



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

# INQUIRY REPORT CONCERNING SENATOR MARILOU McPHEDRAN

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June 1, 2026

Hon James W O'Reilly  
Senate Ethics Officer

Inquiry Report concerning Senator Marilou McPhedran  
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## I OVERVIEW

For more than twenty years, Senator Marilou McPhedran has worked on issues related to Afghanistan, particularly those affecting women and girls. She closely followed the dramatic events that unfolded in Kabul in 2021 as American troops withdrew and the Taliban took control of the country. She was in frequent contact with people and organizations to help those in danger. She responded passionately to calls from individuals, Afghan officials, the Government of Canada, and Non-Governmental Organizations to help those at risk in Afghanistan.

In September 2022, Senators Scott Tannas and Jane Cordy (now retired) requested my predecessor, Mr Pierre Legault, to conduct an inquiry under the *Ethics and Conflict of Interest Code for Senators* (relevant provisions of the Code are set out in Appendix A), alleging that Senator McPhedran may have breached the Code by knowingly providing “false Canadian government documents to persons seeking passage to Canada from Afghanistan.” The senators relied on an article published in the Globe and Mail newspaper on September 21, 2022, entitled “Canadian senator sent documents to Afghan family that weren’t authentic, Ottawa says.” The article alleged that Senator McPhedran had provided an Afghan family with “inauthentic” documents called “facilitation letters.” The letters stated that the family members had visas to enter Canada; in fact, they had not been formally approved to travel to Canada.

The allegations against Senator McPhedran arose out of the tragic situation in Afghanistan during the summer of 2021. I describe these events in more detail below but, in short, Senator McPhedran was involved in efforts to assist vulnerable people trying to flee Afghanistan after the withdrawal of American troops and the Taliban’s takeover. As part of those efforts, Senator McPhedran distributed the documents in issue here, called “facilitation letters.”

In response to the initial allegations, Senator McPhedran asserted that she never knowingly distributed false, inauthentic, or unauthorized documents to those vulnerable individuals. She contends that she acted in a good faith effort, along with many others – Ministers of the Crown, staff members, government officials, United Nations representations, etc. – to help save the lives of vulnerable Afghans.



In March 2024, my predecessor, Mr Legault, issued a Preliminary Review Letter setting out his initial finding that there were sufficient reasonable grounds for concern that Senator McPhedran had breached the *Code* and, therefore, that an inquiry into the allegations was warranted (ss 47(1)(c), 48(2)(a)). Mr Legault embarked on an inquiry and heard testimony from several witnesses. However, he retired as Senate Ethics Officer on January 9, 2025, with one step remaining in the inquiry process – the final interview of Senator McPhedran, in which she would be given an opportunity to respond to the evidence gathered after she filed her initial response.

After my appointment on January 10, 2025, I began taking steps to conclude the inquiry. I describe those steps below.

Mr Legault’s Preliminary Review Letter summarized the grounds on which he found an inquiry to be warranted. What he described as his most “fundamental” concern was that Senator McPhedran went beyond merely supporting applicants seeking to come to Canada and began to facilitate their travel and possibly even to issue documents that were held out as authorizations to enter Canada on behalf of the Government of Canada. He found that this conduct represented “a distinct departure” from the role of a senator. In his view, there were sufficient reasonable grounds for concern that Senator McPhedran’s role in providing these documents went beyond serving as a “messenger” between the Government of Canada and vulnerable individuals in Afghanistan and that she knowingly distributed false, inauthentic, or unauthorized travel documents. In the alternative, Mr Legault concluded that there were sufficient reasonable grounds for concern that she was aware of the need for further inquiries in the circumstances, that she chose not to make those inquiries, and that this conduct amounted to willful blindness as to whether the documents were false, unauthorized, or inauthentic. For these reasons, he found that further examination of these circumstances was necessary.

There are three issues to be determined on this inquiry:

1. Did Senator McPhedran distribute unauthorized Government of Canada facilitation letters?
2. If so, was the senator aware that she lacked authority to distribute facilitation letters, either through actual knowledge or willful blindness?
3. If so, did the senator’s conduct amount to a breach of sections 7.1 or 7.2 of the *Code*?

On issue one, I have not included the question of whether the documents in issue were false or inauthentic. The senator distributed facilitation letters essentially in the same form as the documents government officials were issuing at the time. They were not fake or counterfeit. The letters did contain false information, but many of the facilitation letters issued by government officials also contained incorrect facts. Many letters were intentionally



misleading – they described the holders as having Canadian citizenship or authorization to enter Canada – a visa – when, in fact, they did not. Therefore, the fact that Senator McPhedran may have distributed documents that contained incorrect or deceptive information does not point to any wrongful conduct on her part. Government officials themselves distributed the same or similar documents knowing they were false.

The real question is whether the Senator was authorized to distribute those documents. I find that she was not.

On issue two, I find that in the circumstances, the senator did not know that she lacked authority to issue those documents; to the contrary, she reasonably believed that she had, at least, implicit permission to do so. Further, in the circumstances, there were few indications suggesting that she ought to have made further inquiries about her authority, or lack thereof. In any case, the senator did not fail to make further inquiries to avoid discovering the truth. The senator neither knew that she lacked authority, nor was she willfully blind.

Therefore, I find that she was unaware that the travel documents she distributed were unauthorized.

On issue three, having found that Senator McPhedran did not knowingly distribute unauthorized documents, I have no basis on which to conclude that her conduct breached the *Code*. Senators must uphold the highest standards of dignity inherent to the position of a senator, refrain from acting in a way that could reflect adversely on the position of senator or the institution of the Senate, and perform their parliamentary duties and functions with dignity, honour, and integrity (ss 7.1, 7.2). While some may characterize Senator McPhedran's actions as ill-considered, I cannot conclude – in the circumstances in which she found herself – that her conduct reflected adversely on the position of a senator or the Senate itself. She did not breach her obligation to perform her parliamentary duties and functions with dignity, honour, and integrity. Her actions were focused entirely on the humanitarian crisis that prevailed in Afghanistan at the time. She was simply swept up in the feverish effort to save as many lives as possible.



## II PROCEDURAL HISTORY

Senators Tannas and Cordy requested that an inquiry be conducted to determine whether Senator McPhedran had complied with her ethical obligations under sections 7.1, 7.2, and 9 of the *Code* (s 47(2)(b)).

My predecessor, Mr Legault, advised Senator McPhedran that he was conducting a preliminary review on October 4, 2022; she delivered her responding submissions in late November 2022.

Mr Legault advised Senator McPhedran on November 24, 2022, that he was suspending his review because an investigation was being conducted by another authority (s 52(1)(a)). Some months later, Mr Legault informed Senator McPhedran that he was resuming his preliminary review because the other authority had decided not to pursue the matter (s 52(3)).

Mr Legault provided Senator McPhedran with his preliminary determination letter on March 20, 2024. He found that there were sufficient reasonable grounds for concern that she may have breached her obligations under sections 7.1 and 7.2 of the *Code* and that he must move to the inquiry stage to determine whether there was any such breach (s 47(11)(c)). He also informed Senator McPhedran that there were no reasonable grounds for concern that she had breached her obligations under section 9.

Mr Legault conducted interviews with ten people. Their names and positions, and the dates of their interviews are included in Appendix B. Mr Legault also sent written interrogatories by letter to Mr Marco Mendicino, the former Minister of Immigration, Refugees and Citizenship Canada, Mr Harjit Sajjan, the former Minister of National Defence, and Mr Marc Garneau, the former Minister of Foreign Affairs. The ministers all provided written responses.

Soon after my appointment in January 2025, I reached out to Senator McPhedran and her counsel, Mr Donald Bayne, to schedule the senator's final interview. Several discussions ensued about the degree of disclosure of evidence that should be provided to Senator McPhedran to ensure that she had a fair opportunity to respond and present her case. I agreed to provide her with a set of questions and references to other evidence to be explored. The Senator asked for more, arguing that she was entitled to see all the evidence gathered to date.

