



March 9, 2017

The Honourable Pierre-Hugues Boisvenu  
Room 304 – East Block  
The Senate of Canada  
Ottawa, ON K1A 0A4

Dear Senator Boisvenu:

This letter concerns a written request from Senator Claude Carignan, under paragraph 47(2)(b) of the *Ethics and Conflict of Interest Code for Senators* (the “Code”) and dated June 8, 2015, that I conduct an inquiry in order to determine whether you have not complied with your obligations under the *Code*. As you know, Senator Carignan’s allegations of non-compliance are based on certain matters that have been identified in the Report of the Auditor General of Canada to the Senate of Canada, *Senators’ Expenses*, June 4, 2015 (“the A.G. Report”) concerning your Senate expenses.

On May 14, 2015, prior to the publication of the A.G. Report, the Senate Committee on Internal Economy, Budgets and Administration (“CIBA”) appointed a Special Arbitrator, the Honourable Ian Binnie, C.C., Q.C., to consider the justification for expense claims made on behalf of a number of senators put in question by the A.G. Report. A dispute resolution process was established on May 26, 2015 setting out the *Special Arbitration Rules*.<sup>1</sup>

On June 5, 2015, the Senate referred certain matters in the A.G. Report to the RCMP, at the recommendation of the Auditor General, including the assessment by the Auditor

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<sup>1</sup> Senate Standing Committee on Internal Economy, Budgets and Administration, “Dispute Resolution Process Resolution of the Standing Committee on Internal Economy, Budgets and Administration”, May 26, 2015 (available at: <http://sen.parl.gc.ca/portal/reporting/AG/OAG-ArbitrationDisputeResolutionProcess-2015-05-26-EN.pdf>); “Senate of Canada, Auditor General’s Report Dispute Resolution Process News Release, “The Honourable Ian Binnie, C.C., Q.C. named special arbitrator”, May 26, 2015 (available at: <http://sen.parl.gc.ca/portal/Arbitration/index-e.htm>).

General of the circumstances concerning your expenses for the period from April 1, 2011 to March 31, 2013.

By letter dated June 23, 2015, and in accordance with paragraph 47(4)(b) of the *Code*, I advised you that, pursuant to paragraph 47(2)(b) of the *Code*, I would be conducting a preliminary review of this matter in order to determine whether an inquiry was warranted. With that letter, I forwarded Senator Carignan's request to you. I also provided you with 15 days within which to respond to the allegations, in accordance with subsection 47(7) of the *Code*.

By e-mail dated July 15, 2015, I granted your request for an extension of time, under subsection 47(8) of the *Code* to respond to the allegations due to a delay in receiving the complaint through no fault of your own. You provided me with your submissions on July 29, 2015.

On July 30, 2015, you filed a Notice of Arbitration with the CIBA regarding your intention to proceed with the arbitration process in response to a letter from the Chair of the CIBA, the Honourable Leo Housakos, dated June 5, 2015. In that letter, Senator Housakos inquired as to whether you had decided to reimburse the amount identified in the A.G. Report as expenses you incurred during the relevant time period that could not be related to your parliamentary business or were contrary to applicable Senate rules, policies, or guidelines, or whether you wished to proceed with the dispute resolution process.

On February 16, 2016, you advised me by letter that you had been informed that the RCMP, which had also been seized with this matter, had closed its file in this regard. You provided proof of this fact.<sup>2</sup>

On March 21, 2016, the report of the Honourable Ian Binnie was published, including the results of his assessment of your particular circumstances.<sup>3</sup>

With the conclusion of all other ongoing proceedings into this matter, and having now completed my own review, I am required to write to you, under subsection 47(10), to inform you of my decision, including my reasons, concerning whether an inquiry into this matter is warranted in order to determine whether you have not complied with your obligations under the *Code*.

What follows is my decision, along with the reasons that support my findings.

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<sup>2</sup> Letter from the Senate Law Clerk and Parliamentary Counsel to Senator Boisvenu, dated February 4, 2016, confirming that the RCMP had advised the Law Clerk that it had completed its review of the circumstances involving Senator Boisvenu and that it had closed its file in this matter.

