



OFFICE OF THE SENATE ETHICS OFFICER

*Annual
Report*

2005
2006



Annual Report of the Senate Ethics Officer 2005-2006

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June 20, 2006

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

Dear Mr. Speaker:

It is my honour and pleasure to submit to you the first Annual Report of the Senate Ethics Officer, pursuant to section 20.7 of the *Parliament of Canada Act*, R.S.C. 1985, c. P-1, as am. by S.C. 2004, c.7. It covers the period from April 1, 2005 to March 31, 2006.

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

Yours sincerely,

Jean T. Fournier
Senate Ethics Officer



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Senate Ethics Officer's Remarks

It is an honour and a privilege to serve as the first Senate Ethics Officer and I wish to express my appreciation to the Senate for providing me with the opportunity to do so.

This has been an interesting and productive year and I am confident that the new process that has been established for dealing with conflicts of interest in the Senate is a positive step forward. It is an important step given that, in Canada, we are witnessing a growing mistrust and lack of faith in our political, parliamentary and governmental institutions. Never before have ethics and governance been at the fore in this country as they are today. Canadians are demanding change and improvement in this area and, fortunately, we are seeing a response to this demand. Addressing this call for change is critical – It is fundamental to the proper functioning of democracy that the citizens of a country have confidence in, and respect for, their institutions of government.



The first year of the establishment of a new organization is always the most challenging. I was fortunate to be supported by capable and competent staff members. There are four, each with a specialized skill set: the Executive Assistant, Mrs. Louise Dalphy; the Assistant Senate Ethics Officer and legal counsel to the office, Ms. Deborah Palumbo; the Director, Mr. Willard Dionne; and the Chief Advisor, Mr. Jacques Lalonde. I would like to take this opportunity to express my sincere appreciation for their hard work, professionalism and dedication. They have been of invaluable assistance to me in carrying out my responsibilities. With their commitment and cooperation, we have been able to meet all of our objectives for this year, on time and under budget.

“No aspect of responsible government is more fundamental than having the trust of its citizens.”

*The Right Honourable
Stephen Harper, Prime Minister of
Canada, 2006*

I would also like to thank the Clerk of the Senate, Mr. Paul Bélisle, and the staff of the Senate Administration for providing my office with the necessary support services, namely, security services, financial services, administrative services, information technology, and human resource services, for this year on a



cost-recovery basis, as a result of an agreement signed between myself and the Senate. Finally, I would also like to express my appreciation to the Parliamentary Precinct Services Sector of the Senate, as well as the Department of Public Works and Government Services Canada, for their cooperation and assistance this year.

My primary responsibility is to administer and interpret the *Conflict of Interest Code for Senators*, adopted by the Senate on May 18, 2005. In doing so, my approach has been to focus on preventing conflicts of interest. I view the Code as an opportunity to work with senators to arrange their private affairs so that conflicts of interest are avoided and, to this end, I have made myself available to senators for advice and guidance throughout the year. When a senator recognizes that there may be some doubt about how to proceed in a given situation, he or she is encouraged to discuss it with me with a view to obtaining confidential advice regarding the conflict of interest rules and how they would apply to those particular circumstances. I then recommend a course of action that will bring the senator in compliance with the rules.

My approach is proactive, not reactive, and my focus is, not only on actual conflicts of interest, but also apparent conflicts of interest. While a literal interpretation of the conflict of interest rules is important, I view the spirit of the rules as being of equal importance. The spirit of the Code is contained in the principles of the Code and it is these principles that guide the interpretation of the rules. They include the notion that senators must “fulfil their public duties while upholding the highest standards so as to avoid conflicts of interest and maintain and enhance public confidence and trust in the integrity of each Senator and in the Senate”.

Yet the principles also recognize the need for senators to remain members of their communities and regions and to continue their activities in these communities and regions – this is part of their role as members of the Senate. A careful balance is required to ensure that senators are able to continue to make a positive contribution to the country while ensuring that the public interest prevails over private interests where the two come into conflict.

“Hopefully, working together, we can position the Senate as a leading ethical organization, both in Canada and internationally, where we are considered to be a “chef de file”, a world leader, in promoting sound values and ethics in government.”

Jean T. Fournier, Appearance before the Senate in Committee of the Whole, Debates of the Senate, “February 24, 2005



This past year, I have been pleased to find that senators have readily availed themselves of the opportunity to seek my advice, guidance and recommendations in order to ensure that they stay in compliance with the requirements of the Code. I appreciate the confidence senators have demonstrated in the work and independence of my office. This relationship is invaluable to me in ensuring that I am able to successfully fulfill my mandate.

The Third Report of the Standing Senate Committee on Rules, Procedures and the Rights of Parliament, which included the *Conflict of Interest Code for Senators* as an Appendix to the Report, refers to the Senate conflict of interest regime as a ‘work in progress’.¹ Indeed, there will be opportunities for looking back on our experience and making adjustments and improvements, where necessary. The *Conflict of Interest Code for Senators* requires a comprehensive review of the provisions of the Code and its operation within three years after the coming into force of the Code and every five years after that. In my view, this first year has already resulted in significant achievements and I believe that the Senate public disclosure process will prove to be beneficial in increasing transparency and accountability in the Senate and, thereby, enhancing public confidence and trust in the Senate and its work.

“Probity is the virtue of democracies, because the people look first at the hands of those who govern.”

Lamartine

I view this first annual report as more than a report on the activities of my office for this year. I view it as an opportunity to explain and clarify my mandate as Senate Ethics Officer and the manner in which I fulfill that mandate. I also see it as an opportunity to share some of the challenges the office faced in its first year. Finally, I believe it is a way of highlighting some issues that require further thought and discussion, especially in light of the increasing expectations on the part of the public

regarding ethics and governance, with the hope of engaging Canadians who may be interested in this area as we look to the future.²

¹ This report was tabled in the Senate on May 11, 2005.

² It should be noted that, as we prepare this Annual Report, Parliament is considering and debating the merits of Bill C-2, the *Federal Accountability Act*. One of the proposals in the bill is to merge the positions of the two existing ethics officers, i.e., the Senate Ethics Officer and the Ethics Commissioner into one office holder, with the responsibility of administering three sets of rules on conflict of interest: (1) those that presently apply to senators; (2) those that presently apply to members of the House of Commons; and (3) those that would apply to public office holders, which would be codified into law. Irrespective of the outcome of Bill C-2 in making its way through the legislative process, I believe this first Annual Report will be a useful tool for understanding the work of this office and the current system of conflict of interest in the Senate.



1. Background

Prior to the enactment of Bill C-4, *An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence* (which received Royal Assent on March 31, 2004), and the adoption of the *Conflict of Interest Code for Senators* (May 18, 2005), senators were subject to (1) the rules contained in certain provisions of law governing the conduct of senators, (2) a number of conflict of interest rules in the Senate's rules of procedure, and (3) administrative rules relating to the use of Senate resources. Most of these rules and laws are still in effect. Senators were able to obtain advice regarding the application and interpretation of these rules from the Senate Law Clerk and Parliamentary Counsel on a solicitor-client basis. This was also the case in other jurisdictions in Canada prior to the enactment of their own conflict of interest legislation.

Sections 14 and 15 of the *Parliament of Canada Act*, repealed in 2005, dealt with government contracts. Section 14 provided that senators could not, either directly or indirectly, knowingly and willfully be a party to, or concerned in, any contract under which the public money of Canada was to be paid. However, a senator could not be held liable by reason only that he or she was a shareholder in a corporation that had a contract with the federal government, unless the contract involved the building of a public work.

Another exception was where the senator was a contractor for the loan of money or of securities for the payment of money to the federal government under the authority of Parliament after public competition. Finally, there was an exception provided for a senator who was or had been a contractor regarding the purchase or payment of the public stock or debentures of Canada, on terms applicable to all persons. Section 15 provided a limitation period in which to institute proceedings under section 14. These contracting provisions were repealed by Bill C-4 and are no longer in effect since the issue of government contracts is now dealt with under the new rules.

Section 16 of the *Parliament of Canada Act* was also applicable to senators prior to the enactment of Bill C-4 and is still currently in effect. It prohibits senators from receiving outside compensation, whether directly or indirectly, for services rendered

“If it’s legal, it’s ethical, is a frequently heard slogan. But conduct that is lawful may be highly problematic from an ethical point of view.”

Lynn Sharp Paine, 2003



or to be rendered to any person, either by the senator or another person, in relation to any matter before the Senate or the House of Commons or any of their committees; or for the purpose of influencing or attempting to influence any member of either House.

Sections 119, 121 and 122 of the *Criminal Code* were, and still are, applicable to senators in light of the Supreme Court of Canada's interpretation of these provisions. Section 119 deals with offences related to bribery. Section 121 concerns frauds on the government and is aimed in part at influence peddling. Section 122 creates offences relating to fraud and breach of trust.