While I recognized that the duty of fairness applies in some measure to the inquiry process, I resisted this request. I was concerned that full disclosure of all the evidence was out of keeping with the privileged and confidential nature of an inquiry under the *Code* (s 48(6), (8)). An inquiry by the Senate Ethics Officer is vested with Parliamentary privilege; it is explicitly a confidential process, with witnesses assured that their evidence will be disclosed only to the extent necessary to carry out the inquiry or to support the reasons in the report, which will be made public.



On the other hand, the proceeding must be fair, and the Senate Ethics Officer is granted a broad discretion to decide what is just. The Senate Ethics Officer must give the senator who is the subject of the inquiry “information concerning relevant facts, access to relevant documentation, such opportunity as the Senate Ethics Officer considers reasonable to make representations, whether in writing or in person, and such opportunity to be present in person, accompanied or alone, at other stages in the process, as the Senate Ethics Officer considers appropriate” (s 48(9)).

In the end, on the basis that this inquiry had a unique procedural history, I decided to provide Senator McPhedran not just relevant transcripts but also a draft inquiry report before asking her to appear for her final interview. I took this approach because I was placed in an unusual situation in which I had to make findings of fact based solely on transcripts – I was not present when the witnesses appeared. In this situation, I felt I might need more input from the senator and her counsel than would normally be necessary in this fact-finding process. I also wanted to ensure that the senator received fair treatment commensurate with the nature of the inquiry. Senator McPhedran and Mr Bayne reviewed the draft report on April 22, 2026. After doing so, Senator McPhedran stated that she had no further evidence to provide and no further submissions to make.

In keeping with the procedures outlined in the *Code*, I have provided a copy of this final report on a confidential basis to Senator McPhedran, to Senator Tannas (as the initiating senator), and to the Standing Committee on Ethics and Conflict of Interest for Senators (ss 48(15), (16), (17)).

For a more detailed overview of the steps in this process, see Appendix B.



### III FACTUAL BACKGROUND

#### 1. The Situation in Afghanistan

The events in Afghanistan during the summer of 2021 were grim and confusing. The efforts of various Canadian groups and individuals, including Senator McPhedran, to protect vulnerable people trying to flee the country were intense and, perhaps understandably, somewhat chaotic. For present purposes, I can provide only a snapshot of those events and efforts.

In February 2020, the United States Government signed an agreement with the Taliban that included the withdrawal of American forces from Afghanistan. As forces withdrew, the Taliban filled the void. To many, the Taliban's rapid advances gave rise to concerns that it would defeat Afghanistan's western-backed military, the Afghan National Security Forces, and seize control of the country.

The Taliban's rise to power posed a threat for many groups at risk, particularly women and girls. Understanding this reality, many sought to flee the country.

In the summer of 2021, the Government of Canada made several resettlement announcements in response to the events in Afghanistan. The overall Canadian response involved several government actors: Global Affairs Canada (GAC), the Department of National Defence (DND), the Canadian Armed Forces (CAF), and Immigration, Refugees and Citizenship Canada (IRCC).

On July 16, 2021, Marco Mendicino, the Minister of Immigration, Refugees and Citizenship, announced a “dedicated refugee stream to provide a safe haven for human rights defenders at risk who are fleeing persecution in their home country.”<sup>1</sup>

On July 23, 2021, Minister Mendicino, Marc Garneau, the Minister of Foreign Affairs and Harjit Sajjan, the Minister of National Defence, jointly announced what was described as “a special program to resettle the Afghans who were integral to Canada's efforts in Afghanistan.”<sup>2</sup>

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<sup>1</sup> Government of Canada, “Minister Mendicino launches a dedicated refugee stream for human rights defenders”, at <https://www.canada.ca/en/immigration-refugees-citizenship/news/2021/07/minister-mendicino-launches-a-dedicated-refugee-stream-for-human-rights-defenders.htm>.

<sup>2</sup> Government of Canada, “Government of Canada offers refuge to Afghans who assisted Canada”, at < <https://www.canada.ca/en/immigration-refugees-citizenship/news/2021/07/government-of-canada-offers-refuge-to-afghans-who-assisted-canada.html>>.



To be referred under these special immigration measures, an applicant had to demonstrate a “significant or enduring relationship with the Government of Canada.” Eligible persons were either locally engaged staff at the embassy, or people who had assisted Canada and were referred by GAC or DND. On August 4, 2021, Canada welcomed the first group of Afghan refugees who had supported the Canadian mission in Afghanistan.<sup>3</sup>

While many government departments were engaged with the evacuation efforts, three took the lead: GAC led on diplomatic efforts and support for its clients; DND provided security and coordinated withdrawal from Afghanistan; and IRCC assessed applicants eligible to travel to Canada.

Many government officials were sending and receiving dozens of emails every day about people needing help. In addition, ministers’ offices were short-staffed after an election was called on August 15, 2021. Nevertheless, officials were trying to ensure that whatever could be done to help deal with the humanitarian crisis was, in fact, being done. Many were responding urgently to calls and emails in real time about life-threatening events taking place eight time zones away. Many worked through night after night, despite experiencing severe sleep deprivation.

Senator McPhedran was one of them. She became heavily involved in these humanitarian efforts beginning in early August 2021. The following is a summary of some of her activities.

On August 3, 2021, Senator McPhedran wrote to Minister Mendicino and Karina Gould, the Minister of International Development, about the airlifting of Afghan allies to safety. Senator McPhedran wrote, “In a nutshell: The Canadian Government should of course support human rights defenders who want to leave but what about those civil society leaders who can't or won't leave?” On August 5, 2021, Maryam Monsef, the Minister of Women and Gender Equality, invited Senator McPhedran to join her for a “closed-door, virtual roundtable” on the situation in Afghanistan. The senator was asked to become directly involved in an unofficial group of ministers and senior officials who were trying to save the lives of Afghan women and girls and others. Senator McPhedran became engaged in a series of conversations, phone calls, email chains, and briefing sessions.

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<sup>3</sup> Government of Canada, “Canada welcomes first Afghan refugees resettled through the special immigration program”, at < <https://www.canada.ca/en/immigration-refugees-citizenship/news/2021/08/canada-welcomes-first-afghan-refugees-resettled-through-the-special-immigration-program.html>>.



Around this time, the Global Network of Women Peacebuilders (GNWP) contacted Senator McPhedran and provided a list of young Afghan women they had identified as vulnerable. The individuals were at risk because of their work to promote peace, educational opportunity, youth empowerment, leadership, advocacy, and democracy.

Senator McPhedran sought to lend her personal support to each applicant by directing people at GNWP to the official process for making applications and sharing the names of the young women leaders with Canadian officials.

Senator McPhedran worked closely with a consultant in her office, Ms Laura Robinson. Ms Robinson had collaborated with Senator McPhedran on the issue of abuse in sports. In that connection, they met with Ms Maud Buccachquo, a member of the board of directors for Safe Sport International. During the meeting, it was mentioned that Afghan women soccer players were in trouble. Ms Buccachquo put Ms Robinson in touch with a contact at the Federation Internationale de Football Association (FIFA).

On August 13, 2021, Canada announced further measures to assist those fleeing Afghanistan, committing itself to resettling 20,000 vulnerable Afghans.<sup>4</sup>

GAC and IRCC were most directly involved. GAC was engaged in assisting consular clients, including Canadian citizens, permanent residents, and their families. IRCC was involved in assisting immigration clients. These immigration clients required a referral. IRCC accepted referrals only from GAC and DND. Referrals came from the responsible Assistant Deputy Minister at GAC and the Lieutenant General at DND.

