration under this section of a report of the Senate Ethics Officer, the Committee shall report to the Senate.

No report required

(5) Where the Committee finds that a complaint against a Senator was unfounded, the Committee is not required to report to the Senate unless the Senator concerned requests that it do so.

Contents of report

(6) In its report to the Senate, the Committee shall report the fact of the inquiry and give its findings with respect thereto, its recommendations if any, and its reasons and the supporting documentation for any findings or recommendations.

Remedial action

(7) The Committee may recommend that the Senator be ordered to take specific action or be sanctioned.

gravité, s'est produit par inadvertance ou est imputable à une erreur de jugement commise de bonne foi, il l'indique dans son rapport et peut recommander qu'aucune sanction ne soit imposée.

Recommandations générales

(5) Le conseiller sénatorial en éthique peut inclure dans son rapport des recommandations pertinentes concernant l'interprétation générale du présent code.

Motifs

(6) Le conseiller sénatorial en éthique énonce dans son rapport les motifs de ses conclusions et recommandations et y annexe toute documentation à l'appui.

Examen du rapport

46. (1) Le Comité examine le rapport présenté par le conseiller sénatorial en éthique conformément à l'article 45, aussi rapidement que les circonstances le permettent.

Procédure

(2) Le Comité remet sans délai une copie du rapport du conseiller sénatorial en éthique au sénateur qui a fait l'objet de l'enquête et lui donne la possibilité de se faire entendre par le Comité.

Enquête

- (3) Lors de l'examen du rapport, le Comité peut :
- a) soit mener une enquête;
 - b) soit ordonner que l'enquête du conseiller sénatorial en éthique soit poursuivie et renvoyer le rapport à celui-ci pour qu'il y ajoute les renseignements supplémentaires spécifiés par le Comité.

Rapport du Comité

(4) Sous réserve du paragraphe (5), au terme de son examen du rapport du conseiller sénatorial en éthique selon le présent article, le Comité fait rapport au Sénat.

Rapport non obligatoire

(5) Dans le cas où il conclut que la plainte déposée contre le sénateur n'est pas fondée, le Comité n'est pas tenu de faire rapport au Sénat à moins que le sénateur n'en fasse la demande.

Contenu du rapport

(6) Dans son rapport au Sénat, le Comité fait état de la tenue de l'enquête et énonce ses conclusions ainsi que ses recommandations, le cas échéant, en indiquant ses motifs et en annexant la documentation à l'appui.

Mesures correctives

(7) Le Comité peut recommander que le sénateur visé soit contraint de prendre des mesures précises ou fasse l'objet d'une sanction.

Anonymity

(8) Where the Committee finds that a complaint is unfounded and reports to the Senate, its report may, at the Senator's request, keep the Senator's name anonymous in order to protect the Senator's reputation.

Suspension of investigation or inquiry: Act of Parliament

47. (1) The Committee or the Senate Ethics Officer may suspend the investigation or inquiry if

- (a) there are reasonable grounds to believe that the Senator has committed an offence under an Act of Parliament in relation to the same subject matter, in which case the Committee or Senate Ethics Officer, subject to subsection (4), shall notify the proper authorities;
- (b) it is discovered that
 - (i) the subject matter under investigation or inquiry is also the subject matter of an investigation to determine if an offence under an Act of Parliament has been committed, or
 - (ii) a charge has been laid with respect to that subject matter.

Investigation or inquiry continued

(2) If the Committee or the Senate Ethics Officer has suspended the investigation or inquiry, it may resume once the other investigation or charge regarding the same subject matter has been finally disposed of.

Suspension of investigation or inquiry: other laws

(3) The Committee or the Senate Ethics Officer may suspend the investigation or inquiry and, subject to subsection (4), notify the proper authorities if there are reasonable grounds to believe that the Senator has committed an offence under the law of a Canadian province or territory in relation to the same subject matter, and may continue the investigation or inquiry when any actions arising from the notification have been completed.

Advice of Committee

(4) The Senate Ethics Officer shall seek the advice of the Committee before notifying the proper authorities.

