



March 9, 2017

The Honourable Colin Kenny  
Room 906 – Victoria Building  
The Senate of Canada  
Ottawa, ON K1A 0A4

Dear Senator Kenny:

This letter concerns a written request from Senator James Cowan, under paragraph 47(2)(b) of the *Ethics and Conflict of Interest Code for Senators* (the “Code”), dated June 9, 2015, and a subsequent letter he sent for clarification on June 11, 2015, that I conduct an inquiry in order to determine whether you have not complied with your obligations under sections 7.1, 7.2 and 8 of the *Code*. As you know, Senator Cowan’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.

### **Preliminary Matter**

In a separate letter to you of today’s date, I have informed you of my decision to initiate a preliminary review concerning your use of Senate staff based, in part, on matters raised in the A.G. Report.

Since the time I received Senator Cowan’s letters of June 9 and 11, 2015, further information has come to my attention regarding your use of Senate staff that provides reasonable grounds to believe you have not complied with your obligations under the *Code*. That information is described in my letter initiating a preliminary review about these issues.

Rather than moving forward with two separate reviews of similar conduct (*i.e.*, one in relation to use of Senate staff as raised in the A.G. Report and another in relation to use of Senate staff as raised by the further information that has come to my attention), I have decided to deal with all existing concerns regarding your compliance with the *Code* as it

relates to the use of Senate staff in one proceeding. This will ensure a more efficient use of the resources of the Office of the Senate Ethics Officer (“OSEO”) and will eliminate the potential for you to be required to address substantially similar conduct in multiple OSEO reviews or inquiries.

As such, this preliminary determination decision relates only to Senator Cowan’s allegations of non-compliance related to your Senate travel expenses as raised in the A.G. Report.

### **Timeline of Relevant Events**

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 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 Cowan’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 June 29, 2015, I granted your request for an extension of time, under subsection 47(8) of the *Code*, to respond to the allegations due to personal circumstances that prevented you from meeting the 15 day time frame through no fault of your own. You provided me with your submissions, through your counsel, on July 17, 2015.

On June 29, 2015, you also 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

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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>).

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 March 21, 2016, the report of the Honourable Ian Binnie was published, including the results of his assessment of your particular circumstances.<sup>2</sup>

On August 30, 2016, I was advised by the RCMP in writing that it had completed its review of the A.G. Report concerning your circumstances and that its investigation in this regard was concluded with no further action.

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.

### **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:

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<sup>2</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>).

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 letters of June 9, 2015 and June 11, 2015, Senator Cowan alleged that you may not have complied with your obligations under sections 7.1, 7.2 and 8 of the *Code*. Senator Cowan'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. He wrote that, the observations in the A.G. Report provide the "reasonable grounds" for the belief described in subsection 47(3). This provision reads:

47.(3) A request for an inquiry under paragraph (2)(b) shall be in writing and shall be signed by the initiating Senator, and it shall identify the alleged non-compliance and *the reasonable grounds for the belief that the Code has not been complied with.* [Emphasis added]

## Your Submissions

As already noted above, on July 17, 2015, your counsel provided me with your written response to the above-noted allegations. In your submissions, you argued that I was not authorized to conduct a preliminary review of the matter for the following three reasons.

- (a) The *Code* does not give me the authority to conduct such a review because
  - (ii) In his letters of June 9 and 11, 2015, Senator Cowan did not state that he believes that you had not complied with your obligations under the *Code*; and
  - (ii) no person has stated that he or she believes that you have not complied with your obligations under the *Code*. In this regard, you note that the Auditor General merely came to the conclusion that he was unable to determine whether your expenses were incurred primarily for parliamentary business with due regard for use of public funds.
- (b) Even if Senator Cowan had stated that he had such a belief, the A.G.'s Report cannot reasonably support such a belief because, you argue, neither you nor I have been provided with any documentary or evidentiary basis for the conclusion that the Auditor General reached as to his inability to determine whether improprieties had occurred. Consequently, it would be unfair to ask you to respond to assertions which rest on undisclosed foundations.
- (c) You were involved in an arbitration before Mr. Binnie, which was intended to determine whether the expenses referred to by the Auditor General were appropriate while at the same time these same issues had been referred to the RCMP for investigation. You noted that, in a letter from Mr. Binnie to you dated July 3, 2015, he wrote that where there are parallel civil and criminal proceedings, the criminal proceedings take precedence. As such, you argued that Mr. Binnie was of the view that it would be unfair to require you to proceed before a hearing to determine such issues when a criminal investigation into the same issues was proceeding. You also argued that it would be equally unfair to require you to proceed before an inquiry into these issues before me at the same time.