The *Rules of the Senate* also contain conflict of interest rules. Subsection (4) of Rule 65 provides that a senator may not vote on any question in which he or she has a pecuniary interest not available to the general public. Subsection (1) of rule 94 provides that a senator who has a pecuniary interest not held in common with the general public in a matter that is referred to a committee is not permitted to sit on that committee. These Rules are still in effect today.

Finally, some of the rules in the *Senate Administrative Rules*, which were adopted by the Senate and came into force on May 6, 2004, relate to the proper allocation and use of Senate resources. Subsection 1(1) and section 6 of Chapter 3:01 of these Rules provide that Senate resources must only be used for parliamentary functions and for the service of the Senate.

As noted above, most of these rules and laws are still in force and senators are expected to comply with them in addition to the rules that have been brought into effect as a result of Bill C-4.

With the adoption of Bill C-4, a number of new sections were added to the *Parliament of Canada Act*. These established the position of Senate Ethics Officer, an Officer charged with the sole responsibility of administering and applying a standard set of conflict of interest rules to senators – something which had not previously existed in the Senate. These new rules are contained in the *Conflict of Interest Code for Senators*. The provisions referred to above in the *Criminal Code*, the *Rules of the Senate* and the *Senate Administrative Rules*, and section 16 of the *Parliament of Canada Act*, do not come within the purview of the Senate Ethics Office.

There are many features of Bill C-4 that clearly demonstrate the importance Parliament attaches to the independence and autonomy of the Senate Ethics Officer.



Section 20.1 of the *Parliament of Canada Act* provides for the method of appointment of the Senate Ethics Officer. It requires that the Governor in Council appoint the Officer after consultation with the leader of every recognized party in the Senate and after approval of the appointment by resolution of the Senate. This is to ensure that the appointment has the broadest support of the Senate irrespective of party affiliation. Pursuant to subsection 20.2(1), the incumbent is appointed for a term of seven years as an Officer of the Senate and he or she may be removed from office, only for cause, by the Governor in Council, on address of the Senate. These provisions confer on the Officer a status of independence and autonomy and they provide an effective shield against improper or inappropriate influence.

Other important features of Bill C-4 include the following:

- The Senate Ethics Officer has the rank of a deputy head of a department of the Government of Canada and has the control and management of the office, which is run independently from the Senate and the Standing Senate Committee on Internal Economy, Budgets and Administration. The Officer hires his or her own staff. These measures are aimed at ensuring the Officer is independent.
- The Officer is responsible for preparing the estimate of the sums required to pay the charges and expenses of the office. This estimate is separate from the estimates of the Senate. The Speaker of the Senate, after considering the estimate, transmits it to the President of the Treasury Board who lays it before the House of Commons with the estimates of the government for the fiscal year. The Senate reviews the Officer's proposed budget as part of the annual review of the Main Estimates. Again, this procedure testifies to the independence of the Officer by placing the responsibility for the estimates solely on the Officer, and it

“When they put the ethics commissioners into place in Ontario [1988] and British Columbia [1990], the number of stories [related to ethics scandals] dropped because the elected members had good advice about what conflicts of interest were. They had clear legislation and knew how to avoid conflicts. The number of scandals plummeted. Public trust came up.”

Ian Greene, 2004
York University



underlines the direct relationship that Parliament has established between the Officer and the Senate itself where the ultimate responsibility resides.

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

On February 24, 2005, the Senate Ethics Officer appeared before the Senate sitting in Committee of the Whole. That same day, a motion moved by the Leader of Government in the Senate and seconded by the Leader of the Opposition in the Senate for the approval of the Officer's appointment was adopted. On February 25, 2005, the Governor in Council appointed him for a seven-year term effective as of April 1, 2005.

The Senate adopted the *Conflict of Interest Code for Senators*³ pursuant to subsection 20.5(1) of the *Parliament of Canada Act*. The approach of adopting a code of conduct is the system that has been adopted federally for members of both the Senate and the House of Commons.

The purposes of the *Conflict of Interest Code for Senators* are to:

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

³ As noted earlier, the Code was adopted on May 18, 2005.



The Senate Ethics Officer administers and interprets this Code under the general direction of the Standing Committee on Conflict of Interest for Senators, pursuant to subsection 20.5(3) of the *Parliament of Canada Act*. While the nature of the direction to be provided by the committee to the office was unclear at the outset, in practice, the office has met with the committee in this past year a total of five times, where general matters related to the Code were discussed, for example, the forms to be used for travel, gifts and disclosure obligations. The application and interpretation of the Code to the particular circumstances of senators has been the sole responsibility of the Senate Ethics Officer independent of the committee. The importance of this independence is understood and respected by the committee and by the Senate as a whole.

The new conflict of interest rules are essentially a comprehensive code of conduct for senators that is intended to apply in addition to the already existing rules and laws governing the conduct of senators outlined above, which requires senators to disclose financial and other interests resulting in a system that is more transparent and accountable.

“In the world today, we can easily find 60 jurisdictions: countries, States, provinces, regions such as Scotland and Wales, where the legislature has gradually set aside its traditional system of self-regulation as regards the ethics of parliamentarians. Increasingly, legislatures are moving towards a more external form of ethics regulation, and Bill C-4 reflects this. The bill seeks to involve an external body or person in the traditional process of self-regulation and peer review. Why is this happening? Basically, the goal is to restore faith in public life.”

*Denis Saint-Martin, 2004
Université de Montréal*



Features of Bill C-4 that demonstrate the Independence of the Senate Ethics Officer:

- The Officer is appointed by the Governor in Council, by Commission under the Great Seal, after consultation with the leader of every party in the Senate and after approval of the appointment by resolution of the Senate.
- The Officer is appointed for a term of seven years as an Officer of the Senate and may be removed from office only for cause, by the Governor in Council, on address of the Senate. These provisions confer on the Officer a status of independence and autonomy rarely recognized to Government officials and they provide an effective shield against improper or inappropriate influence.
- The Officer has the rank of a deputy head of a department of the Government of Canada and has the control and the management of the office, which the Officer runs independently from the Senate and its Internal Economy Committee. The Officer hires his or her own staff.
- The Officer has the responsibility for preparing the estimate of the sums required to pay the charges and expenses of the office. This estimate is separate from the estimates of the Senate. The Speaker of the Senate, after considering the estimate, transmits it to the President of the Treasury Board who lays it before the House of Commons with the estimates of the government for the fiscal year. The Senate reviews the Officer's proposed budget as a part of the annual review of the Main Estimates.
- The Officer is required, within three months after the end of each fiscal year, to submit a report of his or her activities to the Speaker of the Senate, who must table the report in the Senate.



2. Conflict of Interest Code for Senators

The *Conflict of Interest Code for Senators* outlines a series of rules that are aimed at fostering transparency, accountability and public confidence in the Senate. They are set in the context of a number of overarching principles that serve to guide the interpretation of the rules.

What follows is a short description of some of the more important aspects of the Code in order to illustrate the nature of the obligations that senators are expected to meet.

A. PRINCIPLES

The Code contains certain principles set out at the outset that serve to guide the interpretation of the various provisions of the Code. These principles read as follows:

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

- (a) to remain members of their communities and regions and to continue their activities in those communities and regions while serving the public interest and those they represent to the best of their abilities;
- (b) to fulfil their public duties while upholding the highest standards so as to avoid conflicts of interest and maintain and enhance public confidence and trust in the integrity of each Senator and in the Senate; and
- (c) to arrange their private affairs so that foreseeable real or apparent conflicts of interest may be prevented from arising, but if such a conflict does arise, to resolve it in a way that protects the public interest.

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

The first principle is an important one given the unique role the Senate plays in Canada's constitutional framework. The Senate's one hundred and

“This conflict of interest code for senators is a remarkable document. It is the excellent fruit of a long and thoughtful but arduous labour by many of our honourable colleagues and their assistants and advisors, to all of whom we owe a substantial debt of gratitude.”

*The Honourable David Angus,
Senator, 2005*



“Those who govern us should not be a special group of professionals without a significant stake in the community. Surely, we do not want people in government who are so narrowly involved in the Canadian community and so one-dimensional that they have no conflicting interests.”

The Honourable Michael Starr and Honourable Mitchell Sharp, “Ethical Conduct in the Public Sector”, Report of the Task Force on Conflict of Interest, 1984

principles is important; it indicates that any such conflict or apparent conflict is to be resolved in favour of the public interest.

B. RULES OF CONDUCT

(a) Private Interests (sections 10 to 18)

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

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

The Code sets out what is covered by the phrase “furthering private interests” (section 13). It includes taking action to increase or preserve the value of assets, to

five members are summoned by the Governor General on the advice of the Prime Minister. They are expected to represent regional interests and to reconcile the national interest with regional aspirations. In order to do so, it is key for them to foster a better understanding of the issues that affect the regions they represent. They are able to do so by remaining connected to their communities and regions.

Moreover, senators come from various backgrounds, professions and fields of expertise. This diversity enhances the knowledge and experience they are able to bring to their examination of public policy issues that are being studied and considered by the Senate and its various committees.