Later, there were other ways in which IRCC resettled Afghans—such as privately sponsored refugees and a special program for families of interpreters—but at the beginning of the evacuation, the primary focus was on assisting people who had helped Canada.

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<sup>4</sup> Government of Canada, “Canada expands resettlement program to bring more Afghans to safety” at < <https://www.canada.ca/en/immigration-refugees-citizenship/news/2021/08/canada-expands-resettlement-program-to-bring-more-afghans-to-safety.html>>.



## 2. The Email Portal

Applicants to Canada were expected to submit their applications through a Government of Canada email portal: [Canada-afghanistan@international.gc.ca](mailto:Canada-afghanistan@international.gc.ca).

However, Senator McPhedran and Ms Robinson found that the portal was of little use. It appeared to them that there were no actions being taken with respect to the names sent through the portal. While the portal was monitored, applicants' names did not necessarily go to IRCC. Too few staff were available to deal with the accumulation of requests coming in and management of the portal was detracting from the immediate need for action on the ground. Senator McPhedran found that the GAC and IRCC information technology systems ended up crashing, and the data was lost.

## 3. Facilitation Letters

After the withdrawal of American forces from Afghanistan, the Taliban set up checkpoints throughout Kabul. Canada wanted to help people get to the airport to enable their departure, but many of them were blocked and harassed; their safety was at risk. Canada learned that allies were using facilitation letters to get past Taliban checkpoints.

Facilitation letters contained some information about the possessor, for example, stating that they were a Canadian citizen or visa holder, and asked that foreign officials treat the person accordingly. Facilitation letters are a tool used judiciously to help people move with relative safety. The issuance of facilitation letters is not a standard practice; they are typically used in crisis situations. They were used in Afghanistan because of the extraordinary circumstances that prevailed at the time. They were an imperfect tool used to try to save lives, not to bypass the regular processes in place.

The letters were first adopted by GAC for their clients; IRCC followed suit. IRCC used GAC's template because GAC had reported success with it. Further, officials believed that it would be less confusing for persons managing checkpoints if they consistently saw the same letter that they had previously accepted. Accordingly, IRCC issued facilitation letters on GAC's letterhead.

The language used in these facilitation letters was copied from letters issued by allies. They included the word "visa" because it was believed that Taliban members might recognize and understand what that word meant. The letters stated that, because the holders either had Canadian citizenship or visas to enter Canada, they should be allowed to travel to the Kabul airport to board their flights. Evidence on this inquiry established that this statement was often false.



Despite containing the word “visa,” the letters did not grant the holders any status or authority,<sup>5</sup> beyond enabling their travel to the airport for possible transport out of Afghanistan. The letters did not entitle holders to get on a plane, just to get to the airport. When persons holding these facilitation letters got to the airport, their names were checked against a manifest before they were allowed to board. They were told that the letters had a limited use and instructed not to provide them to anyone else. In total, GAC issued about 650 letters. IRCC issued over 1,000.

Some facilitation letters were issued to persons who were indeed entitled to travel to Canada because they had Canadian citizenship, permanent resident status, or a visa, but they were also issued to persons who had no such status. They were issued to many IRCC clients who had not yet been found to be eligible for a visa; for example, some of the persons who were eligible for special treatment because they had assisted Canada received them. This latter group, after being referred to IRCC by DND or GAC, became IRCC clients and had to be screened for eligibility and security. However, due to the urgent circumstances, IRCC assisted people before the screening could be completed by giving them facilitation letters to help them get through checkpoints.

There were three main groups receiving assistance – those who had worked with CAF, those who worked with Canadian NGOs, and those who were particularly vulnerable. The latter category was somewhat flexible, but included LGBTQ activists, women, parliamentarians, and judicial officials, many of them identified by the United Nations High Commission for Refugees.

The value of facilitation letters was temporary; after the Kabul airport closed in September 2021, they were no longer of any use. Still, many individuals used the letters successfully to get past Taliban checkpoints.

Senator McPhedran’s role in distributing facilitation letters is described below under Issue One – Did Senator McPhedran distribute unauthorized Government of Canada facilitation letters?

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<sup>5</sup> A group of Afghan citizens who had been issued facilitation letters brought an application in Federal Court arguing that the Minister of Citizenship and Immigration and the Minister of Foreign Affairs should be compelled to grant them temporary resident permits in Canada. The Court denied their application and concluded that facilitation letters are not “visas” and were not issued under any of the programs for admitting Afghan nationals to Canada: *AB v Canada (Citizenship and Immigration)*, 2025 FC 1973.



## **IV ISSUE ONE – DID SENATOR McPHEDRAN DISTRIBUTE UNAUTHORIZED GOVERNMENT OF CANADA FACILITATION LETTERS?**

### **1. Senator McPhedran's Position**

Senator McPhedran contends that she was authorized to distribute official facilitation letters.

She believes that someone at GAC knowingly provided a template of an actual and official facilitation letter to DND. DND then knowingly provided the GAC document to Senator McPhedran's staff for use by Afghan women. This was all done, says Senator McPhedran, under the supervision of Minister Monsef. Senator McPhedran submits that she and Ms Robinson could not have accessed an official GAC document unless GAC and DND had knowingly and willingly provided it to them.

Senator McPhedran also maintains that no one in government expressed any hesitation or concern about her distribution of these facilitation letters.

Further, in her view, GAC, DND, and Minister Monsef authorized Ms Robinson to forward the GAC document to vulnerable women and explicitly encouraged her to do so. She points out that the GAC facilitation letter template was provided directly to Ms Robinson with instructions to "try it" - ie, to forward the letter to the vulnerable women and girls and see if it worked.

Senator McPhedran also submits that GAC, DND, and Minister Monsef knew or reasonably should have known that the intended recipients of the facilitation letters were neither Canadian citizens nor holders of visas to enter Canada, contrary to what was stated in the letters.

She also maintains that when she received a second, revised facilitation letter—one without any qualification for Canadian citizens—GAC, DND, and Minister Monsef had already authorized the use of facilitation letters generally. She submits that “[j]ust as the senior officials at GAC and [DND], and Minister Monsef, knew that the desperate Afghan women were not Canadian citizens, they knew that none of them had been granted a visa to enter Canada.”

I find that the evidence does not support Senator McPhedran's assertion that she received express authorization from responsible government officials to distribute facilitation letters. The letter template she received reached her through irregular channels from sources who were not authorized to distribute it, or to provide permission to Senator McPhedran to distribute it.



This lack of authorization, however, was unknown to Senator McPhedran. As I will explain under Issue Two, Senator McPhedran reasonably believed that she was authorized to distribute the facilitation letters.

## **2. Senator McPhedran's Involvement in Distributing Facilitation Letters**

Before she became involved in distributing facilitation letters, Senator McPhedran had participated in other efforts to assist people who were fleeing Afghanistan. It is fair to say that she became impatient with the slow pace of those efforts.

During a meeting with staff members in Minister Mendicino's office, Senator McPhedran expressed her frustration that bureaucratic barriers were standing in the way of relieving a humanitarian crisis:

This is an extreme humanitarian crisis and do not talk to me about the fine little details of what happens in other situations. I want you to talk to me about this humanitarian crisis.

Among those with whom Senator McPhedran and Ms Robinson were communicating was Mr George Young, Chief of Staff to Minister Sajjan. Ms Robinson sent the names of vulnerable individuals to Mr Young and he passed them along to officials in DND or CAF. Mr Young did not vet the list because he believed the vetting would be done by others.

Senator McPhedran soon elevated her involvement in helping Afghans flee the country. On August 21, 2021, she wrote a letter on her Senate letterhead that was intended to be provided to vulnerable Afghans to assist with their entry to Kabul Airport. The letter read:

Re: Application for human rights visa to Canada

This is to confirm that \_\_\_\_\_ has made a formal application to CANADA to be recognized as a vulnerable person in accordance with the terms of the special human rights visas announced by the Honourable Marco Mendicino, Minister of Immigration, Refugees and Citizenship, Canada. I have so advised the Canadian authorities and stand ready to provide further support as needed to assist with resettlement in Canada.