<sup>3</sup> The Honourable Ian Binnie, "Report of the Special Arbitrator on the Expense Claims Identified by the Auditor General in his Report Dated June 4, 2015", March 21, 2016 (available at: <http://sen.parl.gc.ca/portal/reporting/AG/ArbitrationReportSenatorsExpenses-E.pdf>).

### **Preliminary Determination**

Having carefully considered this matter and all the information that I have before me at this time, I am of the view that your case properly falls within paragraph 47(11)(c) of the *Code*. This provision reads as follows:

47.(11) In the preliminary determination letter, the Senate Ethics Officer may make one of the following findings regarding reasonable grounds:

....

(c) that there are sufficient reasonable grounds for concern that the Senator may have breached his or her obligations under the Code.

A finding described in paragraph 47(11)(c) is not a finding that the *Code* has been breached; it is only a finding that there are *sufficient* reasonable grounds for *concern* that you *may* have breached the *Code* to warrant inquiring into the matter.

If I have sufficient reasonable grounds for *concern* that you *may* have breached your obligations, I must move to the inquiry stage in order to determine whether there was, in fact, any such breach, unless I find that the matter falls under one or more of the circumstances described in subsection 47(12). This provision reads as follows:

47.(12) In the preliminary determination letter, the Senate Ethics Officer may make one or more of the following findings regarding a possible breach of the Code:

(a) that an obligation under the Code may have been breached but that the non-compliance was trivial;

(b) that an obligation under the code may have been breached but that the non-compliance occurred through inadvertence or an error in judgment made in good faith;

(c) that an obligation under the Code may have been breached but that all reasonable measures were taken to prevent the non-compliance; and

(d) that an obligation under the Code may have been breached, but that the situation has been addressed and remedied to the satisfaction of the Senate Ethics Officer or the Senator has undertaken to address and remedy the situation to the satisfaction of the Senate Ethics Officer.

In this case, I am of the view that the circumstances properly fall under paragraph 47(12)(d). As such, an inquiry into this matter, pursuant to paragraph 48(2)(a) of the *Code*, is not warranted.

## **Request for Inquiry**

In his letter of June 8, 2015, Senator Carignan alleged that you had claimed ineligible Senate expenses, contrary to rules, policies and guidelines applicable to senators, particularly because these expenses were not related to your parliamentary duties and functions. Senator Carignan's allegations in this respect were based on the A.G. report's concerning your expenses for the period between April 1, 2011 to March 31, 2013.

Senator Carignan makes reference to the fact that the Auditor General concluded that your principal residence was situated in the Ottawa region for the year 2012 and, consequently, you were not entitled to claim living expenses, daily allowances, and transportation costs on the basis that your primary residence was situated at Sherbrooke. Senator Carignan also notes that the Auditor General concluded that you claimed a reimbursement of travel expenses and other related expenses in relation to your participation in conferences and radio broadcasts on behalf of a not-for-profit organization of which you were a founding member and President prior to your appointment to the Senate. The Auditor General characterized these activities as personal.

Senator Carignan also refers to the fact that the Auditor General determined that you incurred and claimed other expenses (hospitality, shipping and taxis) that were not related to your parliamentary duties and functions, but rather were of a more personal nature.

Senator Carignan argues that the conclusions in the A.G. Report demonstrate that you acted in a way to improperly further your private interests and those of another entity in the course of your parliamentary duties and functions, contrary to section 8 of the *Code*.

Finally, Senator Carignan also argues that this conduct could also be contrary to the general rules of conduct outlined in sections 7.1 and 7.2 of the *Code*.

## **Your Submissions**

As already noted above, on July 29, 2015, you provided me with your written response to the above-noted allegations.

### *Primary residence*

In your response letter, you submit that, since your appointment to the Senate in 2010, you have had to provide to the Senate Finance Directorate all the legal documents proving that your principal residence is in Sherbrooke. You stated that, from 2005 until April 2013, Sherbrooke has been your sole primary residence. You contend that the financial obligations associated with this residence were entirely your responsibility. All the documents provided as evidence to the Auditor General's Office identified this address, for example, your driver's license, your health insurance card, your credit cards,

your own income tax returns as well as those of your family, your property taxes, your automobile insurance and home insurance, and documents concerning your creditors. You explain that the A.G. Report seems to require that all senators spend a minimum number of days at their primary residence in order for this residence to be considered as such. However, you note that the definition of “primary residence” in the *Senators’ Travel Policy*<sup>4</sup> in force from June 2012 to June 2014 is as follows: “the residence identified by the senator as his/her main residence and is situated in the province or territory represented by the senator”. You question why the Auditor General is attempting to redefine the term “primary residence” in requiring that a minimal number of days be spent there.