Having said that, these outside activities may give rise to situations in which a conflict, or the appearance of a conflict, may develop between a senator’s private activities and the public interest. In such cases, paragraph (c) of the



eliminate or reduce liabilities, and to become a director or officer in a corporation or organization. However, it excludes, for example, matters of general application and those that apply to a broad class of the public.

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

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

Senators and their family members are not permitted to accept any gifts or benefits that could reasonably be considered to relate to the senator's position (subsection 19 (1)). An exception is made for gifts or benefits that are expressions of courtesy, protocol or that are within the customary standards of hospitality that generally accompany a senator's position (subsection 19 (2)). However, even if the gift or benefit falls under the exception, if its value exceeds \$500.00, or if the total value of all such gifts or benefits received from one source in a one year period exceeds \$500.00, then the senator must file a statement with the Senate Ethics Officer disclosing the nature, value, and source of any such gifts or benefits, and the circumstances under which they were received.

This disclosure must occur within thirty days after the receipt of the gift or benefit, or within thirty days after the value of all such gifts or benefits exceeds \$500.00, as the case may be (subsection 19 (3)).

“The concern about appearance of conflict as an important ethical postulate of modern government is one that is well founded. The reasons are obvious. Trust and confidence in government can be maintained and enhanced only if the occasions for apparent conflict are kept to a minimum. Public perception is important. Indeed, the perception that government business is being conducted in an impartial and even-handed manner goes a long way to enhancing public confidence in the overall integrity of government.”

*The Honourable W. D. Parker,
Commission of Inquiry into the Facts
of Allegations of Conflict of
Interest Concerning the Honourable
Sinclair M. Stevens, 1987*



“Play by the rules.”

Anonymous

A senator and guests of the senator may, however, accept sponsored travel that relates to the senator’s position. Where the cost of any such travel exceeds \$500.00, and where the travel is not paid for by the senator, or the guests, or through international and interparliamentary affairs programs recognized by the Parliament of Canada, the Senate, the Government of Canada, or the senator’s political party, the trip must, however, be disclosed to the Senate Ethics Officer within thirty days after the end of the it (section 20).

(c) Government Contracts (sections 22 to 28)

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

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

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



(d) Disclosure Process (section 29 to 36)

The *Conflict of Interest Code for Senators* requires each senator to submit to the Senate Ethics Officer an annual confidential disclosure statement listing sources of income, assets, liabilities, and government contracts (sections 29 and 30). Senators who held office on the day the Code came into effect were required to submit the statements within one hundred and twenty days after that day and newly appointed senators were required to submit the statements within one hundred and twenty days after being summoned to the Senate.

The Senate Ethics Officer reviews the information, advises individual senators on possible conflicts, or apparent conflicts, and then recommends measures, if necessary, to ensure senators are in compliance with the provisions of the Code (section 31).

Senators must continue to remain in compliance with the Code at all times. This is done by reporting to the Senate Ethics Officer any material changes to the information provided in their confidential disclosure statements within sixty days of any such change occurring (subsection 30(4)). Moreover, an annual review of the senators' confidential disclosure statements and compliance arrangements is conducted by the Senate Ethics Officer (subsection 29(1)).

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

C. INQUIRIES

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

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



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

D. COMMITTEE REVIEW

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



KEY OBLIGATIONS OF SENATORS UNDER THE CONFLICT OF INTEREST CODE

- Senators may not act in any way to further their **private interests**, or those of their family, or to improperly further another person's or entity's private interests when performing parliamentary duties and functions (section 10).
- Senators may not use their position to **influence** a decision of another person in order to further their own private interests, or those of their family, or to improperly further another person's or entity's private interests (section 11).
- Senators may not use **information** that is generally not available to the public to further their own private interests, or those of their family, or to improperly further another person's or entity's private interests (section 12).
- Senators are expected to make a **declaration**, orally or in writing, when they, or their family, have a private interest that might be affected by a matter that is before the **Senate** or a **committee** of the Senate in which they participate (section 14). [Senators may **participate** in debate on that matter if a declaration is first made orally on the record; they may **not vote**, but may abstain (sections 15 and 16)].
- Senators may not accept, nor may a family member accept, any **gift** or other **benefit** that could reasonably be considered to relate to their position, except as permitted under the Code. Gifts, benefits and sponsored travel that are acceptable under the Code must be declared to the Senate Ethics Officer if they exceed \$500.00 in value (sections 19 and 20).
- Senators may not be a party to a **contract with the Government of Canada** under which they receive a benefit, unless specifically authorized by the Senate Ethics Officer (sections 22-28).
- Senators are expected to **disclose** their private interests to the Senate Ethics Officer on an annual basis and then to publicly disclose those interests required to be disclosed under the Code (sections 29-35).
- Senators must report to the Senate Ethics Officer any **material change** to the information in their confidential disclosure statements, within the prescribed time (subsection 30(4)).
- Senators must cooperate with the Senate Ethics Officer with respect to any **inquiry** (subsection 44(12)).



3. Mandate of the Senate Ethics Officer

The Senate Ethics Officer's mandate involves five major areas: A. opinions and advice; B. the disclosure process; C. inquiries; D. communication and information; and E. administration of the office.

Obviously, in this first year, it was necessary for the office to focus on two of these areas: providing opinions and advice, and completing, for the first time, the disclosure process. While this important work will continue through the second annual review process, there will also be in the second year a focus on other matters.

The following is an outline in more detail of these five areas in order to provide some context regarding the Senate Ethics Officer's main responsibilities.

A. OPINIONS AND ADVICE

The primary function of the Senate Ethics Officer is to provide opinions and advice to senators regarding their obligations under the Code. The Code requires that these opinions and advice be kept confidential but they may be made public by the senator to whom they were given, or by the Senate Ethics Officer with the senator's written consent. Moreover, some opinions related to contracts with the federal government must be made public under section 33 of the Code.

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

*Ian Greene and David P. Shugarman, 1997
York University*

The importance of this advisory function should not be underestimated. While each senator is responsible for arranging his or her affairs in such a way as to prevent any foreseeable, real or apparent conflicts of interest, if a senator has any doubt about whether there may be a conflict or a perceived conflict, the senator is

encouraged to consult the Senate Ethics Officer on a confidential basis to resolve the matter. This approach is preventative, not punitive. The focus is not on addressing conflicts of interest once they have arisen, but rather on preventing them from arising.



B. THE DISCLOSURE PROCESS

The disclosure process is at the heart of the rules on conflict of interest for senators. The process is aimed at fostering transparency, accountability, and confidence in the Senate.

All senators must file annual confidential disclosure statements with the Senate Ethics Officer setting out their outside activities, their sources of income, assets, liabilities, and government contracts, pursuant to sections 29 and 30 of the *Conflict of Interest Code for Senators*.

A public summary is then prepared for each senator by the Senate Ethics Officer pursuant to section 32 of the Code, based on the information provided in the confidential disclosure statements and any other additional information provided through the disclosure process, and under section 35 of the Code, all summaries are then made available to the public at the Senate Ethics Office.

C. INQUIRIES

One of the functions of the Senate Ethics Officer involves conducting inquiries to determine whether a senator has complied with the senator's obligations under the Code.

Under section 44 of the Code, an inquiry can be commenced at the direction of the Standing Committee on Conflict of Interest for Senators, at the request of a senator, or at the initiative of the Senate Ethics Officer with the approval of the committee, in accordance with the procedure set out in the Code.

D. COMMUNICATION AND INFORMATION

Another key function is the communication function. This aspect of the Senate Ethics Officer's mandate is relevant, not only to senators, but also to the public at large.

The Senate Ethics Officer may publish guidelines to assist senators on the interpretation of the Code. The Officer may also publish general opinions and advice for the guidance of senators. These tools are useful for assisting senators in understanding their obligations under the Code and helping to ensure consistency in the advice given.

The office is also responsible for ensuring that the public understands the nature of its work and how it may be of interest to Canadians. It does this through its website at the following address: [www. parl.gc.ca/seo-cse](http://www.parl.gc.ca/seo-cse). The annual reports are also tools for



“An independent ethics commission is a more sensible mechanism for promoting compliance with conflict of interest legislation than such mechanisms as advice from line civil servants, or enforcement by judges or an auditor general.”

*The Honourable Ted Hughes, former
Conflict of Interest Commissioner of
British Columbia, 1991*

communicating and explaining the mandate and work of the office. Finally, its participation in various organizations with an interest in ethics, both national and international, is also important as a means of exchanging information and communicating with others the type of work for which it is responsible.

The office also responds to requests for information from the public and the media regarding its mandate and, more generally, the *Conflict of Interest Code for Senators*.

E. ADMINISTRATION OF THE OFFICE

The Senate Ethics Officer is responsible for ensuring that the highest standards are applied in the administration of his or her office in order to foster trust and confidence in its work – something which is essential to its proper functioning.