...

Please provide all possible assistance and ensure entry to the Kabul airport so that the applicant(s) may proceed to Canadian Armed forces Personnel at the airport, who will facilitate the next steps towards re-settlement.



Senator McPhedran adapted this letter from a similar one that an Australian Member of Parliament used to help women get through Taliban checkpoints.

Soon thereafter, Senator McPhedran had a phone call with Minister Sajjan in which she again expressed her dissatisfaction about the process of evacuating endangered persons from Kabul. She summarized the call as follows:

... there were two things that really came home to me in that call. One was that he was basically asking me to leave him alone. I mean, he was just, like, "Senator, we're doing everything we possibly can, and I know, you know, you're emailing us and, you know, please believe me, we're doing everything we possibly can." And we talked about -- and I was like, "Yes, but Minister, I'm emailing you because everything I've tried to do, my letters were working, we got -- we know we got some women out; we don't know the details but we got some women out with my little Senator's letter and now it's being -- what's going on? What's happening, because we're getting all these mixed messages, and who's directing the soldiers?"

Minister Sajjan said that he spoke to Senator McPhedran and scores of other parliamentarians, advocates, members of the media, and community stakeholders. While he was not able to recall the details of these calls, he says that his message to these persons was consistent: provide the government with any information you have about people in need of help and we will see what we can do. He did not recall Senator McPhedran giving any indication that she was bypassing official policies and procedures in place to evacuate individuals from Afghanistan.

After her call with Minister Sajjan, Senator McPhedran emailed Mr Young:

Mr Young, the next generation of pro-democracy leaders are mostly caught inside still. Wanted to let you know that I've been working with a number of credible international organizations to pull together a list (with cell numbers if possible) that is a "one stop" document for young Afghans we've been supporting and working with. Some have direct connections to Canada, and some are connected to me through my international work. My understanding is that they all have applied through the <canada-afghanistan@international.gc.ca>

May I send you this list - will you try to help?



Mr Young responded that same day:

Please send [the] list.

I wi[ll] try to find out/confirm that the names are in the process of being handled and or completed. That should be happening judging by the information you have provided.

Days later, Senator McPhedran became aware that Canadian soldiers at Kabul Airport were turning away vulnerable individuals because they lacked the required forms. On August 25, 2021, Senator McPhedran wrote to Mr Young, copying Minister Sajjan, Minister Monsef, and Ms Robinson:

Key question: are the letters on my letterhead helpful/effective in identifying soccer players and family members to assist Canadian troops in their triage process?

Canadian forces on the ground still not helping those who show them a letter – why?

George, please be straight with us on this question.

Within an hour, Mr Young responded:

Senator,

I do not know if a letter from a Canadian Senator has any sort of direct impact on what is a multi-national effort. I do know that GAC and IRCC issue documentation for Canada.

I am also not on the ground in whatever the chaos of [Kabul Airport] is at the moments referenced in the emails that I receive from you and many others. I am passing along every piece of information that I receive and am hoping that it has an impact.

Mr Young's reference to the fact that "GAC and IRCC issue documentation for Canada," was meant to emphasize that it was GAC's and IRCC's responsibility to authorize travel to Canada.

A few hours later, Ms Robinson sent an email to Mr Young with the subject line "Request from Ahmadi players and family so CAN Forces will not turn them away." She said:



The Ahmadi's were turned away by Canadians yesterday because they did not have the right "forms". Frozan Lrfan Mashal is going today too, and I believe does not have the correct "forms"-- whatever they are. They are on our Master List. I now have Frozan Lrfan Mashal's name and will add to list.

...

Shabnam has also reached out to Senator McPhedran re: sending something Canadian forces will recognize.

Just over half an hour later, Mr Young responded saying "I have received this [attachment to the email] from a colleague at GAC...try it." The attachment was a short letter. In the top left corner of the document was a line stating: "Subject: FACILITATION LETTER FOR TRAVEL". It bore the Government of Canada's coat of arms, two Government of Canada references, and a GAC seal. The letter stated:

The Canadian Government validates that the names identified below are Canadian citizens and have been granted a VISA to enter Canada. Please allow these persons safe travel to the Hamid Karzai International Airport so that they can board their organized flight.

Mr Young does not recall from whom or when he received this letter. Mr Oz Jungic, who worked in Minister Garneau's office at GAC and was copied on the email, stated firmly that he was not the "colleague at GAC" who provided Mr Young with this document. Indeed, he would not have had access to the template.

Mr Young was not aware of any approval process in GAC to issue these letters. He did not recall being provided with limitations or restrictions on the use of the document when it was sent to him.

Mr Young did not tell anyone that he would be sending this document and, after sending it, he did not recall forwarding it to anybody else. He did not get approval before sending it to Senator McPhedran. Minister Sajjan was not aware that Mr Young had distributed the letter to Senator McPhedran and did not authorize him to do so.<sup>6</sup>

After Ms Robinson received Mr Young's email, Senator McPhedran informed her that it was not a valid document for the soccer players because they were not Canadian citizens.

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<sup>6</sup> See *AB v Canada (Citizenship and Immigration)*, above at footnote 5, at para 35.



Ms Robinson then emailed Mr Young again, pointing out that the document he had sent applied only to Canadian citizens. The subject line of this email was “Wrong form sent”. Ms Robinson wrote:

George: The form is for Canadian citizens. Does not work for those who are waiting. Can you send correct form asap?

I will still have to add names to each individual form, unless it can be done at your end or your colleague’s end.

In response to Ms Robinson’s observation, Mr Young sent a message with no content, just a revised attachment titled “Facilitation Letter Visa.pdf”. In doing so, he dropped the other recipients on the email thread; he sent the attachment only to Ms Robinson.

The revised attachment differed from the original in two material ways: (1) it no longer contained a line stating “Subject: FACILITATION LETTER FOR TRAVEL;” and (2) the words “are Canadian Citizens and” were removed.

Mr Young does not remember the circumstances surrounding this second document he provided. He does not recall who sent it to him. He does not recall modifying the letter himself but concedes that he may have. Nor does he recall why he dropped the names of the previous recipients from the email thread.

Soon after receiving the revised letter, Ms Robinson added the names to the letters and sent them out. Another staff member also distributed the revised letter with names added to it.

### **3. Were the facilitation letters unauthorized?**

#### **(a) The content of the letters**

As mentioned above, the letters distributed by Senator McPhedran and Ms Robinson were essentially the same as those that were issued by GAC and IRCC. In that sense, they were not fake.

In fact, the template provided to Senator McPhedran looked the same as the letter that GAC created and was used by IRCC, except for the absence of names. IRCC may also have created a revised version of the letter similar to the second letter Mr Young sent to Ms Robinson in which the reference to Canadian citizenship was removed.



The facilitation letters used by GAC and IRCC frequently contained false statements: They said that the persons named in them were Canadian citizens or visa holders, but often they were not. The statements were directed at members of the Taliban with the aim of facilitating passage through checkpoints in Kabul. They were not intended to be accurate.

**(b) Distribution of the Letters was not authorized**

**(i) *GAC Facilitation Letters***

Facilitation letters are an administrative tool developed by GAC under its consular affairs mandate. The department's consular manual provides guidance on the issuance of these letters.

For Afghanistan, GAC officials issued these letters to their consular clients – that is, Canadian citizens, permanent residents, and certain immediate family members. The letters were sent directly to these individuals by email with instructions that the letters were for the purpose of facilitating movement through Taliban checkpoints, that they were specifically for them, and that they should not be provided to anyone else. The holders would be met at the airport and subjected to further validation. To receive a GAC facilitation letter, a person would have to be approved for a flight out of Afghanistan to Canada.