You also contend that the activities of senators largely vary from one senator to another, from month to month, and from year to year. As such, you argue that the determination of “primary residence” should not depend on the number of days spent in a given location.

#### *Parliamentary duties and functions*

You argue that the term “parliamentary functions” is defined under the *Senate Administrative Rules*<sup>5</sup> as follows:

duties and activities related to the position of senator, wherever performed, and includes public and official business and partisan matters, but does not include activities related to

(a) the election of a member of the House of Commons during an election under the *Canada Elections Act*; or

(b) the private business interests of a Senator or a member of a Senator’s family or household. [2004-05-06]

You contend that, when you were appointed to the Senate, you were asked to work with the then Ministers of Justice and of Public Safety and to present to Canadians and help them to understand the Government bills related to crime. This responsibility required that you travel to francophone communities in Canada. In addition to representing these ministers, you contend that you held press conferences announcing new bills, participated in public activities to introduce the Government’s agenda in this area, participated in the launching of the Week of Victims and Survivors of Crime, and gave lectures and hosted workshops in order to sensitize people in the area of domestic violence, intimidation and the rights of victims of crime.

You explain that the book you wrote after the murder of your daughter is a useful educational tool helping you to explain the state of the justice system in Canada. You state that you made use of it many times at conferences and it was also sold at these events. You note that you have an agreement with the editor that all the proceeds derived

<sup>4</sup> *Senators’ Travel Policy*, adopted by the CIBA on May 10, 2012 and came into force on June 5, 2012.

<sup>5</sup> *Senate Administrative Rules* (2004-05-06), Division 1:00 Interpretation, Chapter 1:03, section 1.

from the sale of this book will be donated to the Fonds Isabelle Boisvenu. The purpose of this fund is to support students whose research advances the rights of victims of crime or advances knowledge on the impact of crime on the family unit.

#### *Other expenses*

You explain that the third area of expenses highlighted by the Auditor General were all related to your parliamentary activities, whether they were incurred as a result of meetings held in your office on justice issues, or the distribution of your book or other useful publications to victims of crime, their families and those involved in the justice system.

You indicate that, in order to ensure that you are no longer in a situation in which your expenses are being questioned, you asked that your staff clarify certain financial requests before making a claim, by making inquiries with the Senate Finance Directorate or with the Senate Law Clerk and Parliamentary Counsel Office.

### **Background**

#### *Auditor General Report*

As already noted above, the A.G. Report was published on June 4, 2015. The Report identified \$61,076 in expenses for which the Auditor General's Office had conflicting or insufficient information to determine that the expense had been incurred for parliamentary business. The specific details are set out below.

#### (1) Residency

The Auditor General concluded that you had claimed ineligible expenses from January 2012 to December 2012 totalling \$15,826, including accommodation expenses and per diems. He took the position that, in the calendar year 2012, your primary residence was in the Ottawa area and that, therefore, you ought to have amended your Declaration of Primary and Secondary Residences accordingly.<sup>6</sup> He also concluded that you took a number of trips from the National Capital Region (NRC) to Sherbrooke that were not parliamentary business, which included mileage and per diems, with expenses totalling \$5,529.

#### (2) Travel

In attempting to determine whether certain travel expense claims were incurred for parliamentary business, the Auditor General found conflicting or insufficient information.

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<sup>6</sup> If a senator's primary residence is in the National Capital Region, he or she is not entitled to have his or her living expenses reimbursed. In order to claim reimbursement for living expenses in the National Capital Region, a senator's primary residence must be more than 100 km away: see the *Senator's Travel Policy 2012*, see s. 2.11.