Notice for motion to adopt

48. (1) A motion that the Senate adopt a report referred to in subsection 46(4) shall be put pursuant to the notice provisions of paragraph 58(1)(g) of the *Rules of the Senate*.

Anonymat

(8) Lorsque le Comité conclut qu'une plainte n'est pas fondée et en fait rapport au Sénat, le rapport peut, si le sénateur visé en fait la demande, ne pas faire mention du nom du sénateur afin de protéger sa réputation.

Suspension de l'enquête : lois fédérales

47. (1) Le Comité ou le conseiller sénatorial en éthique peut suspendre l'enquête dans les cas suivants :

- a) il y a des motifs raisonnables de croire que le sénateur a commis une infraction à une loi fédérale relativement à la question visée par l'enquête, auquel cas le Comité ou le conseiller sénatorial en éthique, sous réserve du paragraphe (4), en avise les autorités compétentes;
- b) il est constaté que la question visée par l'enquête fait l'objet :
 - (i) soit d'une autre enquête visant à établir si une infraction à une loi fédérale a été commise,
 - (ii) soit d'une accusation.

Reprise de l'enquête

(2) Si le Comité ou le conseiller sénatorial en éthique a suspendu l'enquête, il peut la poursuivre après qu'une décision finale a été prise relativement à l'autre enquête ou à l'accusation.

Suspension de l'enquête : autres lois

(3) Le Comité ou le conseiller sénatorial en éthique peut suspendre l'enquête et, sous réserve du paragraphe (4), aviser les autorités compétentes s'il y a des motifs raisonnables de croire que le sénateur a commis une infraction à une loi d'une province ou d'un territoire canadien qui porte sur la question visée par l'enquête, et peut reprendre l'enquête dès que les mesures faisant suite à l'avis sont terminées.

Avis du Comité

(4) Le conseiller sénatorial en éthique obtient l'avis du Comité avant d'aviser les autorités compétentes.

Avis de motion

48. (1) Il faut donner avis, conformément à l'alinéa 58(1)g) du *Règlement du Sénat*, d'une motion proposant l'adoption par le Sénat d'un rapport visé au paragraphe 46(4).

Motion

(2) A motion to adopt a report referred to in subsection 46(4) shall be deemed to have been moved on the fifth sitting day subsequent to the presentation of the report if the motion has not yet been moved.

Senator may speak

(3) After a motion to adopt a report has been moved, or has been deemed to have been moved, no vote may be held for at least five sitting days, or until the Senator who is the subject of the report has spoken to the motion for its adoption, whichever is the sooner.

Right to speak last

(4) The Senator who is the subject of the report may exercise the right of final reply.

Senate vote

(5) If a motion for the adoption of a report has not been put to a vote by the 15th sitting day after the motion was moved or deemed to have been moved, the Speaker shall immediately put all necessary questions to dispose of the matter when the item is called.

Referral back

(6) The Senate may refer any report back to the Committee for further consideration.

Suspension: former Senators

49. (1) An investigation or inquiry of a Senator who ceases to be a Senator is permanently suspended unless the Committee directs that the investigation or inquiry be completed.

Direction to continue

(2) In considering whether to issue a direction under subsection (1), the Committee shall consider any request from the former Senator or from the Senator who requested the inquiry, and any representations made by the Senate Ethics Officer.

Consideration of committee report

(3) Notwithstanding subsection 48(5), where a motion to adopt a report about a former Senator is moved or deemed to be moved, the motion shall not be put to a vote until the former Senator has been offered the opportunity to speak to the report as a witness in Committee of the Whole, and has either availed himself or herself of the opportunity or has refused or otherwise failed to take advantage of the offer.

Motion

(2) La motion proposant l'adoption d'un rapport visé au paragraphe 46(4) est réputée avoir été présentée le cinquième jour de séance suivant la présentation du rapport si elle n'a pas été présentée auparavant.