The third submission you made concerning contemporaneous proceedings is now moot. The RCMP has completed its review of the A.G. Report as it relates to you and concluded its investigation with no further action. Mr. Binnie has also concluded his arbitration proceedings concerning Senate expenses. As such, I only address your first and second submissions regarding my authority below.

## Background

### *Auditor General Report*

As already noted above, the A.G. Report was published on June 4, 2015. In relation to your circumstances, the Auditor General was of the view that you incurred travel expenses of at least \$35,549 for which he had insufficient or conflicting documentation to determine whether the trips were primarily for parliamentary business.

Several of these trips, according to the Auditor General, included single, short meetings pertaining to parliamentary business, but began with or were followed by personal activities.

*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>3</sup>

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

#### (1) Challenged trips from Ottawa to Vancouver/Victoria during the audit period

During the audit period, you made numerous trips to Vancouver/Victoria and were reimbursed \$85,522.10. Of this amount, only the sum of \$24,965.55 was put in issue by the Auditor General and became an issue in the Special Arbitration Process.

Mr. Binnie noted that your frequent trips to Vancouver/Victoria during the audit period must be viewed in terms of a cumulative travel history rather than isolated, individual trips. This is because the applicable *Senator's Travel Policy* (2012) required senators to have "due regard with the need, frequency, cost and purpose" as it related to a senator's parliamentary functions. Mr. Binnie wrote that the requirement to consider frequency necessitates an overall approach rather than an individual trip analysis. He was of the view that 16 trips to Vancouver/Victoria in the two-year audit period for repeated visits to a relatively small group of people at a cost to the taxpayer of \$85,522.10 was out of proportion to your parliamentary functions, especially when you were not a member of any of the Senate committees or working groups during the audit period but were essentially free-lancing your own public policy agenda.

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

## (2) Challenged trips from Ottawa to Toronto

Again, with respect to your trips to Toronto (whether or not in connection with a trip to Vancouver/Victoria), Mr. Binnie was concerned with frequency, overall proportionality, and the fact that in his view, in some cases, the primary purpose of the trip was personal in nature. The challenged trips to Toronto were viewed by Mr. Binnie in the context of the many unchallenged trips to Toronto where you had been fully reimbursed and where there was no challenge by the Auditor General. These unchallenged trips were in the amount of \$29,213.07. The amount at issue in the Special Arbitration Process was \$8,070.82.

## (3) Challenged Trip to Montreal

The expense claim that was at issue in the Special Arbitration Process concerned a personal trip you took to New Hampshire, Vermont and Quebec. The amount at issue was \$756.58. On your drive back to Ottawa, you arranged some Senate business in Montreal. Mr. Binnie found that you were entitled to the expenses associated with the Senate business incidental to your personal itinerary, *i.e.*, the cost of the hotel in Montreal and associated one day allowance for meals and incidentals.

In conclusion, Mr. Binnie determined that the total balance you owed to the Senate concerning all the above-referred to expenses was \$27,458.77 of the \$35,549 identified in the A.G. Report.

## **Authority to Conduct a Review**

With respect to your submission that the *Code* did not authorize me to conduct a preliminary review of the matter, I would note that, in his complaint letter dated June 11, 2015, Senator Cowan specifically referred to paragraph 47(2)(b) and subsection 47(3) of the *Code*, the latter of which sets out the proper test for proceeding with a complaint, *i.e.* reasonable grounds to believe that the *Code* has not been complied with. This makes clear what he intended when he filed his complaint with my office.

Moreover, and as I explained in my letter to your counsel, dated November 17, 2015, though it is true that, in his letter to me, Senator Cowan did not track the identical language used in subsections 47(2)(b) and 47(3), my view is that this was merely a technical deficiency in the form of the complaint. In such a case, I am of the view that I have an obligation to proceed if there are in fact reasonable grounds to believe that you did not comply with your obligations under the *Code*. It is clear that this was the intent of the Senate since it also saw fit to also adopt paragraph 47(2)(a). This provision provides that if I have reasonable grounds to believe that a senator has not complied with his or her obligations under the *Code*, I am required to self-initiate a preliminary review of the matter in order to determine whether an inquiry is warranted. This provision is mandatory, not permissive.