The sole purpose of these GAC facilitation letters was to get past Taliban checkpoints.

A core operational group of departmental officials issued facilitation letters. This group did not include anyone from the minister's office. Either the Director General or the Assistant Deputy Minister approved the letters. GAC did not provide a template for a facilitation letter to any third parties, although it did provide a template for IRCC's use. The only difference between the letters used by GAC and the template Senator McPhedran's office received is that the GAC letters always contained names.

During the summer of 2021, Minister Garneau received many emails and letters from Canadians wanting to help Afghans leave Afghanistan, including Senator McPhedran. His standard approach with any email or letter was to ask his political staff to handle these requests and refer them to GAC and IRCC officials. Minister Garneau did not personally, or through his staff (explicitly or implicitly), authorize Senator McPhedran or her office to deliver GAC facilitation letters to any persons or groups in Afghanistan.

Before receiving the facilitation letter from Mr Young, Senator McPhedran was also in touch with Mr Oz Jungic, then a senior policy advisor to Minister Garneau. On August 24, 2021, Mr Jungic emailed Senator McPhedran:



My name is Oz and I am a policy advisor working for Minister Garneau. George Young from Minister Sajjan's office forwarded me the list of young Afghan leaders that you sent to him.

I have forwarded this list to GAC officials - it is good that your contacts have applied to the [Canada-afghanistan@international.gc.ca](mailto:Canada-afghanistan@international.gc.ca) account, as you indicated in your message to George. GAC has a dedicated team of officials monitoring that account 24/7 - they are providing confirmation to IRCC about applicants' service to Canada and IRCC officials determine visa eligibility and share information with the CAF. You have done the right thing by raising it to George's attention.

Thank you for your commitment to supporting those seeking to come to Canada.

Mr Jungic intended to confirm that Senator McPhedran was doing the right thing by providing the names of people she was concerned about to Mr Young. He did not mention facilitation letters.

Senator McPhedran and Mr Jungic spoke by telephone after this email. Mr Jungic characterized the call as merely introductory after the minister had shared his contact information with the senator. He told her that if she provided names, he would pass them along to departmental officials. Mr Jungic also told her that he had been designated by the minister to be her primary contact at GAC in the government's efforts to save the lives of vulnerable Afghans. Again, nothing was said about facilitation letters.

That same summer, a general election was called in Canada. While many political staff at GAC (and other departments) left their roles to work on campaigns, some were part of a "leave-behind staff" who were dealing with the crisis in Afghanistan and advising Minister Garneau. During this time, many individuals were reaching out to the minister's office for help. Mr Jungic was one of the staff members who remained in the minister's office. His role did not extend beyond relaying to GAC officials the names and circumstances of the individuals who were brought to his attention. At the time, GAC had about 200 people working in shifts in a 24-hour cycle: it was "all hands on deck."

Later, in 2022, GAC reviewed its processes around the issuance of facilitation letters and confirmed that its letters had been issued in accordance with their policies. Letters had not been circulated beyond the operational group and the individuals who were receiving them.



Therefore, there is no evidence that authority to issue facilitation letters was delegated outside of GAC. Specifically, GAC would not have asked a senator to distribute facilitation letters, and did not authorize Senator McPhedran to do so.<sup>7</sup>

(ii) *IRCC Facilitation Letters*

IRCC also issued facilitation letters. Recipients were informed of the limited purpose of the letter and told that it was not a visa, despite its wording. The letters were only for IRCC clients. Since not all IRCC clients had been determined to be eligible for a visa, many facilitation letters were issued to persons who had not yet received a visa.

There was also a verification process for IRCC clients. Many people whom GAC and DND referred to IRCC did not ultimately pass eligibility and admissibility criteria. People referred by others, such as journalists, MPs, etc, had to be checked against the list of clients already referred to IRCC by GAC or DND. Military personnel at the airport had a list of IRCC clients. They were not told to look for facilitation letters but, rather, to focus on the client list.

The authority to issue IRCC facilitation letters rested with the Director General of the International Network. In general, the authority to issue a document related to a government immigration program falls to IRCC officials.

Ministerial staff, MPs, and senators would not have had the authority to issue IRCC facilitation letters. In ordinary circumstances, the Canadian government in general, and IRCC, in particular, would not ask a senator to help distribute facilitation letters. Similarly, MPs would not be involved in the process for determining who received facilitation letters.

Like GAC's letters, IRCC's were individualized. IRCC did not issue a template for facilitation letters to anyone. The only difference between the letters that IRCC issued and the template that Senator McPhedran's office received is that the IRCC letters always contained names.

Neither Senator McPhedran nor Ms Robinson had approval from IRCC to issue facilitation letters. Minister Mendicino did not authorize Senator McPhedran or her office either explicitly or implicitly. Political staffers at IRCC would not normally have the authority to give permission to outside parties, including senators and MPs, to use a departmental form such as a facilitation letter.

In early September 2021, Ms Robinson learned that the letters she had sent were void. Once the airport closed, the letters were no longer of much use. For purposes of aiding evacuations, they were essentially moot.

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<sup>7</sup> The Federal Court found that the authority to add names to facilitation letters could not be subdelegated: *AB v Canada (Citizenship and Immigration)*, above at footnote 5, at para 40.



Senator McPhedran and her office reached out to IRCC to discuss the situation of those individuals who had already received facilitation letters, asking if they could receive visas. Senator McPhedran was told that these people were not in the system and had not received facilitation letters from IRCC. Senator McPhedran, to say the least, was disappointed.

Like GAC, IRCC also conducted a review of its protocols and found that no one had authorized the issuance of any letters beyond those that were issued to IRCC clients. The authority to issue facilitation letters was never delegated outside of IRCC.

#### **4. Conclusion on Issue One**

Senator McPhedran lacked authority to issue facilitation letters; the letters she distributed were unauthorized.

Facilitation letters, while used in extraordinary circumstances and for a limited purpose, were still subject to controls. Both GAC and IRCC followed certain protocols for the issuance of these letters. Neither department authorized third parties to issue them. DND, the source of the template used by Senator McPhedran, had no authority to issue facilitation letters or to give permission to others to do so.



## **V ISSUE TWO – WAS SENATOR McPHEDRAN AWARE THAT SHE WAS NOT AUTHORIZED TO DISTRIBUTE FACILITATION LETTERS, EITHER THROUGH ACTUAL KNOWLEDGE OR WILLFUL BLINDNESS?**

### **1. Senator McPhedran’s Position**

The essence of the complaint against Senator McPhedran is that she “knowingly” distributed false, inauthentic, or unauthorized documents, or was willfully blind about it.

Senator McPhedran states that she never knowingly provided false, inauthentic, or unauthorized Government of Canada travel documents. More particularly, she submits that she and Ms Robinson reasonably understood and believed that they had the approval and authorization of GAC, DND, and Minister Monsef to forward facilitation letters with names added.

As discussed above, the fact that the facilitation letters contained false information is immaterial – they were intended in many cases to contain misleading information for the limited purpose of influencing Taliban personnel to let certain individuals pass through checkpoints on their way to the Kabul airport. However, as I concluded above, Senator McPhedran and Ms Robinson lacked the authority to distribute those letters.

The question here is whether Senator McPhedran was aware that she lacked that authority, either because she actually knew that she was acting beyond her authority, or because she was aware of indications that she lacked authority but decided to ignore those indications because she did not want to know the truth. The latter state of awareness is called “willful blindness.” Senator McPhedran’s conduct could be characterized as wrongful or unethical only if she knew she was acting without proper authority or was willfully blind.