Droit de parole du sénateur

(3) Lorsque la motion proposant l'adoption du rapport a été présentée ou est réputée l'avoir été, le vote ne peut avoir lieu avant l'expiration d'au moins cinq jours de séance ou avant que le sénateur faisant l'objet du rapport ait eu l'occasion de s'exprimer sur la motion, selon la première de ces éventualités.

Droit de dernière réplique

(4) Le sénateur faisant l'objet du rapport peut exercer son droit de dernière réplique.

Vote du Sénat

(5) Si la motion proposant l'adoption du rapport n'a pas été mise aux voix le quinzième jour de séance après qu'elle a été présentée ou est réputée l'avoir été, le Président met immédiatement aux voix toutes les questions nécessaires pour conclure l'affaire lorsque celle-ci est appelée.

Renvoi au Comité

(6) Le Sénat peut renvoyer un rapport au Comité pour qu'il l'examine à nouveau.

Suspension : anciens sénateurs

49. (1) L'enquête portant sur un sénateur est suspendue de manière définitive lorsqu'il cesse d'exercer ses fonctions, à moins que le Comité n'ordonne de la terminer.

Poursuite de l'enquête

(2) Lorsqu'il évalue la pertinence d'ordonner de terminer l'enquête, le Comité examine les demandes de l'ancien sénateur ou du sénateur ayant demandé l'enquête et les arguments présentés par le conseiller sénatorial en éthique.

Examen du rapport du Comité

(3) Malgré le paragraphe 48(5), lorsqu'une motion proposant l'adoption d'un rapport sur un ancien sénateur est présentée ou est réputée l'être, celle-ci ne peut être mise aux voix avant que l'ancien sénateur se soit fait offrir la possibilité de commenter le rapport à titre de témoin devant le comité plénier et se soit prévalu de cette possibilité, l'ait refusée ou ait omis de s'en prévaloir.

PRIVACY AND CONFIDENTIALITY

Privacy to be minimally impaired

50. In interpreting and administering this Code, reasonable expectations of privacy shall be impaired as minimally as possible.

Confidentiality

51. (1) All information relating to the private interests of Senators and those of their family members received pursuant to this Code or created under it is to be kept confidential, except in accordance with this Code or as otherwise ordered by the Senate.

Inclusions

(2) For greater certainty, the requirement set out in subsection (1) applies to documents and information received in the course of an inquiry that the Senate Ethics Officer has suspended in accordance with paragraph 47(1)(a) or subsection 47(3) and to documents and information retained by the Senate Ethics Officer pursuant to section 52.

Confidentiality

(3) The Senate Ethics Officer and all officers, employees, agents, advisers and consultants that may be employed or engaged by the Senate Ethics Officer shall keep confidential all matters required to be kept confidential under this Code. Failure to do so shall constitute behaviour sufficient to justify either or both of the following:

- (a) a resolution by the Senate under subsection 20.2(1) of the *Parliament of Canada Act* requesting the Governor in Council to remove the Senate Ethics Officer from office;
- (b) dismissal of any officers, employees, agents, advisers or consultants involved.

Retention of documents

52. (1) The Senate Ethics Officer shall retain all documents relating to a Senator for a period of 12 months after he or she ceases to be a Senator, after which, subject to subsections (2) to (4), the documents shall be destroyed.

Ongoing proceedings

(2) Where, at the time that a Senator ceases to be a Senator, there is an investigation or inquiry in progress concerning the Senator or a charge has been laid against the Senator, the destruction of documents that relate to the matter shall be postponed until 12 months after the day of the final disposition of all related proceedings.

RESPECT DE LA VIE PRIVÉE ET CONFIDENTIALITÉ DES RENSEIGNEMENTS

Entrave minimale au respect de la vie privée

50. Le présent code doit être interprété et appliqué de manière à entraver le moins possible l'attente raisonnable des sénateurs en matière de respect de leur vie privée.

Confidentialité

51. (1) Tous les renseignements — reçus ou créés aux termes du présent code — qui ont trait aux intérêts personnels des sénateurs et des membres de leur famille doivent être tenus confidentiels, sauf dans les cas prévus au présent code ou sauf ordre contraire du Sénat.