In other words, a technically deficient complaint will not stop a preliminary review into the matter if I have reasonable grounds to believe that a senator did not comply with his or her obligations under the *Code*. In such circumstances, I still have an obligation to proceed. In this case, I am of the view that the A.G. Report did establish such reasonable grounds. As explained to you in my letter of November 17, 2015, I am of this view for two reasons.

First, subsection 47(9) of the *Code* provides some indication as to the Senate's intent as to what may form the basis of "reasonable grounds to believe" in order to initiate a preliminary review of a matter. This provision reads as follows:

47.(9) Reasonable grounds to believe a Senator has not complied with his or her obligations under the Code *may be based on an unsubstantiated oral or written statement for the purpose of initiating a preliminary review*, but such a statement is not adequate proof of an alleged fact for the purpose of making a finding in a preliminary review. [Emphasis added]

Moreover, the jurisprudence on the meaning of this phrase is clear. The standard of proof required to establish "reasonable grounds" is more than a suspicion but less than the civil test of a balance of probabilities. It is a *bona fide* belief in a serious possibility based on credible evidence.<sup>4</sup> In my view, the information in the A.G.'s Report concerning your circumstances raises more than a suspicion that you did not comply with certain obligations under the *Code*, namely your obligations under section 8. Moreover, the Auditor General's Report is, in my view, credible evidence.

The Auditor General of Canada, an agent of Parliament, was mandated by the Senate to determine whether senators' expenses were incurred primarily for parliamentary business and with due regard for the use of public funds. However, he was unable to make this determination with respect to you due to the fact that the information you provided to his office was either inconsistent with other information provided to his office or was insufficient.

For example, the Auditor General reports discrepancies between your electronic calendar and your printed calendar for the audit period. And though you argued that these discrepancies were not significant, the Auditor General thought otherwise based on what he wrote in his report.

The above referred to inconsistencies and conflicting information raise questions under section 8 of the *Code*. Under this provision, senators are prohibited from furthering their own private interests when they are acting in the course of their parliamentary duties and functions. In other words, if a senator uses public funds for private gain, this could be caught by section 8, depending upon the circumstances. As already noted above, the Auditor General was unable, in your case, to conclude that you used public funds primarily for parliamentary business. He found that you incurred travel expenses in the amount of at

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<sup>4</sup> *Chiau v. Canada (Minister of Citizenship and Immigration)*, [1998] 2 F.C. 642 (T.D.); *Sabour v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No.1615; *Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100, citing *Chiau* and *Sabour* with approval.



least \$35,549 for which he had insufficient or conflicting documentation to determine whether the trips were primarily for parliamentary business.

Moreover, section 4 (which was adopted and came into force in 2004) of Chapter 3:01 Allocation and Use of Senate Resources in the *Senate Administrative Rules*<sup>5</sup> provides that each person or body of persons who uses the Senate resources is responsible to account for that use. I also note that the version of the *Senators' Handbook on the Use of Senate Resources* (September 2012)<sup>6</sup> which was applicable to senators during the period that was audited by the Auditor General provides, at page 6, that senators should retain records relating to the use of Senate resources, particularly those related to expenditures, in order to ensure sound management practices. The *Senators' Handbook* goes on to provide that senators should ensure that such records, and especially any supporting documentation or information not provided to the Administration, clearly document that the expenses in question were incurred for parliamentary functions and were used in accordance with Senate policy. It provides that such records should be kept for seven years. The obligation to keep such records is reiterated at page 13 of the *Senators' Handbook* concerning travel and related expenses and again at page 23 concerning hospitality expenses. A failure to comply with this policy by failing to keep proper records also raises questions under section 8 of the *Code*.

In using Senate resources, senators are required to maintain, and be seen to maintain, a clear distinction between the performance of their parliamentary duties and functions on the one hand, and other responsibilities they may hold, such as business interests and personal relationships, on the other. This obligation to maintain a clear distinction between one's public duties and one's private interests is reflected in the principles set out under the *Code*, in particular in paragraph 2(2)(c), which provides that senators are expected to arrange their private affairs so that foreseeable real or apparent conflicts may be prevented from arising. Complying with this principle is also helpful in preventing breaches of section 8 of the *Code*.