These trips involved you delivering speeches and participating in radio broadcasts on behalf of a victims' rights organization, i.e. l'Association des familles de personnes assassinées ou disparue (AFPAD). The organization was founded and headed by you prior to your appointment to the Senate. The Auditor General was of the view that the expenses for these trips were incurred in order to pursue your own personal interests given that you had been involved in these activities prior to your appointment in the Senate. Given this conclusion on his part, as well as the conflicting information, and the lack of other information available, his report notes that he was unable to determine whether the expenses were for parliamentary business. These expenses totalled \$38,577 and included mainly mileage and accommodation expenses, as well as per diems.

### (3) Other expenses

The Auditor General determined that certain hospitality expenses were not for parliamentary business or were not in accordance with Senate's rules, policies and guidelines. He determined that \$745 in expenses, including postage for mailing copies of your book and taxi expenses, were personal and therefore not eligible for reimbursement under Senate policies.

#### *Special Arbitrator – The Honourable Ian Binnie, C.C., Q.C.*

As noted above, on May 14, 2015, the CIBA appointed a Special Arbitrator to consider the justification for expense claims made on behalf of a number of senators put in question by the A.G. Report and a dispute resolution process was established on May 26, 2015 setting out the *Special Arbitration Rules*.

Mr. Binnie's mandate was to carry out a series of arbitrations in accordance with the *Special Arbitration Rules* approved by the CIBA on May 26, 2015 "to determine whether the Senator in fact received overpayment or made an improper use of Senate resources."

Mr. Binnie's decisions were then provided to the CIBA. The Senate agreed to accept as final the findings of this independent, arms-length arbitration.<sup>7</sup>

In your case, Mr. Binnie made the following determinations:

#### (1) Primary residence

You were resident in the NRC during the calendar year 2012 and you were therefore not entitled to claim \$15,826.05 accommodation expenses and per diems as if you were in Ottawa on travel status.

Though there is nothing in the Senate rules, policies or guidelines that contemplate a counting of the days to establish primary residency, Mr. Binnie found that there was no

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<sup>7</sup> Letter from Chief Financial Officer to the Senate to Senate Ethics Officer, dated November 3, 2016.

reason for your living expenses in Ottawa to be subsidized by the public purse during 2012 when, in fact, that was your primary home for that year.

As such, the expenses for trips from the NCR to Sherbrooke during 2012 totalling \$5,528.95, including mileage and per diems, were not properly reimbursable. These were not trips from Sherbrooke to the NCR but rather trips from the NCR, where you had your primary residence, to Sherbrooke and since there was no evidence that you had any parliamentary business in Sherbrooke, the expenses for any such travel could not be covered by the Senate.

## (2) Travel

Your activities in the area of victims' rights was always a matter of public interest and of important political consequence. The issue of victims' rights was a part of the then Government's agenda and you were an instrumental part of communicating this part of its agenda to francophone Canadians. Championing the cause of victims' rights cannot be characterized as "personal". Rather, this cause has a very public dimension to it, is a matter of public interest, and was a signature policy of the then federal Government. As such, Mr. Binnie held that you were justified in receiving a reimbursement for your expenses in this regard totalling \$38,576.21.

## (3) Other expenses

Certain expenses were incurred during the audit period to offer refreshments to public interest groups or visitors to your Senate office; these totalled \$399.17. They were claimed in accordance with the *Miscellaneous Expenditure Account Guidelines*<sup>8</sup> and, as such, were justified.

Other expenses included postage for mailing copies of your book and taxi expenses. The distribution of a book in the area of victims' rights, for which you drew no profit, was related to Senate business and postage in this regard was a legitimate expense.

Taxis are a reimbursable expense if they are related to Senate business.

The allowable expenses concerning the distribution of your book and taxis was \$725.49. However, one taxi expense was not reimbursable because it related to a personal medical appointment; the cost for this expense was \$20.00.

In conclusion, Mr. Binnie determined that the total balance you owed to the Senate concerning all the above-referred to expenses was \$20,467.33 of the \$61,076 identified in the A.G. Report.

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<sup>8</sup> Revised on April 1, 2012.



## Relevant Provisions of the Code

7.1 (1) A Senator's conduct shall uphold the highest standards of dignity inherent to the position of Senator.