Précision

(2) Il est entendu que l'exigence prévue au paragraphe (1) s'applique aux documents et renseignements reçus dans le cadre d'une enquête que le conseiller sénatorial en éthique a suspendue en vertu de l'alinéa 47(1)a) ou du paragraphe 47(3) ainsi qu'aux documents et renseignements conservés par lui en application de l'article 52.

Confidentialité

(3) Le conseiller sénatorial en éthique ainsi que les agents, employés, mandataires, conseillers et experts dont il retient les services sont tenus d'assurer la confidentialité de toute question que le présent code exige de garder confidentielle. L'omission de le faire constitue un comportement pouvant justifier l'une ou l'autre — ou les deux — des mesures disciplinaires suivantes :

- a) une résolution adoptée par le Sénat en vertu du paragraphe 20.2(1) de la *Loi sur le Parlement du Canada* afin de demander au gouverneur en conseil la révocation du conseiller sénatorial en éthique;
- b) le congédiement des agents, employés, mandataires, conseillers ou experts visés.

Conservation des documents

52. (1) Le conseiller sénatorial en éthique conserve tous les documents relatifs à un sénateur pendant les douze mois suivant la cessation de ses fonctions de sénateur. Ces documents sont ensuite détruits, sous réserve des paragraphes (2) à (4).

Procédures en cours

(2) Si, au moment où le sénateur cesse d'exercer ses fonctions, une enquête le concernant est en cours ou une accusation a été portée contre lui, la destruction des documents pertinents est reportée jusqu'à l'expiration des douze mois suivant le jour où il est disposé de façon définitive des procédures y afférentes.

Return of confidential documents

(3) At a Senator's request, confidential documents relating to a Senator may be returned to the Senator instead of being destroyed.

Archiving of public documents

(4) Public documents relating to a Senator shall be forwarded to the Senate archives.

PERIODIC REVIEW**Committee review**

53. The Committee shall undertake a comprehensive review of this Code and its provisions and operation once every five years, and shall submit a report to the Senate thereon, including a statement of any changes the Committee recommends.

Retour des documents confidentiels

(3) Les documents confidentiels relatifs à un sénateur peuvent, à sa demande, lui être retournés au lieu d'être détruits.

Archivage des documents publics

(4) Les documents publics concernant un sénateur sont transmis au service d'archives du Sénat.

EXAMEN PÉRIODIQUE**Examen par le Comité**

53. Le Comité procède tous les cinq ans à un examen exhaustif du présent code, de ses dispositions et de son application, et présente au Sénat un rapport assorti des modifications qu'il recommande, le cas échéant.

APPENDIX B

Standing Committee on Conflict of Interest for Senators Three Year Comprehensive Review

EXECUTIVE SUMMARY OF COMMITTEE RECOMMENDATIONS

The Committee recommends 22 amendments to the *Conflict of Interest Code for Senators* in addition to amendments to the *Rules of the Senate*. The amendments to the Code have the following objectives:

1. The flow of information presented by the Code is improved, as are some of the emphases (*amendments 1, 13, 17, 18, 20*);
2. Becoming a director or officer of a not-for-profit organization is included in the definition of furthering a private interest (*amendment 2*);
3. Declarations made *in camera* and not published are to be renewed publicly (*amendment 4*);
4. Declarations made on reasonable grounds but found to be unnecessary may be retracted (*amendment 5; also 3 and 10*);
5. A Senator who has made a declaration may no longer debate and, in the case of committee hearings, must withdraw (*amendment 6*);
6. Provision is made for more than one annual filing date, which will help to accommodate the filings of Ministers (*amendment 8*);
7. Senators must meet with the Senate Ethics Officer if a meeting that relates to their confidential disclosure statement is necessary (*amendment 9*);
8. The discretion of the Senate Ethics Officer to withhold information from the public disclosure summary is removed (*amendment 10*);
9. A Senator's file is to be removed from the public registry at the time that he or she ceases to be a Senator (*amendment 11*);
10. The relationship between the Committee and the Senate Ethics Officer with respect to directions is reworked to respect the independence of the Senate Ethics Officer in giving opinions and advice (*amendment 12*);
11. The Senate Ethics Officer is given a higher profile in the Code and his independent status is affirmed (*amendment 13*);
12. The protection given to a Senator who complies with the Code by relying upon advice given by the Senate Ethics Officer is enlarged (*amendment 13*);
13. Investigations and inquiries of a Senator who ceases to be one are permanently suspended unless the Committee otherwise directs (*amendment 16*);
14. A higher profile is given to the privacy and confidentiality of Senators, and the provisions are strengthened (*amendments 17 and 18*);
15. The provision for the destruction or return of confidential documents to a retired Senator is enhanced, and provision is made for the safekeeping of public documents (*amendment 19*);
16. Spent provisions are repealed and language is proved (*amendments 6, 7, 8, 14, 15, 21*); and
17. Renumbering flowing from these recommendations and editorial changes are authorized (*amendment 22*).

Comité permanent sur les conflits d'intérêts des sénateurs
Examen triennal exhaustif

RÉSUMÉ DES
RECOMMANDATIONS DU COMITÉ

Le Comité recommande 22 amendements au *Code régissant les conflits d'intérêts des sénateurs* en plus des amendements au *Règlement du Sénat*. Les amendements au code visent les objectifs suivants :

1. La présentation des renseignements du code est améliorée, certains étant accentués (*amendements 1, 13, 17, 18, 20*);
2. Le fait de devenir un dirigeant ou un administrateur d'un organisme à but non lucratif est inclus dans la définition du fait de favoriser les intérêts personnels (*amendement 2*);
3. Les déclarations faites à huis clos et non publiées doivent être consignées au résumé public (*amendement 4*);
4. Les déclarations faites sur des motifs raisonnables, mais jugées non nécessaires, peuvent être rétractées (*amendement 5; voir aussi 3 et 10*);
5. Un sénateur qui a fait une déclaration ne peut plus prendre part au débat et, dans le cas des délibérations d'un comité, doit se retirer (*amendement 6*);
6. Plus d'une date de dépôt annuel est prévue, ce qui facilitera le dépôt de la part des ministres (*amendement 8*);
7. Les sénateurs doivent rencontrer le conseiller sénatorial en éthique si une rencontre concernant la déclaration confidentielle est nécessaire (*amendement 9*);
8. Le pouvoir discrétionnaire du conseiller sénatorial en éthique de ne pas publier des renseignements dans le résumé public est supprimé (*amendement 10*);
9. Le dossier d'un sénateur est retiré du registre public au moment où celui-ci cesse d'exercer ses fonctions (*amendement 11*);
10. La relation qui existe entre le Comité et le conseiller sénatorial en éthique en ce qui concerne les directives est reformulée afin que ce dernier demeure indépendant lorsqu'il donne des avis ou des conseils (*amendement 12*);
11. Le conseiller sénatorial en éthique obtient plus de visibilité dans le code et son caractère indépendant est reconnu (*amendement 13*);
12. Le sénateur qui respecte le code en se fondant sur l'avis du conseiller sénatorial en éthique est mieux protégé (*amendement 13*);
13. Les enquêtes au sujet d'un sénateur qui cesse d'exercer ses fonctions sont suspendues de manière définitive à moins que le Comité ne l'ordonne autrement (*amendement 16*);
14. Le respect de la vie privée et de la confidentialité des renseignements des sénateurs devient plus visible, et les dispositions sont renforcées (*amendements 17 et 18*);
15. La disposition concernant la destruction ou le retour de documents confidentiels à un sénateur à la retraite est améliorée, et une disposition prévoit l'archivage de documents publics (*amendement 19*);
16. Les dispositions caduques sont abrogées et le libellé est amélioré (*amendements 6, 7, 8, 14, 15, 21*);
17. La renumérotation découlant de ces recommandations et du remaniement du texte est permise (*amendement 22*).