More specifically, the Senate Ethics Officer establishes internal procedures, policies and practices for the office, for example, policies with respect to interpreting the *Conflict of Interest Code for Senators*. Another example concerns the security and confidentiality of information; these are of the utmost importance in the Senate Ethics Office given the nature of the information that is handled by staff. Best practices with respect to business plans and strategic planning are also necessary to ensure that the office outlines certain key objectives and achieves results based on those objectives.

The Senate Ethics Officer is independent of government, appointed for a seven-year term, and may only be removed for cause. The Officer enjoys the privileges and immunities of the Senate and its members when carrying out his or her duties and functions. The Officer has the rank of a deputy head of a department of the Government of Canada whose mandate is to administer and interpret the *Conflict of Interest Code for Senators* adopted by the Senate on May 18, 2005.



4. Activities of the Senate Ethics Officer: 2005-2006

A. OFFICE SET-UP

The Senate Ethics Office was officially opened on April 1, 2005; it was first located in Centre Block of the Parliament Buildings. At this time, I had already employed an Executive Assistant to assist me in setting up the new office.

By mid-April, I had finalized an agreement with the Senate Administration for the provision of support services for the office, on a cost-recovery basis, including security services, financial services, human resource services, and information technology services. Legal, procedural and communications services were excluded.

I considered it to be more efficient and cost-effective to utilize the existing services of the Senate Administration. In doing so, it was necessary to consider the independence of the office and, indeed, the agreement refers specifically to the fact that the services provided in no way infringe on this independence. Initially, the arrangement was intended to be a one-year agreement, but since it proved to be effective and useful, it has been renewed for a further three years.

During our first few months in operation, we were also busy developing our present website (www.parl.gc.ca/seo-cse) in order to provide the public with basic information about the new office.

I also worked in collaboration with the Standing Committee on Conflict of Interest for Senators in finalizing the various forms required to implement the Code, for example, forms regarding gifts, benefits, sponsored travel, and disclosure obligations.

Staffing issues were also a focus during this time and for the months following. My objective was to keep the office small in order to ensure that its expenses were reasonable. I had a full complement of staff by November 1, 2005.

Some time was spent preparing for an office relocation from the Parliament Buildings to 90 Sparks, room 526 – a move that officially occurred in February 2006. The new offices are in close proximity to Parliament Hill and, as such, are easily accessible to senators, but they are also easily accessible to the public. This is important given the unique role of the office: we not only provide advice and opinions to senators on



conflict of interest, but we also serve Canadians by making available to them the public summaries of senators, and by providing general information regarding my mandate and the work of my office.

The new offices are highly secure. This was a major consideration for me given the concerns that had been expressed to me by senators regarding privacy and confidentiality in the handling of personal information – a justifiable concern. Indeed, finding the right balance between the public interest in disclosure on the one hand, and the right to privacy and confidentiality on the other, is a constant preoccupation of mine in my role as Senate Ethics Officer.

B. ADVICE AND OPINIONS

During this year, I spent a great deal of time meeting with individual senators to discuss the requirements under the *Conflict of Interest Code for Senators* and providing advice to them in order to ensure they were in compliance with the Code.

“By far the greatest portion of the Commissioner’s time is taken up by informal, confidential meetings with Members.....to discuss Members’ problems or potential problems....or to provide assistance to Members in identifying potential future problems not readily observable at first glance with a view to their avoidance.”

*The Honourable H.A.D. Oliver, Q.C.,
Conflict of Interest Commissioner of
British Columbia, 2004-2005*

Since the Code is relatively new, we received numerous telephone calls and e-mails from senators and their offices regarding the various forms to be completed, as well as simple matters of interpretation of the provisions of the Code. We responded to over two hundred such requests throughout the year.

I also prepared a number of written opinions to senators in response to their requests for confidential advice respecting possible conflicts of interest, pursuant to section 8 of the Code. This provision refers to the obligation of the Senate Ethics Officer to provide advice and opinions to senators respecting their obligations under the Code and any other matters related to the Code. One of these opinions involved a rather complex area of conflict of interest – parliamentarians contracting with the federal government. This comprehensive opinion covered a number of different provisions of the new *Conflict of Interest Code for Senators* requiring interpretation and application for the first time. The



opinion was made public on July 27, 2005, at the request of the senator for whom it was prepared. It is included as an appendix to this report (Appendix E) and is also available electronically by accessing the office website.

Moreover, I provided over one hundred written opinions to senators as part of the confidential disclosure process in order to assist them in arranging their private affairs in such a way as to prevent conflicts of interest. These opinions involved varying degrees of complexity and, in some cases, covered multiple issues.

Finally, I provided general advice to all senators in the form of guidelines in order to assist them in their understanding of the provisions of the Code related to private interests and the requirement for disclosure where such interests might be affected by matters before the Senate or one of its committees.

C. PUBLIC DISCLOSURE PROCESS

Section 29 of the Code requires that all senators file with my office a confidential disclosure statement within the timeframe outlined in chapter 2 (section B) of this report.

I worked with senators, assisting them to prepare these statements, which were then reviewed, and as noted above, I provided advice where necessary respecting possible conflicts of interest and recommendations for complying with the Code. Section 31 of the Code provides that the Senate Ethics Officer may wish to meet with senators to discuss their confidential disclosure statements. Indeed, I had an opportunity to meet with most senators in this regard, and I was pleased that all senators met the deadline for filing the statements this year.

Once the office finished the first annual review of the confidential disclosure statements and, based on the information provided in them and any additional information that was relevant, a public disclosure summary related to each senator was prepared. Section 33 of the Code identifies the interests that must be included in these summaries, for example, gifts, sponsored travel, contracts with the federal government, official positions such as directorships in corporations, associations and non-for-profit organizations, and, where the Senate

“Transparency is important if the Senate is to preserve its credibility and independence.”

Eighth Report of the Standing Senate Committee on Rules, Procedures and the Rights of Parliament, April 2003



“No responsibility of government is more fundamental than the responsibility of maintaining the highest standards of ethical behaviour by those who conduct the public business. The basis of effective government is public confidence, and that confidence is endangered when ethical standards falter or appear to falter.”

John F. Kennedy, 1961

all summaries first, then review each one again to ensure that the rules had been applied consistently to all similar fact situations and to ensure that any differential treatment was a reflection of different circumstances.

In the first review, it was important to spend some time thinking about the kinds of situations that more commonly arise in the Senate, and how the new Code applies to those situations. However, next year and as part of the second annual review (2006-2007) of the confidential disclosure statements, the public summaries of individual senators will be placed on the public record as soon as the review for each is completed. This will also apply to newly appointed senators.

D. OUTREACH AND EXTERNAL ACTIVITIES

It is important for a new office to establish ties and relationships with similar organizations in order to be able to share policies, best practices and exchange ideas with a view to identifying what works best and where improvements might be made.

Ethics Officer considers them to be relevant to the senator’s parliamentary duties and functions, any assets and liabilities. Sources of income that a senator received in the preceding twelve months and would be likely to receive in the next 12 months must also be disclosed, again, where the Officer considers them to be relevant to the senator’s parliamentary duties and functions.

Once all the summaries had been prepared, they were made available for public inspection at the Senate Ethics Office. The Public Registry was officially opened on May 9, 2006.

In order to ensure consistency and accuracy, a decision was taken to make all the summaries publicly available at the same time, as opposed to making each one available in the order in which it was completed. Since the *Conflict of Interest Code for Senators* is a relatively new document, we thought it important to prepare



To this end, over the course of the year, I met with a number of my current and former provincial counterparts and colleagues, including the Honourable Bert Oliver, the present Conflict of Interest Commissioner in British Columbia, Mr. Don Hamilton, the present Ethics Commissioner in Alberta, as well as Mr. Bob Clark, the former Ethics Commissioner in Alberta. I also met with the Honourable Ted Hughes, the former Conflict of Interest Commissioner in British Columbia. These meetings were helpful to me and I am grateful to my colleagues for taking the time to share their experiences with me.

The office also maintained regular contact with our colleagues in the Ethics Commissioner's office. This was important in order to draw comparisons – there are many similarities between the *Conflict of Interest Code for Senators* and the *Conflict of Interest Code for Members of the House of Commons*. We also noted some important differences. Discussions between the two offices were useful in ensuring consistency in our interpretations of the two codes where this made sense, but also in applying different interpretations where warranted.

On September 9 and 10, 2005, I had the pleasure of participating in the annual meeting of the Canadian Conflict of Interest Network (CCOIN), which took place in Edmonton, Alberta. This is an organization of the various ethics commissioners and officers at the federal, provincial, and territorial levels of government who gather together on a yearly basis to discuss issues of common interest.

I also attended a conference in Ottawa organized by the Business & Law Institute from September 15 and 16, 2005 in which the theme was “Public Trust, Ethics & Dealing with the Government”.