(2) A Senator shall refrain from acting in a way that could reflect adversely on the position of Senator or the institution of the Senate.

7.2 A Senator shall perform his or her parliamentary duties and functions with dignity, honour and integrity.

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.

## Analysis

### (a) Sections 7.1 and 7.2

Sections 7.1 and 7.2 of the *Code* were adopted by the Senate on June 16, 2014. The A.G. Report reviewed the expenses of senators for the period from April 1, 2011 to March 31, 2013. As such, the matters under review took place prior to the adoption of sections 7.1 and 7.2 of the *Code*. Applying these provisions to conduct that predates their enactment would, in these circumstances, be an impermissible retroactive application of the provisions.<sup>9</sup> As such, they are not relevant to this case.

### (b) Section 8

#### *Parliamentary duties and functions*

For the purposes of section 8, I must first determine whether you were acting in the course of your parliamentary duties and functions when you were traveling to attend speaking engagements and other events concerning victims' rights.

Subsection 3(1) of the *Code* defines "parliamentary duties and functions" as follows:

duties and activities related to the position of Senator, wherever performed, and includes public and official business and partisan matters.

I am of the view that when you traveled in the context of events in relation to victims' rights, you were in fact acting in your parliamentary duties and functions. As Mr. Binnie

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<sup>9</sup> See *Merck Frosst Canada & Co. v. Apotex Inc.*, 2011 FCA 329 at para. 53 (and the authorities cited therein).

noted in his report, victims' rights were a part of the then Government's agenda and you were a key part of its communications' strategy, particularly in the province of Quebec. This was not a private matter given the context in which you were involved at that time. Moreover, you no longer held an official position within AFPAD during the audit period since you had resigned as President in 2010 due to your appointment to the Senate.<sup>10</sup> You were championing the same cause, but were not privately associated with the entity after your appointment to the Senate. Senators are entitled to champion causes in the Senate and to further public policy by identifying and pursuing matters of public interest.

*Furthering Private interests*

Under section 8, I must also determine whether you acted or attempted to act in any way to further your own private interests, those of a family member, or to improperly further another person's or entity's private interests.

Subsection 11(1) of the *Code* defines the term "furthering private interests". The relevant portion reads as follows:

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 a reduction in the amount of the person's or entity's liabilities;

....

There is no evidence before me that you furthered a family member's private interests.

With respect to furthering another person's or entity's private interest, the Auditor General was of the view that you travelled and attended speaking engagements and other events concerning victims' rights on behalf of AFPAD. If this was the case, when you filed expense claims and received reimbursement from the Senate for some of these events, you would have been furthering the private interests of AFPAD since you were acting on behalf of AFPAD at no cost to it. However, Mr. Binnie was of the view that you were not acting in a private capacity when you attended events and functions related to victims' rights; rather, you were acting on behalf of the then Government of Canada. I too am of the view that you were in fact acting in a public capacity when you attended these events and functions, as I already noted above. In fact, you no longer held an official position within this organization. You had resigned as President of this organization in 2010 due to your appointment to the Senate and, as such, you no longer

<sup>10</sup> L'Association des familles de personnes assassinées ou disparues, Annual Report, 2009-2010, page 11.

had any formal ties to the organization. Therefore, you were not furthering the private interests of AFPAD within the meaning of paragraphs 11(1)(a) or (b) of the *Code*.

In light of my finding that you were not furthering AFPAD's private interests in attending these events and functions, it is not necessary for me to address the term "improper" in section 8 of the *Code*.

With respect to your own private interests, Mr. Binnie identified \$20,467.33 in Senate expenses which he found, through the arbitration process, that you were not entitled to claim. When you filed these expense claims with the Senate, you did so in your capacity as a senator and you were acting in the course of your parliamentary duties and functions because this activity (filing expense claims with the Senate) forms part of your "duties and activities related to the position of senator". If you were not a senator, you would not be filing expense claims with the Senate.