The A.G.'s Report provides that several of your trips included single, short meetings pertaining to your parliamentary duties and functions, but began with or were followed by personal activities. You, on the other hand, argued that the Auditor General invalidated entire trips due to one personal appointment. The *Senators' Handbook* provides, at page 13: "Because of the wide range of senators' activities and interests, it is crucial to distinguish between travel and associated expenses that relate to parliamentary functions and those that are for other, non-parliamentary purposes." There are legitimate questions concerning the extent of the personal activities in which you were engaged during travel in the context of your parliamentary duties and functions, which, again, relate to section 8 of the *Code*.

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<sup>5</sup> *Senate Administrative Rules* (2004-05-06), Division 3:00 Senate Resources, Chapter 3:01, Allocation and Use of Senate Resources, section 4.

<sup>6</sup> *Senators' Handbook on the Use of Senate Resources* (September 2012) published by the CIBA.

In the end, the A.G. Report stated you incurred travel expenses of at least \$35,549 for which the Auditor General had insufficient or conflicting documentation to determine whether the trips were primarily for parliamentary business.

The Auditor General deemed his audit findings concerning your expenses and use of resources serious enough to recommend that this particular case be sent to the RCMP, which the Senate saw fit to do. I acknowledge the fact that the RCMP recently discontinued its investigation.

Your counsel writes, in his letter of July 17, 2015: “The Auditor General himself cannot conclude that Senator Kenny has acted improperly – how can anyone else reach such a conclusion on the basis of what the Auditor General has written in his report?” A preliminary review under the *Code* is not intended to conclude that you have acted improperly”. My decision to conduct a preliminary review did not mean that I had found that you breached your obligations under the *Code*. It simply meant that I believed there was sufficiently credible information at that stage which raised serious questions about your compliance with the *Code*. In other words, the only purpose of a preliminary review is to determine whether an inquiry into the matter is warranted in order to determine whether a senator has or has not breached his or her obligations under the *Code*. It is not intended to result in findings on the merits of the case.

In his letter of July 17, 2015, your counsel also writes that the Auditor General has not provided the basis for his report. He argues that the Auditor General did not identify what information was conflicting or insufficient. However, in your response to the report, at page 48, you stated that you were in fact provided with a document that briefly listed the Auditor General’s concerns for the travel claims in question. You described this document as “useful”, albeit you were of the view that it was provided to you too late in the process. You say that, had it been given to you earlier, you would have been able to better defend your expenses. This suggests that the Auditor General did provide a basis for his report in respect of his concerns about your travel claims.

In light of all of the above, the Auditor General’s report provided enough credible information to proceed with a preliminary review into this matter in order to determine whether an inquiry was or was not warranted.

Further, in March 2016, when Mr. Binnie’s report in the Special Arbitration Process was published, Mr. Binnie concluded that you owed the Senate \$27,458.77 in ineligible travel expenses of the \$35,549 identified in the A.G. Report.

### 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>7</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 filed your expense claims with the Senate during the audit period.

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. [Emphasis added]*

I am of the view that when you file expense claims with the Senate, you are doing so in your capacity as a senator and you are acting in the course of your parliamentary duties and functions because these activities form part of your "duties and activities related to the

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<sup>7</sup> See *Merck Frosst Canada & Co. v. Apotex Inc.*, 2011 FCA 329 at para. 53 (and the authorities cited therein).

position of Senator”. If you were not a senator, you would not be filing expense claims with the Senate.

*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, or that you improperly furthered another person’s or entity’s private interests.

With respect to furthering your own private interest, based on the facts I have before me, you claimed \$27,458.77 from the Senate in expenses, which Mr. Binnie, through the arbitration process, found you were not entitled to claim.

Under subsection 19.6(1) of the *Parliament of Canada Act*<sup>8</sup>, the 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 repaid this amount (\$27,458.77) by April 19, 2016.<sup>9</sup>

<sup>8</sup> *Parliament of Canada Act*, R.S.C. 1985, c. P-1, s. 19.6(1).

<sup>9</sup> *Supra* note 3.

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 paragraph 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.

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 addressed and remedied to my satisfaction. 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 matter as in the present case.

In the matter of the audit of your travel expenses, there have 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 concluded that you claimed \$35,549 in travel expenses, the eligibility of which the Auditor General could not determine. The Special Arbitrator, Mr. Binnie, concluded that you owed the Senate \$27,458.77 of the \$35,549 identified in the A.G. Report. And the RCMP eventually closed its file in this matter. Mr. Binnie's determinations were accepted by the CIBA and you have reimbursed 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 \$27,458.77 and I understand that you did so by April 19, 2016.

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 'Lyse Ricard', with a stylized flourish at the end.

Lyse Ricard

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