From December 4 to 7, 2005, I participated in a conference hosted by the Council on Governmental Ethics Laws (COGEL), which was held this year in Boston, Massachusetts. I was asked to make a presentation at this conference regarding new developments at the federal level in Canada on conflict of interest. This involved a discussion of the legislation that established the Senate Ethics Officer and the Ethics Commissioner, as well as the conflict of interest rules that apply to members of the Senate and the House of Commons. COGEL is a professional organization for government agencies, organizations and individuals with responsibilities or interests in governmental ethics, elections, campaign finance, lobby laws and freedom of information. Membership is drawn principally from groups or individuals from the United States and Canada, with some European, Australian, and Latin American members as well.



The office is also a member of the Ethics Practitioners' Association of Canada (EPAC), a professional organization comprised of ethics practitioners working and consulting in the field of ethics across Canada. EPAC provides members with information about organizational ethics, and opportunities to discuss and debate best practices in the area of ethics.

Finally, I participated in meetings with a delegation from Cambodia that came to Canada from June 5 to June 15, 2005 to study Canada's parliamentary system; I met with them on June 8. In addition, I met with a senior official from the Independent Commission Against Corruption in Hong Kong on March 28, 2006. The purpose of her visit to Canada was to study the system in place for parliamentarians respecting conflicts of interest.

These conferences and exchanges have been of enormous benefit to the office in better understanding the similarities and differences between the conflict of interest system at the federal level and that in place in the various provinces, territories and in other countries as well. I intend to ensure that my office continues to participate and be involved in such exchanges in order to further our knowledge of other approaches to conflict of interest with a view to improving on our system in the Senate.



5. Outside Activities and Contracts

In an earlier chapter, we provided a short description of some of the most important aspects of the *Conflict of Interest Code for Senators* in order to illustrate the nature of the obligations that senators are expected to meet. What follows is a brief account of the restrictions and compliance measures which senators might be required to follow in order to comply with their obligations under the Code involving two specific areas, namely outside activities and contracts with the federal government.

The advice given by the Senate Ethics Officer is based on a careful analysis of the Code and each senator's circumstances. Obviously, each situation must be evaluated on its own particular facts and different circumstances will lead to different conclusions; however, a general description of the application of the rules in those areas will hopefully assist the reader in better understanding how the Code works in practice.

The examples used here are based on the experience gained during the office's first year of operation and are illustrative only. However, in the future, they may serve as the basis for developing guidelines on the interpretation of the provisions that are relevant in these key areas in order to assist senators, as well as the general public, in understanding the Code.

A. ACTIVITIES OUTSIDE OFFICIAL PARLIAMENTARY DUTIES

As already noted in chapter two of this report, the principles of the Code permit senators to remain involved in activities in their communities and regions. Paragraph 2(1) (a) is relevant. It provides that senators are "to remain members of their communities and regions and to continue their activities in those communities and regions while serving the public interest and those they represent to the best of their abilities". Section 5 of the Code explicitly permits senators to engage in a wide range of activities outside their parliamentary duties. The section provides:

"Women are now almost 37 per cent of senators: This exceeds by a long measure the current 20 per cent of MPs who are women. The Senate's membership is diverse, and different from that of the House of Commons."

*The Honourable Claudette Tardif,
Senator, 2006*



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

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

“In a rapidly evolving public sector environment, conflicts of interest can never be fully eliminated. As excessive restrictions may deter qualified professionals from accepting public office, a modern conflict of interest policy seeks to strike a balance, by identifying and preventing unacceptable forms of conflict, making public organizations aware of their presence, and ensuring effective disclosure and resolution to diminish their consequences.”

Organisation for Economic Co-operation and Development, 2002

The Senate comprises women and men who play an active role in their communities. They come from many different backgrounds. For example, lawyers, teachers, journalists, artists, business people, police officers, doctors, writers, nurses, Aboriginal leaders and politicians have all become senators at different points in time. It is this diversity that permits senators to bring a wealth of experience, expertise and knowledge to the study of public policy issues in the Senate.

The outside activities that senators engage in cover a wide spectrum. Some of these are of a commercial nature but many others are not. The essential point is that the Code does not prevent a senator from being involved in these activities. Having said that, some of these activities may give rise to real or apparent conflicts. Senators are expected to resolve these in a way that upholds the highest standards and protects the public interest. However, while strict rules and standards must be in place to protect the public interest, the rules should not be so stringent as to discourage capable and experienced individuals from entering public life.

It is worth noting that the rules that apply to Cabinet ministers are more restrictive than those that apply to senators and private members of the House of Commons. To reflect the fact that Cabinet Ministers have considerable executive powers, the *Conflict of Interest and Post-Employment Code for Public Office Holders* places tight restrictions on the types of assets Ministers may hold and specifi-



cally prohibits them from, for example, engaging in outside employment, practicing a profession, and being a director in a corporation. The role, responsibilities and powers of legislators are, however, quite distinct with the result that both the Code applicable to senators and that applicable to the members of the House of Commons permit a wide range of outside activities.

(i) Not-for-Profit Organizations and Associations

One example of what senators are permitted to do under the *Conflict of Interest Code for Senators* is to sit as members of boards of directors of not-for-profit organizations – indeed, a majority of senators do. However, under the Code, they are required to disclose all the positions they hold to the Senate Ethics Officer, who then places this information on the public record.

Moreover, senators must ensure that they arrange their affairs to prevent their private interests from coming in conflict, or appearing to come in conflict, with the public interest and, where this occurs, they are expected to resolve the matter in favour of the public interest. A number of sections of the Code highlight the importance of ensuring that the public interest always prevails over private interests (paragraph 2(1)(c) and sections 10, 11, and 12).

To this end, senators who are active on boards of not-for profit organizations must take certain precautions. For example, they would be advised to refrain from making representations to the federal government, on behalf of these organizations, in order to obtain financial assistance, or from acting in any way to further private interests as defined under the Code. As senators, they represent the public interest, but as directors of organizations and associations, they also represent the interests of these bodies. The Code requires that senators perform, and be seen to perform, their parliamentary functions objectively. Moreover, no one organization should receive, or appear to receive, preferential treatment or unfair advantage in the awarding of federal funding. This restriction, however, would not prevent senators from making representations to the federal government on behalf of these organizations on matters that do not involve federal funding.

(ii) For-Profit Organizations

As in the case of not-for-profit organizations, senators who sit on the boards of directors of for-profit organizations may continue to do so; however, they must disclose these positions to the Senate Ethics Officer, who is then required to place this information in their public disclosure files.

Moreover, senators, in such cases, must not act, attempt to act, or appear to be acting, in such a way as to improperly further the organizations' private interests. "Furthering a private interest" includes, for example, taking action to increase the value of an



organization's assets, to reduce or eliminate the organization's liabilities, or to assist the organization in acquiring a financial interest.

As such, and as in the case of not-for-profit organizations, senators would be advised to refrain from making representations, on behalf of the organizations, to the federal government for the purpose of seeking financial assistance, or from acting in any way to further private interests as defined under the Code.

Report by the Special Joint Committee of the Senate and of the House of Commons on Conflict of Interests, Chaired by Senator Richard J. Stanbury and Don Blenkarn, M.P., 1991-1992:

The Canadian tradition has seen a mix of politicians who have given up outside activities for their parliamentary activities, and "citizen politicians", citizens who entered politics after pursuing active business or professional lives, and who retain those businesses during their tenure in public life. We believe this mix enhances the quality of Parliament as a whole, contributing to an expression of diverse views and the representation of a broad range of interests.

Insofar as Parliament includes individuals who are active in the outside community, or who come to Parliament after building successful business or professional careers, there will be situations where a Member's public duties could impact on their private interests. Government and Parliament are today so deeply involved in a myriad of issues touching on diverse aspects of business and the professions, that it is virtually impossible for this not to occur.

Committee members recognize that it is not necessarily wrong or improper for a conflict between a Member's public duties and private interests to arise. To say otherwise would be to demand that all Members sever all ties with their former lives....Not only do we believe such a demand would work excessive hardship (and dissuade talented and capable individuals from public life), but we believe it is unnecessary. What is important is to ensure that any conflict that could arise is and is seen to be always resolved in the public interest.



B. CONTRACTS WITH THE FEDERAL GOVERNMENT

The issue of parliamentarians and members of provincial and territorial legislatures contracting with government is not a new issue, nor is it uniquely Canadian. Where a parliamentarian has a private interest in the nature of a contract with government, the ethical dilemma that must be addressed is how to avoid or minimize the risk of the member using his or her position to influence, or to obtain preferential treatment in, the awarding and management of government contracts for themselves, their families or their friends, to the disadvantage of other potential bidders or interested parties.

The *Conflict of Interest Code for Senators* sets out detailed provisions regarding senators (1) contracting, directly or through subcontracts, with the federal government or its agencies; (2) owning securities in a public corporation that contracts with the federal government or its agencies; and (3) having an interest in a partnership or private corporation that is a party, directly or through a subcontract, to a contract with the federal government or its agencies (sections 22 to 28).