Considering the relevant circumstances, I cannot conclude that Senator McPhedran distributed facilitation letters knowing that she lacked the authority to do so. Nor can I find that Senator McPhedran was willfully blind about her lack of authority.

### **2. There is no evidence of knowledge or willful blindness**

There is no evidence of actual knowledge or willful blindness on Senator McPhedran’s part. Indeed, the evidence shows some confusion around the nature and status of the facilitation letters the senator distributed. Those most directly involved were making on-the-spot good-faith efforts to save lives; they were not focusing on the particulars of government policies, procedures, and paperwork.



There is no evidence that anyone explained to Senator McPhedran how facilitation letters were issued or by whom. No one told her expressly that she had permission to issue the letters, but some, namely Mr Young and Minister Monsef, had implied it. Therefore, Senator McPhedran did not know that her distribution of facilitation letters was unauthorized. Nor did the circumstances suggest that she should have made inquiries about the proper procedures surrounding the letters. The situation was urgent; a senior staff member to the Minister of Defence had provided her a tool that might help, and she used it. She was told that the document came from GAC, and it bore GAC's seal. A GAC staff member was copied on the email attaching the original version of the letter. Minister Monsef was also copied on this email. Senator McPhedran had good reason to believe that she could legitimately make it available to persons in need, especially given the exigent circumstances.

There is nothing in the email exchanges with Mr Young that discloses any discussion about the need for proper authorization. Because time was of the essence, when Mr Young said, "try it", that is what Ms Robinson did. She assumed that Mr Young, as Chief of Staff for the Minister of Defence, could provide sufficient authorization. She noted that the first letter referred to Canadian citizens and asked Mr Young to send the correct form. She also questioned whether she should add names to the form or if he or his colleague would do so. Beyond these queries, Ms Robinson did not see a need for further inquiries about the authenticity of the document or whether it was properly authorized. Nor did Senator McPhedran suggest to her that there was a need for further inquiry.

Mr Young does not recall receiving any questions from Senator McPhedran or her office about where this document came from or whether they could use it. For his part, in the exigent circumstances of his communications with the senator, Mr Young did not stop to explain to her how approvals were made in the minister's office. When he sent the second revised template, Mr Young expected Senator McPhedran to use it and send out the letters. By saying "try it", he meant that she should see whether, as a "last-ditch effort"; this would help some people get to the airport in Kabul. Mr Young was not sure who would be receiving a letter from the senator, but he thought the document he sent could be used successfully; it looked official.

In fact, Mr Young could not say that the senator's use of a facilitation letter was a departure from usual procedures because things were evolving every day during that period. He thought it might have been the proper form to use:

The use of 'authority' as a word is still a problem for me, because, as we talked earlier, everyone was trying to do absolutely everything they could to save lives, and this document, as I said, could very well have been one of many that different departments – IRCC and GAC – were using and issuing.



Mr Jungic was not aware of any explicit or implicit authorization being given to Senator McPhedran to issue facilitation letters; however, he believes Mr Young's email message to her could be interpreted that way. Mr Jungic's own email to Senator McPhedran was meant to emphasize the fact that IRCC officials determine visa eligibility, but he did not specifically inform her that she lacked authority to issue documents. After reviewing the email exchange between Mr Young and the senator's office, Mr Jungic noted that the Senator was not informed about who was eligible to receive facilitation letters, that is, citizens, permanent residents, and visa holders, "which [was] a very harsh thing to say in this situation."

Senator McPhedran also had frequent contacts with Minister Monsef and believes that the minister authorized her use of facilitation letters. Minister Monsef participated in the Canadian response and attended briefings, but she did not have an official decision-making role. As the only Afghan national in the House of Commons, Minister Monsef was actively involved in the Canadian government's efforts in Afghanistan. Her own constituency office was getting calls from around the world.

Minister Monsef saw Senator McPhedran as part of the process that involved regular communication with various departments. The people she was trying to help were not family and friends. They were women human rights defenders or role models who would likely be persecuted and killed by the Taliban. Minister Monsef saw Senator McPhedran as working together with the government and as a helpful parliamentarian in a moment of crisis for which there was no blueprint.

Minister Monsef cautioned that the email exchanges around the senator's use of facilitation letters must be interpreted in the circumstances that prevailed at the time:

There wasn't a lot of time. We knew that that safe airway that the Americans had created for these evacuations to happen that that window was closing, and time was of the essence. Remember people were holding onto airplanes and falling to their deaths because they were so desperate to get away so -- and that desperation, here in Canada anyway, was matched by a desire from all of these officials and so many more to try and save lives and so I think that's the context that it's best to understand and read these e-mails.



Minister Monsef was not concerned about the use of the words “try it” by Mr Young. In fact, she believed Mr Young may have been authorized to provide the letter to the Senator. She noted that, in hindsight, it may seem unlikely that a DND official could authorize use of a GAC document, but the circumstances were extraordinary:

Q. Do you see an issue in the chief of staff of the Minister of National Defence telling a senator "try it" when the "it" is a letter from GAC which is not his department?

A. That is a good point three and a half years later to think of that but back then there were a few individuals who were wearing many hats and doing their best to coordinate the response from the government and George was one of those people. So, no, at the time it wasn't odd. Looking back now, okay, I could see the merit of that point.

Minister Monsef does not know who the GAC official was who provided the template to Mr Young. She was also not aware of any further inquiries that were made or concerns raised by Senator McPhedran or her office upon receiving the document. When asked if she approved or authorized, explicitly or implicitly, the sharing of this letter, she explained that it would not have been her approval or authority to provide. On the other hand, Minister Monsef does not recall anyone telling Senator McPhedran not to issue facilitation letters.

In fact, Minister Monsef was aware that Senator McPhedran had distributed the letter template to third parties for their use. She did not have concerns about that, nor did anyone else, as far as she knew. There were no concerns that anyone was trying to go beyond the rules in place or to bypass proper procedures. According to Minister Monsef, there was a clear understanding that these were unprecedented times and that those involved were going to look for solutions that would save lives.

Accordingly, Senator McPhedran's belief that Minister Monsef approved of her actions is not unreasonable.

### **3. Conclusion on Issue Two**

Considering the whole of the evidence, I find on a balance of probabilities that when Senator McPhedran distributed facilitation letters, she was unaware that she was not authorized to do so. In the hectic circumstances surrounding the evacuation of Afghanistan in the summer of 2021, many actors, including Senator McPhedran, were reaching for and trying to use all available means to protect as many endangered individuals as possible.



Senator McPhedran informed herself about the official methods of helping vulnerable people enter Canada, as well as the existence of facilitation letters. She reached out to ministers and senior officials to explore all options. Many of them were aware of her efforts and the measures she was exploring. She was working openly and diligently along with many other like-minded persons and organizations. While she was passionate about her role, her commitment did not lead her to try to bypass official procedures. In fact, Senator McPhedran's activities reinforced official government policies regarding the situation in Afghanistan. Ministers and their political staff likely appreciated her help, especially during an election period when the government's policies and actions in respect of the situation in Afghanistan were under scrutiny by voters.

In my view, Senator McPhedran cannot be faulted for interpreting supportive acquiescence as tacit approval.

She used her own letters, based on a model used by an Australian MP, to assist people in getting to the airport. Increasingly frustrated with delays and what she saw as bureaucratic barriers, she persistently explored other forms of documentation that could be used. No doubt, those at the receiving end of her frequent phone calls and emails tried their best to respond in a way that would meet her demands. In due course, she received a letter template from DND, ostensibly provided by GAC, and was told to "try it." Although she did not receive explicit authority to send out facilitation letters, she had no reason to think that in doing so she was breaching protocols or engaging in any kind of wrongful conduct. She had no reasonable basis for believing that her actions were unauthorized. In general, it was not unusual for a parliamentarian to be involved in supporting a person's efforts to immigrate to Canada. While she was one of the most ardent advocates for those in danger, no one suggested to her that she was stepping beyond her remit as a senator or acting disrespectfully. No one, even those aware of her involvement, discouraged her from pursuing her aim of helping as many people as possible.