Under subsection 19.6(1) of the *Parliament of Canada Act*<sup>11</sup>, the Standing Senate Committee on Internal Economy, Budgets and Administration ("CIBA") has exclusive authority to determine whether any previous current or proposed use by a senator of any resources made available to that senator for the carrying out of his or her parliamentary functions is or was proper. Division 2:02, s.14 of the Senate Administrative Rules provides that "subject to the rules, directions and control of the Senate, the Committee has the exclusive authority to interpret...whether any previous, current or proposed use of Senate resources is a proper use for the carrying out of parliamentary functions."

The CIBA accepted Mr. Binnie's findings and required you to reimburse the Senate in that amount. I understand that you have made arrangements with the CIBA to repay the amount in full (\$20,467.33) and are doing so.<sup>12</sup>

These facts raise concerns that you may have furthered your own private interests, within the meaning of paragraphs 11(1)(a) and (b), while acting in the course of your parliamentary duties and functions. As such, I am of the view that there are sufficient reasonable grounds for concern that you may have breached your obligations under section 8 of the *Code* in respect of the expenses you claimed from the Senate during the audit period. Therefore, your situation falls under paragraph 47(11)(c) of the *Code*.

However, and as already noted above, I may make a finding under subsection 47(12)(d) of the *Code* that, though an obligation under the *Code* may have been breached, the situation has been addressed and remedied to my satisfaction. In such a case, I need not proceed to an inquiry into the matter.

I find that this case properly falls within paragraph 47(12)(d) of the *Code* and, therefore, an inquiry into this matter is not warranted.

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<sup>11</sup> *Parliament of Canada Act*, R.S.C. 1985, c. P-1, s. 19.6(1).

<sup>12</sup> *Supra* note 7.

Subsection 47(12) of the *Code* was adopted by the Senate on April 1, 2014. Its purpose is to address a situation in which a matter has already been satisfactorily resolved and remedied. Inquiries are time-consuming and costly and should be avoided in cases where the process is not likely to yield any new evidence in a matter, where sufficient evidence is already available to the Senate Ethics Officer to dispose of the matter, and where the matter has already been remedied. In such a case, an inquiry would be an inefficient use of resources and taxpayers dollars, particularly where significant public resources have already been expended in a particular matter as in the present case.

In the matter of the Senate audit, there had been three different authorities examining your particular circumstances: the Office of the Auditor General, the Special Arbitrator, and the RCMP. The Auditor General's Office identified \$61,076 in Senate expenses, which you claimed, that raised concerns. The Special Arbitrator, Mr. Binnie, concluded that you owed the Senate \$20,467.33 of the \$61,076 identified in the A.G. Report. And the RCMP closed its file in this matter. Mr. Binnie's determinations were accepted by the CIBA and you are currently reimbursing the Senate in the amount identified by Mr. Binnie as the amount you owed to the Senate.

### **Conclusion**

As already outlined above, I am of the view that there are sufficient reasonable grounds for concern that you may have breached your obligations under section 8 of the *Code*. However, I am also of the view that the circumstances under paragraph 47(12)(d) are applicable to the case at hand. In other words, while you may have breached an obligation under the *Code*, the situation has been addressed and remedied to my satisfaction.

As already noted above, subsection 47(12) of the *Code* was adopted by the Senate to address a situation in which a matter has already been addressed and remedied to my satisfaction. This avoids time-consuming and costly inquiries where the process is not likely to yield any new evidence in a matter; where sufficient evidence is already available to the Senate Ethics Officer to dispose of the matter; and where the matter has already been remedied. In such a case, an inquiry would be an inefficient use of resources and taxpayers' dollars, particularly where significant public resources have already been expended in a matter as in the present case.

Based on Mr. Binnie's findings, you were required to reimburse the Senate \$20,467.33 and, as I mentioned above, you have made arrangements with the CIBA to repay the amount in full and are doing so.

For this reason, I am of the view that an inquiry into this matter, under paragraph 48(2)(a), is not warranted. It is, of course, your right to require that an inquiry be held in

any event, pursuant to paragraph 48(2)(b) of the *Code*. Should you wish to exercise this right, you may do so by making a written request to me, pursuant to subsection 48(3), within seven days of the date of this letter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'L Ricard', with a stylized flourish at the end.

Lyse Ricard

c.c. The Honourable Claude Carignan

The Standing Senate Committee on Ethics and Conflict of Interest for Senators