Other provisions of the Code are also relevant. For example, section 10 of the Code prohibits senators from acting or attempting to act in any way to further their private interests, or those of a family member, or to improperly further another person's or entity's private interest, in the performance of their parliamentary duties and functions.

Section 11 of the Code is also pertinent. It prohibits a senator from using, or attempting to use, his or her position as a senator to influence another person's decision in order to further the senator's private interests, or those of a family member, or to improperly further another person's or entity's private interests.

Finally, as noted earlier, the principles of the Code provided under section 2 guide the interpretation and application of the rules. Two of these principles are relevant and bear mentioning again. First, senators are expected to remain members of their communities and regions and to continue participating in activities outside the parliamentary context given the unique role they play in our parliamentary system in voicing the concerns and preoccupations of the regions they were appointed to represent. Second, senators must arrange their private affairs so that foreseeable real or apparent conflicts of interest may be prevented from arising and, if such a conflict does arise, to resolve it in a way that protects the public interest.

Based on the various provisions of the Code referred to previously and on the specific circumstances, the Senate Ethics Officer may provide a written opinion on whether a particular contract is likely to affect a senator's obligations under the Code.



In making a determination as to whether a senator's obligations under the Code are likely to be affected as a result of a contract with the federal government, one consideration of the Senate Ethics Officer, for example, could involve the manner in which the contract was awarded – whether it was awarded through a competitive and fair process – a process that would lead a reasonable person to conclude that neither the senator nor the organization with which he or she is involved received any special advantage or consideration as a result of the position of the senator. In the case of public corporations, another consideration would involve how significant the senator's interest is in the company.

Another factor to consider would be the extent of the senator's involvement in the contract at its different stages, including the awarding and the management of the contract. For instance, if the senator undertook to refrain from having any contact whatsoever with federal representatives on matters relating to the contract, the organization with which the senator is associated could continue to hold existing contracts with the federal government and to compete for future contracts.

The Canadian Encyclopedia, 2006 (Kenneth Gibbons, University of Winnipeg):

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

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



In some cases, the senator might also be advised to send a letter of direction to a senior officer or board member of the organization setting out his or her obligations under the Code with respect to federal government contracts and, more particularly, directing the organization to keep the senator at arms length from any negotiations or discussions with federal officials in relation to the contract. A copy of this letter would be included in the senator's public disclosure file, in addition to any letters from the organization confirming that it will respect the restrictions imposed on the senator. Finally, and with these restrictions in place, the Senate Ethics Officer's written opinion confirming that the senator is in compliance with the Code would also be placed in the Senate Public Registry and thus available for public inspection.

Another compliance measure might be a requirement that the senator provide the Senate Ethics Office with copies of all existing and future contracts between the organization and the federal government, as well as copies of related requests for proposals and other tender documents. These would be reviewed during the annual review by the Senate Ethics Officer to ensure that the senator continues to be in compliance with the Code.

As noted earlier, the issue of parliamentarians contracting with the federal government is a complex area of conflict of interest. Additional information is available in a detailed opinion, dated July 18, 2005, which is attached to this report as Appendix E. It is also available on the office website. Moreover, since then, the Senate Ethics Officer has provided several opinions on this subject; these are also available to the public in the Senate Public Registry.



Concluding Remarks

The office has identified five priority areas for the coming year. First, we will focus on the second annual review (2006-2007) of the disclosure statements. In this regard, we will continue to work with senators to ensure that they remain in compliance with their obligations under the *Conflict of Interest Code for Senators*. Any additional information provided by senators will be examined in order to identify potential conflicts of interest and this information will then be added to the senators' public disclosure files as required under the Code.

Second, the office will be reviewing the work reported for the fiscal year 2005-2006 with a view to identifying where improvements may be made in terms of policies, procedures and practices. In particular, we will focus on areas where the *Conflict of Interest Code for Senators* may be improved in light of the review that the Standing Committee on Conflict of Interest for Senators is required to undertake within three years of the Code coming into effect, pursuant to section 52 of the Code.

“There are really only two important points when it comes to ethics. The first is a standard to follow. The second is the will to follow it.”

John C. Maxwell, 2003

Third, with the benefit of one year of experience with the Code, the office will develop material that will be of assistance to senators and their staff, and to the public, in understanding the Code and how the various rules apply in different fact situations. Section 9 of the Code refers to the Senate Ethics Officer's authority to publish guidelines to assist senators on the interpretation of the Code. We will also work on enhancing our office website by including additional material that may be helpful in understanding the work of the office.

Fourth, we will work on internal governance issues for the office. We will adopt internal policies related to conflict of interest and continue to place high priority on confidentiality and security of information. We will implement a strategic plan that outlines performance measures and indicators in order to ensure that the office has identified key objectives and is working towards meeting those objectives.



Fifth, we will work on strengthening our relationships with our provincial and territorial counterparts, as well as continuing to be involved in external activities, such as conferences and meetings with delegations, in order to highlight the work that we do, but also to learn where we might consider making changes to improve the system that is currently in place.

As already noted in my opening remarks, the new conflict of interest system in the Senate is a positive step forward and will serve as a solid basis for moving ahead in the future. It is, in my view, a foundation on which to continue to build.

*“Only he deserves power
who every day justifies it.”*

Dag Hammarskjöld, 1964

Having said that, it is important to recognize the desirability of improving on the existing system in light of the steady rise in public scrutiny of our political leaders and the growing expectations in Canada, as well as abroad, that politicians must be held to the highest standards. The Senate Ethics Office is committed to building on the existing system to meet these growing expectations. As already noted above, the Code provides for a review of its provisions and operation. This review would be an ideal opportunity to give the public and interested parties a venue in which to comment on the Code and recommend possible improvements.

Indeed, this is the approach that was taken in the province of Alberta. On March 8, 2005, an all-party committee of Members of the Legislative Assembly of Alberta, i.e., the Select Special Conflicts of Interest Act Review Committee, was established to review the *Conflicts of Interest Act* – the legislation that contains conflict of interest rules for Members of the Legislative Assembly. This is the first legislatively mandated review of the Act and, given the importance of the work the committee is carrying out, it issued a discussion paper in June 2005 containing a series of issues and the questions that these issues raise. The committee invited the public to submit their views on these matters for the committee’s consideration. Its final report was tabled on May 18, 2006.

With respect to possible changes to the Code, and based on the limited experience we have had with it, one issue should be considered for future discussion: the relationship between the Standing Committee on Conflict of Interest for Senators and the Senate Ethics Officer. The Code makes reference to the committee in many of its provisions, yet in practice, the relationship between the two has been very much at arm’s length. This past year has demonstrated that, in practice, the interpretation and



“The most intimidating court of all is the court of public opinion. This is probably the most demanding aspect of the life of parliamentarians – Canadians can be quite unforgiving of the foibles of their public figures. Senators face an uphill battle to establish and maintain public trust.”

*The Honourable Serge Joyal,
Senator, 2003*

application of the Code as it relates to individual senators has been the sole responsibility of the Senate Ethics Officer. As such, some of the explicit provisions of the Code may create a false impression about the independence of the Senate Ethics Officer. The Senate Ethics Officer must not only be independent, but must also be seen to be independent. Both are critical in order to ensure that the Senate Ethics Officer is effective in terms of the work the Officer undertakes, and that Canadians view the office as credible. The review process that will be undertaken by the committee under section 52 of the Code would be an opportunity to address this issue.

Let me conclude by noting that, even with the new conflict of interest regime in the Senate, conflicts of interest will undoubtedly arise from time to time as they do in any legislative body. This is not “unethical”. The fact that a conflict arises should not be viewed as problematic. It is

how this conflict is resolved – that it is resolved in a manner that protects the public interest, and the measures that are taken to address it that are of utmost importance. It is this attempt to address the issue in a satisfactory manner that is ethical because it is honest and respectful of the responsibilities and the higher standards that come with holding a public office and working for the people of Canada, and I am privileged to be involved in this important process.

Appendices



APPENDIX A



Appendix A

EXCERPTS FROM AN ACT TO AMEND THE PARLIAMENT OF CANADA ACT (ETHICS COMMISSIONER AND SENATE ETHICS OFFICER) AND OTHER ACTS IN CONSEQUENCE

52-53 ELIZABETH II CHAPTER 7

An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence

[Assented to 31st March, 2004]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

R.S., c. P-1

PARLIAMENT OF CANADA ACT

- 1. Sections 14 and 15 of the *Parliament of Canada Act* are repealed.**
- 2. The Act is amended by adding the following after section 20:**

Senate Ethics Officer

Appointment

20.1 The Governor in Council shall, by commission under the Great Seal, appoint a Senate Ethics Officer after consultation with the leader of every recognized party in the Senate and after approval of the appointment by resolution of the Senate.

Tenure

20.2 (1) The Senate Ethics Officer holds office during good behaviour for a term of seven years and may be removed for cause by the Governor in Council on address of the Senate. He or she may be reappointed for one or more terms of up to seven years each.