In calmer circumstances, with more time and less at stake, Senator McPhedran might have questioned whether it was proper for her, as a sitting senator, to be distributing travel documents under the Canadian coat of arms and a GAC seal. Or, she might have questioned how the letter could have been revised, authorized, and redistributed so quickly. She might have made further inquiries, reaching out to officials at GAC and IRCC and elsewhere before acting. The instruction to "try it" might have seemed to her, in a less extreme situation, insufficient authorization to proceed. But, naturally, in the urgent conditions of late August 2021, the need for further inquiries did not occur to her. And she did not fail to make inquiries because she was avoiding the truth; she was acting as quickly as possible to help address a dire humanitarian emergency.



In view of all the circumstances, I conclude that Senator McPhedran was unaware that she was distributing facilitation letters without proper authority.



## VI ISSUE THREE – DID SENATOR McPHEDRAN’S CONDUCT AMOUNT TO A BREACH OF SECTIONS 7.1 OR 7.2 OF THE CODE?

Senator McPhedran submits that her actions, far from reflecting adversely on the position of senator or the Senate, represent the very highest standards of dignity, honour, and integrity, as required by the *Code*.

Considering my conclusion on Issue Two – that Senator McPhedran was not aware that she was distributing facilitation letters without proper authority – it is not, strictly speaking, necessary to consider Issue Three because she had not acted improperly. I offer just a few brief remarks.

There is no direct evidence on the issue of whether Senator McPhedran’s conduct amounts to a breach of the Code. The first question is whether the senator’s conduct represented a departure from the duty to “uphold the highest standards of dignity inherent to the position of Senator,” or reflected “adversely on the position of Senator or the institution of the Senate” (s 7.1(1), (2)). The second question is whether the senator performed her “parliamentary duties with dignity, honour and integrity” (s 7.2). These open-textured terms – “dignity,” “honour,” “integrity” – do not admit of easy interpretation. Assistance can be found only in dictionary definitions and previous inquiry reports.

For example, in the Inquiry Report relating to Senator Michael L. MacDonald, my predecessor, Mr Legault, cited the *Oxford Dictionary* and concluded that “dignity” means “[t]he state or quality of being worthy of honour or respect.”<sup>8</sup> Senator McPhedran relies on the same definition of “dignity.” She also cites the *Concise Oxford English Dictionary*’s definitions of “honour” – “great respect or esteem” and “a clear sense of what is morally right” – and “integrity” – “the quality of having strong moral principles.”

I see no basis for finding that Senator McPhedran’s conduct could be characterized as contrary to these high standards. Her conduct was worthy of honour and respect, based on what she (and many others) viewed as morally right, based on strong moral principles. Nor did she fail to uphold the highest standards of dignity inherent in the position of senator.

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<sup>8</sup> *Inquiry Report Concerning Senator Michael L. MacDonald* (Office of the Senate Ethics Officer, July 18, 2023), at p 20 (found [here](#)).



Mr Jungic described the efforts of Senator McPhedran and others involved in the attempt to save the lives of those fleeing Afghanistan, as follows:

[T]heir intent was good. They were trying to help people. I think that's fair. Everyone who was there was trying to help as many people as they could within the framework that existed, or at least that's what I was doing.

But he added this caution:

I just want to make the point that I do think the senator had good intent in what she sought to do which was to support vulnerable people. However, I do think that there was a great danger in suggesting to people that they could go to this airport and get through if they had not been properly authorized. [T]here were very chaotic scenes at that airport. There were some threats to those crowds, and I would not advise anyone who shouldn't go there, with the expectation of getting through and getting on a plane, to go there because it was dangerous.

One can look back in hindsight at the various actions taken by Senator McPhedran and others and question whether their conduct was appropriate. But one must also consider the entire context, especially the duress of circumstances brought on by a humanitarian crisis, before reaching any adverse conclusions.

As mentioned, in less urgent circumstances, Senator McPhedran's actions might have raised more concerns. She herself may have paused before distributing government documents without explicit approval from responsible authorities. But her conduct must be considered in the setting in which she was acting, and with due regard for her motives. In that light, her actions did not fall outside the rules of conduct set out in the *Code*.

In my view, therefore, there is no basis for finding that Senator McPhedran breached the *Code*. There are no grounds on which to conclude that, through her distribution of facilitation letters, she behaved without dignity, honour, and integrity. Further, her conduct did not reflect adversely on her position as a senator or on the Senate itself.



## VII CONCLUSION

Senator McPhedran distributed facilitation letters that contained false information but so did government officials. In fact, Canadian officials intended the letters to mislead Taliban members manning checkpoints in Kabul and to persuade them to allow people to get to the airport in Kabul. When viewed in context, Senator McPhedran's role in distributing documents that contained incorrect or deceptive information does not point to any wrongful conduct on her part.

Senator McPhedran was not authorized to distribute those documents, but she was not aware that she lacked that authority. In the circumstances, she reasonably believed that she had, at least, implicit permission to do so. The senator did not know that she lacked authority; nor was she willfully blind.

Accordingly, there is no basis for concluding that the senator's conduct breached the *Code*. While some may view Senator McPhedran's actions as ill-advised, I find, considering the overall circumstances, that she did not breach her obligation to perform her parliamentary duties and functions with dignity, honour, and integrity. Her conduct did not reflect adversely on the position of a senator or the Senate itself. Nor did Senator McPhedran fail to uphold the highest standards of dignity inherent in the position of senator. She passionately pursued a noble cause and, in doing so, succeeded in helping to save lives.



## APPENDIX A - RELEVANT CODE PROVISIONS

### **General Conduct**

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

7.1 (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.

### **Conduct: parliamentary duties and functions**

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

### **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.

### **Mandate**

47(2) The Senate Ethics Officer shall conduct a preliminary review if he or she:

- (a) has reasonable grounds to believe a Senator has not complied with his or her obligations under the *Code*; or
- (b) receives a request to conduct an inquiry from a Senator who has reasonable grounds to believe another Senator has not complied with his or her obligations under the *Code*.

### **Findings regarding reasonable grounds**

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

- (a) that there are no reasonable grounds for concern that the Senator has breached his or her obligations under the *Code*;
- (b) that there are insufficient reasonable grounds for concern that the Senator has breached his or her obligations under the *Code*; or
- (c) that there are sufficient reasonable grounds for concern that the Senator may have breached his or her obligations under the *Code*.



### ***Mandate***

48(2) The Senate Ethics Officer shall conduct an inquiry in either of the following circumstances:

- (a) where the Senate Ethics Officer determines that an inquiry is warranted after conducting the preliminary review; or
- (b) where the Senator who was the subject of a preliminary review requests that the Senate Ethics Officer conduct the inquiry because the Senate Ethics Officer has made a finding that an obligation under the Code may have been breached but he or she has also determined that an inquiry is not warranted.

### ***Confidential and prompt***

48(6) The Senate Ethics Officer shall conduct an inquiry confidentially and as promptly as circumstances permit.

### ***Cooperation: any person***

48(8) Any person participating in the inquiry process is expected to respect its confidential nature and to cooperate with the Senate Ethics Officer.

### ***Fair hearing***

48(9) The Senate Ethics Officer shall give the Senator who is the subject of an inquiry information concerning relevant facts, access to relevant documentation, such opportunity as the Senate Ethics Officer considers reasonable to make representations, whether in writing or in person, and such opportunity to be present in person, accompanied or alone, at other stages in the process, as the Senate Ethics Officer considers appropriate.