Interim appointment	(2) In the event of the absence or incapacity of the Senate Ethics Officer, or if that office is vacant, the Governor in Council may appoint a qualified person to hold that office in the interim for a term of up to six months.
Remuneration	20.3 (1) The Senate Ethics Officer shall be paid the remuneration set by the Governor in Council.
Expenses	(2) The Senate Ethics Officer is entitled to be paid reasonable travel and living expenses incurred in the performance of his or her duties or functions while absent from his or her ordinary place of residence, in the case of a part-time appointment, and ordinary place of work, in the case of a full-time appointment.
Functions – part-time	(3) In the case of a part-time appointment, the Senate Ethics Officer may not accept or hold any office or employment – or carry on any activity – inconsistent with his or her duties and functions under this Act.
Functions – full-time	(4) In the case of a full-time appointment, the Senate Ethics Officer shall engage exclusively in the duties and functions of the Senate Ethics Officer and may not hold any other office under Her Majesty or engage in any other employment for reward.
Deputy head	20.4 (1) The Senate Ethics Officer has the rank of a deputy head of a department of the Government of Canada and has the control and management of the office of the Senate Ethics Officer.
Powers to contract	(2) The Senate Ethics Officer may, in carrying out the work of the office of the Senate Ethics Officer, enter into contracts, memoranda of understanding or other arrangements.
Staff	(3) The Senate Ethics Officer may employ any officers and employees and may engage the services of any agents, advisers and consultants that the Senate Ethics Officer considers necessary for the proper conduct of the work of the office of the Senate Ethics Officer.



- Authorization (4) The Senate Ethics Officer may, subject to the conditions he or she sets, authorize any person to exercise any powers under subsection (2) or (3) on behalf of the Senate Ethics Officer that he or she may determine.
- Salaries (5) The salaries of the officers and employees of the office of the Senate Ethics Officer shall be fixed according to the scale provided by law.
- Payment (6) The salaries of the officers and employees of the office of the Senate Ethics Officer, and any casual expenses connected with the office, shall be paid out of moneys provided by Parliament for that purpose.
- Estimates to be prepared (7) Prior to each fiscal year, the Senate Ethics Officer shall cause to be prepared an estimate of the sums that will be required to pay the charges and expenses of the office of the Senate Ethics Officer during the fiscal year.
- Inclusion in Government estimates (8) The estimate referred to in subsection (7) shall be considered by the Speaker of the Senate and then transmitted to the President of the Treasury Board, who shall lay it before the House of Commons with the estimates of the government for the fiscal year.
- Duties and functions **20.5** (1) The Senate Ethics Officer shall perform the duties and functions assigned by the Senate for governing the conduct of members of the Senate when carrying out the duties and functions of their office as members of the Senate.
- Privileges and immunities (2) The duties and functions of the Senate Ethics Officer are carried out within the institution of the Senate. The Senate Ethics Officer enjoys the privileges and immunities of the Senate and its members when carrying out those duties and functions.
- General direction of committee (3) The Senate Ethics Officer shall carry out those duties and functions under the general direction of any committee of the Senate that may be designated or established by the Senate for that purpose.



Clarification – ethical principles, etc.	(4) For greater certainty, the administration of any ethical principles, rules or obligations established by the Prime Minister for public office holders within the meaning of section 72.06 and applicable to ministers of the Crown, ministers of state or parliamentary secretaries is not part of the duties and functions of the Senate Ethics Officer or the committee.
Clarification – powers, etc., of the Senate	(5) For greater certainty, this section shall not be interpreted as limiting in any way the powers, privileges, rights and immunities of the Senate or its members.
No summons	20.6 (1) The Senate Ethics Officer, or any person acting on behalf or under the direction of the Senate Ethics Officer, is not a competent or compellable witness in respect of any matter coming to his or her knowledge as a result of exercising any powers or performing any duties or functions of the Senate Ethics Officer under this Act.
Protection	(2) No criminal or civil proceedings lie against the Senate Ethics Officer, or any person acting on behalf or under the direction of the Senate Ethics Officer, for anything done, reported or said in good faith in the exercise or purported exercise of any power, or the performance or purported performance of any duty or function, of the Senate Ethics Officer under this Act.
Clarification	(3) The protection provided under subsections (1) and (2) does not limit any powers, privileges, rights and immunities that the Senate Ethics Officer may otherwise enjoy.
Annual report	20.7 (1) The Senate Ethics Officer shall, within three months after the end of each fiscal year, submit a report on his or her activities under section 20.5 for that year to the Speaker of the Senate, who shall table the report in the Senate.
Confidentiality	(2) The Senate Ethics Officer may not include in the annual report any information that he or she is required to keep confidential.



APPENDIX B



Appendix B

CONFLICT OF INTEREST CODE FOR SENATORS

Purposes

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

Principles

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



Interpretation

Definitions

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

“Committee”

« Comité »

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

“common-law partner”

« conjoint de fait »

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

“Intersessional Authority”

« autorité intersessionnelle »

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

“parliamentary duties and functions”

« fonctions parlementaires »

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

“Senate Ethics Officer”

« conseiller sénatorial en éthique »

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

“spouse”

« époux »

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



Family members

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

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

Activities and Jurisdiction Preserved

Assisting the public

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

Carrying on activities

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

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

Existing Committee jurisdiction

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

Role of the Speaker

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



Opinions and Advice

Request for opinion

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

Opinion binding

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

Written advice binding

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

Confidentiality

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

Committee consideration

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

Publication

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



Guidelines

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

Rules of Conduct

Furthering private interests

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

Use of influence

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

Use of information

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

Conveying information

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

Clarification: furthering private interests

13. (1) In sections 10 to 12, furthering private interests of a person or entity, including the Senator's own private interests, means actions taken by a Senator for the purpose of achieving, directly or indirectly, any of the following:
- (a) an increase in, or the preservation of, the value of the person's or entity's assets;
 - (b) the elimination, or reduction in the amount, of the person's or entity's liabilities;
 - (c) the acquisition of a financial interest by the person or entity;



- (d) an increase in the person's or entity's income from a contract, a business or a profession;
- (e) an increase in the person's income from employment;
- (f) the person becoming a director or officer in a corporation, association or trade union; or
- (g) the person becoming a partner in a partnership.

Clarification: not furthering private interests

- (2) A Senator is not considered to further his or her own private interests or the private interests of another person or entity if the matter in question
 - (a) is of general application;
 - (b) affects the Senator or the other person or entity as one of a broad class of the public; or
 - (c) concerns the remuneration or benefits of the Senator as provided under an Act of Parliament or a resolution of the Senate or of a Senate committee.

Declaration of a private interest: Senate or committee

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

Subsequent declaration

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

Declaration recorded

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



Where declaration *in camera*

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

Declaration of a private interest: other circumstances

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

Debate in the Senate

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

Debate in Committee

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

Prohibition on voting

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

Procedure

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



Clarification: having a private interest

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

Prohibition: gifts and other benefits

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

Exception

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

Statement: gift or other benefit

Statement: gift or other benefit

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

Statement: sponsored travel

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

Contents of statement

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



Duplication

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

Consent of Senate

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

Government contracts

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

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

Public corporations

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

Public interest

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

Government programs

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



Trust

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

Partnerships and private corporations

24. A Senator shall not have an interest in a partnership or in a private corporation that is a party, directly or through a subcontract, to a contract or other business arrangement with the Government of Canada or any federal agency or body under which the partnership or corporation receives a benefit unless the Senate Ethics Officer provides a written opinion that
- (a) due to special circumstances the contract or other business arrangement is in the public interest; or
 - (b) the contract or other business arrangement is unlikely to affect the Senator's obligations under this Code.

Clarification: Government programs

25. For the purposes of sections 22 and 24, it is not prohibited to participate in a program operated or funded, in whole or in part, by the Government of Canada or any federal agency or body under which a Senator, or a partnership or private corporation in which a Senator has an interest, receives a benefit if
- (a) the eligibility requirements of the program are met;
 - (b) the program is of general application or is available to a broad class of the public;
 - (c) there is no preferential treatment with respect to the application; and
 - (d) no special benefits are received that are not available to other participants in the program.