### ***Investigation***

52(1) When the matter under review or inquiry by the Senate Ethics Officer or study by the Committee is a matter in respect of which an investigation is being conducted by proper authorities to determine if an offence under an Act of Parliament or of the legislature of a province or territory has been committed, the review, inquiry or study may be suspended by the Senate Ethics Officer or the Committee, as the case may be, if:

- (a) the Senate Ethics Officer or the Committee, as the case may be, believes that the review, inquiry or study could prejudice the investigation of the matter by the proper authorities; or



(b) the proper authorities request, in writing, that the review, inquiry or study be suspended.

***Resumption: Investigation***

52(3) The preliminary review, inquiry or study suspended pursuant to subsection (1) may be resumed at any time by the Senate Ethics Officer or the Committee unless charges have been laid in respect of the matter under review, inquiry or study.



## APPENDIX B – DETAILED PROCESS AND TIMELINE OF EVENTS

Date	Event
October 4, 2022	<p>Senator McPhedran was informed that the Senate Ethics Officer (SEO) was conducting a preliminary review pursuant to paragraph 47(4)(b) of the <i>Code</i>. The SEO provided Senator McPhedran the written requests and informed her that he was satisfied that Senators Tannas and Cordy had met the requirements set out in paragraph 47(2)(b) and subsection 47(3) of the <i>Code</i>, including setting out reasonable grounds to believe that Senator McPhedran had not complied with her obligations under the <i>Code</i>.</p> <p>Senator McPhedran was given 15 days to respond to the SEO's letter concerning Senator Tannas and Senator Cordy's requests for an inquiry in accordance with subsection 47(7) of the <i>Code</i>. The SEO advised her to provide her submissions by October 19, 2022.</p>
October 11, 2022	<p>Senator McPhedran's Director of Parliamentary Affairs, Mr John Anderson, contacted the SEO's office by telephone to seek clarification about the letter to her dated October 4, 2022. The conversation was documented in a letter to her dated October 14, 2022.</p> <p>At that time, Mr Anderson confirmed that he was advising Senator McPhedran in this matter. He relayed that Senator McPhedran was unclear as to whether the SEO expected an acknowledgement of letter and a confirmation of intention to cooperate or whether a more substantive response addressing the specific allegations was required. He also indicated that she was not clear as to whether the SEO expected a written response or whether a telephone call would suffice.</p> <p>Mr Anderson was informed that the SEO expected a more fulsome response in writing and, at that time, the process for the preliminary review was explained to him.</p> <p>He inquired about how extensive the submissions should be at this stage of the process and how much detail should be provided. He was informed that the determination at the preliminary review stage is whether an inquiry into this matter is warranted [s 47(10)]. He was also referred to the other relevant provisions of the <i>Code</i> concerning the potential findings the SEO may make at this stage of the process [s 47(11) and (12)]. He was informed that Senator McPhedran's submissions should be directed at these issues and that she was entitled to provide whatever information she felt was necessary to address them.</p>



Date	Event
	<p>Mr Anderson also asked whether it was possible to grant an extension of time to provide an opportunity to seek and consult counsel and to prepare the submissions. He was advised that, under subsection 47(8) of the <i>Code</i>, the SEO did have the authority to grant an extension of time with respect to these submissions if the circumstances warranted it.</p> <p>Finally, Mr Anderson inquired as to whether counsel could prepare the submissions on the Senator's behalf. He was advised that counsel could certainly do so.</p> <p>Following this conversation, Senator McPhedran requested by email dated October 11, 2022, an extension of time to retain counsel and to provide her submissions.</p>
October 13, 2022	By letter dated October 13, 2022, the SEO granted Senator McPhedran an extension pursuant to subsection 47(8) of the <i>Code</i> until November 14, 2022.
October 26, 2022	By email dated October 26, 2022, Senator McPhedran's counsel, Mr Donald Bayne, requested a further extension of time until December 5, 2022, to provide her response. He explained that he required this extension to obtain further documents that, in his view, were pertinent to the matter and which could not be released until legal advice had been sought and provided.
October 28, 2022	This further request for an extension was granted on October 28, 2022, pursuant to subsection 47(8) of the <i>Code</i> .
November 24, 2022	<p>Senator McPhedran's submissions were delivered on November 24, 2022. The submissions comprised four volumes, spanning nearly 500 pages and including 84 tabs.</p> <p>On November 24, 2022, Senator McPhedran was advised by letter that the SEO would be suspending the preliminary review pursuant to paragraph 52(1)(a) of the <i>Code</i>, which authorizes a suspension where an investigation is being conducted in relation to the same matter by another authority to determine if an offence under an Act of Parliament or of the legislature of a province or territory has been committed. She was also advised that, under subsection 52(3) of the <i>Code</i>, the SEO was authorized to resume the review later, depending upon the circumstances.</p>



Date	Event
April 14, 2023	On April 14, 2023, the SEO advised Senator McPhedran by letter that he was resuming this review, pursuant to subsection 52(3) of the Code. She was informed that the decision to resume the review was based on information received from the other authority on April 13, 2023, that it had decided to no longer pursue this matter at that time.
May 11, 2023	On May 11, 2023, by email, Senator McPhedran provided additional information that she requested be added to and considered with her original submissions. Senator McPhedran was advised by email that same day that this information would be added to her response in this matter.
March 20, 2024	On March 20, 2024, the SEO provided Senator McPhedran with his preliminary determination letter, informing her of the decision that her case properly fell within paragraph 47(11)(c) of the Code. Specifically, the SEO informed her that there were sufficient reasonable grounds for concern that she may have breached her obligations under sections 7.1 and 7.2 of the Code and that he must move to the inquiry stage to determine whether there was, in fact, any such breach. The SEO also informed her that there were no reasonable grounds for concern that she breached her obligations under section 9 of the Code.
May 23, 2024	The SEO interviewed Mr George Young. Mr Young was formerly Chief of Staff to Harjit S. Sajjan, Minister of National Defence.
June 6, 2024	The SEO interviewed Ms Laura Robinson. Ms Robinson was formerly a consultant to Senator McPhedran.
June 10, 2024	The SEO conducted the first interview of Senator McPhedran.
July 10, 2024	The SEO interviewed Ms Julie Sunday. Ms Sunday was formerly the Director General for Emergency Management and Security at Global Affairs Canada (“GAC”).
September 17, 2024	The SEO interviewed Mr Oz Jungic. Mr Jungic was formerly a Senior Policy Advisor to Marc Garneau, the Minister of Foreign Affairs.
September 19, 2024	The SEO interviewed Ms Jennifer MacIntyre. Ms MacIntyre was formerly the Assistant Deputy Minister Afghanistan at Immigration, Refugees and Citizenship Canada (“IRCC”).
October 23, 2024	The SEO interviewed Mr Paul Thoppil. Mr Thoppil was formerly the Assistant Deputy Minister for Asia-Pacific at GAC.



<b>Date</b>	<b>Event</b>
November 19, 2024, November 20, 2024, and November 27, 2024	The SEO sent written interrogatories by letters to Marco Mendicino, the former Minister of IRCC, Harjit Sajjan, the former Minister of National Defence, and Marc Garneau, the former Minister of Foreign Affairs.
November 20, 2024	The SEO interviewed Maryam Monsef, the former Minister of Women and Gender Equality.
December 12, 2024	The SEO interviewed Alanna MacDougall, former Director General, at IRCC.
December 16, 2024	The SEO interviewed Olga Radchenko, former Policy Advisor, Minister's Office, at IRCC.
December 19, 2024	The SEO interviewed Karim Virani, former Senior Director and Former Director General, at IRCC.
December 2, 2024	The SEO received a written response from former Minister Mendicino.
December 16, 2024	The SEO received a written response from former Minister Garneau.
January 13, 2025	The SEO received a written response from Minister Sajjan.



Office of the  
Senate Ethics Officer

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conseiller sénatorial  
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