Trust

26. Section 24 does not apply if the Senator has entrusted his or her interest in a partnership or private corporation to one or more trustees on all of the following terms:
- (a) the provisions of the trust have been approved by the Senate Ethics Officer;
 - (b) the trustees are at arm's length from the Senator and have been approved by the Senate Ethics Officer;
 - (c) except as provided in paragraph (d), the trustees may not consult with the Senator with respect to managing the trust, but they may consult with the Senate Ethics Officer;



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

Pre-existing contracts

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

Interest acquired by inheritance

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

Duty to Disclose

Confidential disclosure statement: sitting Senators

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

Filing date

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



Confidential disclosure statement: new Senators

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

Submission to Committee

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

Errors or Omissions

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

Response within 60 days

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

Family members

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

Confidentiality

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

Initial meeting with Senate Ethics Officer

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



Contents of confidential disclosure statement

30. (1) Subject to subsection (2) regarding excluded matters, and any Guidelines published by the Senate Ethics Officer under section 9, the confidential disclosure statement shall list :
- a. any corporations, income trusts and trade unions in which the Senator is a director or officer and any partnerships in which the Senator is a partner, including a description of the activities of each entity;
 - b. any associations and not-for-profit organizations in which the Senator is a director, officer or patron, including memberships on advisory boards and any honorary positions;
 - c. the nature but not the amount of any source of income over \$2,000 that the Senator has received in the preceding 12 months and is likely to receive during the next 12 months; for this purpose,
 - (i) a source of income from employment is the employer,
 - (ii) a source of income from a contract is a party with whom the contract is made,
 - (iii) a source of income arising from a business or profession is that business or profession, and
 - (iv) a source of income arising from an investment is that investment;
 - d. the source, nature and value of any contracts or other business arrangements with the Government of Canada or a federal agency or body that the Senator has directly, or through a subcontract;
 - e. the source, nature and value of any contracts, subcontracts or other business arrangements with the Government of Canada or a federal agency or body that the Senator has by virtue of a partnership or a significant interest in a private corporation that the Senator is able to ascertain by making reasonable inquiries;
 - f. the source, nature and value of any contracts or other business arrangements with the Government of Canada or a federal agency or body that a member of the Senator's family has, directly or through a subcontract, or by virtue of a partnership or a significant interest in a private corporation, that the Senator is able to ascertain by making reasonable inquiries;
 - g. information regarding the nature but not the value of any assets and liabilities over \$10,000; and
 - h. any additional information that the Senator believes to be relevant to this Code.



Excluded matters

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

Additional excluded matters

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

Material change

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

Meeting with the Senate Ethics Officer

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

Public disclosure summary

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

Contents of public disclosure summary

33. (1) The public disclosure summary shall list

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



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

Discretion

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

- (a) the information is not relevant to the purposes of this Code or is inconsequential, or
- (b) a departure from the general principle of public disclosure is justified in the circumstances.

Disagreement

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



Public inspection

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

Evasion

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

Committee

Designation or Establishment

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

Membership

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

No *ex officio* members

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

Election of members

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

Presentation and adoption of motion

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

Chair

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



Removal

- (7) A member is deemed removed from the Committee as of the time that:
- (a) the Senate Ethics Officer informs the Committee that a request for an inquiry made by the Senator is warranted; or
 - (b) the Senator becomes the subject of an inquiry under the Code.

Substitutions

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

Meetings *in camera*

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

Meetings in public

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

Attendance

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

Affected Senator

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

Withdrawal

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

Jurisdiction

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



Senate Ethics Officer

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

Directives

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

Appeals to the Committee

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

Decisions binding

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

Confidentiality

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

Intersessional Authority

Intersessional Authority created

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

Composition

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

General authority

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



Additional functions

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

Inquiries and Investigations

Direction by the Committee

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

Request for an inquiry

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

Form of request

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

Request to be sent

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

Preliminary review

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

If inquiry warranted

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



Receipt of information

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

Committee to approve

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

Notice

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

Respect for the inquiry process

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

Inquiry to be confidential

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

Cooperation

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



Powers of Senate Ethics Officer

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

Report to the Committee

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

Contents of report

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

Bad faith

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

Mitigation

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

General recommendations

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



Reasons

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

Consideration of report

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

Due process

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

Investigation

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

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

Committee report

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

No report required

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

Contents of report

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

Remedial action

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



Anonymity

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

Suspension of investigation or inquiry: Act of Parliament

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

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

Investigation or inquiry continued

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

Suspension of investigation or inquiry: other laws

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

Advice of Committee

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

Notice for motion to adopt

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



Motion

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

Senator may speak

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

Right to speak last

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

Senate vote

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

Referral back

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

Miscellaneous

Privacy to be minimally impaired

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

Confidentiality

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

- (a) a resolution by the Senate under subsection 20.2(1) of the Parliament of Canada Act requesting the Governor in Council to remove the Senate Ethics Officer from office;
- (b) dismissal of any officers, employees, agents, advisers or consultants involved.



Retention of documents

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

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

Committee review

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



APPENDIX C



Appendix C

CHRONOLOGY OF KEY EVENTS

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



- February 26, 2004 Bill C-4 was referred to the Standing Senate Committee on Rules, Procedures and the Rights of Parliament.
- March 23, 2004 The Standing Senate Committee on Rules, Procedures and the Rights of Parliament tabled its report on Bill C-4.
- March 31, 2004 Bill C-4 received Royal Assent.
- February 24, 2005 Motion to approve the appointment of Mr. Jean T. Fournier as Senate Ethics Officer (SEO) was debated in the Senate. Mr. Fournier appeared before the Senate sitting in Committee of the Whole. Motion to approve the appointment was adopted that day.
- February 25, 2005 Governor in Council appointment of Mr. Jean T. Fournier as the first Senate Ethics Officer effective April 1, 2005.
- April 1, 2005 Mr. Fournier assumed his duties along with Louise Dalphy, Executive Assistant. He began a series of informal meetings with senators.
- May 11, 2005 The Standing Senate Committee on Rules, Procedures and the Rights of Parliament tabled its Third Report recommending the adoption of a *Conflict of Interest Code for Senators*.
- May 18, 2005 The *Conflict of Interest Code for Senators* was adopted by the Senate.
- September 15, 2005 Deadline for submitting Confidential Disclosure Statements to the SEO. All senators met the deadline.
- October 2005 to April 2006 SEO examined the Confidential Disclosure Statements submitted by senators to identify potential conflicts of interest and determine the compliance measures required in each case.
- May 9, 2006 Launch of the Senate Public Registry.



APPENDIX D



Appendix D

FINANCIAL INFORMATION (UNAUDITED)

April 1, 2005 to March 31, 2006

	Authorized	Expenditures	Unspent Balance
Program expenditures	\$775,000	\$731,926	\$43,074
Contributions to employee benefit plans	\$87,046	\$87,046	\$0
Total	\$862,046	\$818,972	\$43,074

Description	Expenditures
Salaries, Wages and Employee Benefits	\$612,192
Transport and Communication	\$18,369
Information	\$7,007
Professional and Special Services	\$47,159
Rentals	\$575
Purchase, Repair and Maintenance	\$5,127
Utilities, Materiel and Supplies	\$3,678
Furniture and Equipment	\$124,865
Total	\$818,972

Note: The Office of the Senate Ethics Officer began operations April 1, 2005. Due to the election on January 23, 2006, the Office was funded through a temporary transfer of funds from the Treasury Board Secretariat.



APPENDIX E



Appendix E

OPINION RELEASED BY SENATE ETHICS OFFICER

July 18, 2005

The Honourable Paul Massicotte
Room 144, East Block
The Senate of Canada
Ottawa ON K1A 0A4

Dear Senator Massicotte:

Request for an Opinion

With the recent coming into force of the *Conflict of Interest Code for Senators*, your letter of June 1, 2005 seeks my confidential opinion pursuant to section 8 of the Code, on what steps you may need to take to be in compliance with the Code.

Background

In addition to being a Senator you are the President and Chief Executive Officer of Alexis Nihon Real Estate Investment Trust (Alexis Nihon). I understand that you hold approximately 12% of the shares of this publicly traded company. The three federal contracts held by the company are leases in Alexis Nihon properties: one in Gatineau and two in the Montreal region. The Gatineau contract involves a \$99 million, 15 year lease with the federal government for a 333,000 square foot office building. The other two leases totaling some 40,000 square feet, were part of a larger real estate portfolio acquired by Alexis Nihon from a third party in 2003.

The Gatineau lease agreement between the Department of Public Works and Government Services and Alexis Nihon was the result of an open and competitive bidding process involving five bidders in the final stage. KPMG, one of Canada's largest firms providing audit services, oversaw the bidding process, which was a timely initiative I might add. KPMG's final report concluded that "the overall process is deemed to have been fair". Alexis Nihon was awarded the contract in December 2001, some 18 months **before** you became a Senator.

I note as well that at the time of your appointment you sought expert advice from several sources, both inside and outside government, about the possibility of conflicts



between your public duties as a Senator and your personal interests in Alexis Nihon. That those experts were unable to reach a consensus would have been frustrating. Now that the Code is in place and with the establishment of the Office of the Senate Ethics Officer, I trust that newly appointed Senators or potential candidates will be able to identify, at the earliest possible opportunity, any real or apparent conflicts and quickly take whatever action may be required to comply with the Code. My door will always be open to you and your colleagues, and all such informal consultations will take place in the most complete confidence.

As I consider how best to deal with the issue of parliamentarians contracting with government, I would note that this is not a new issue, nor is it a uniquely Canadian one. In our parliamentary system, this question goes back to the days in Britain many years ago when the King and his ministers resorted to various schemes to “buy” Members of Parliament in order to win support. Today, the issue is debated publicly in many countries and, as we will see later, different approaches are being followed to avoid or minimize the possibility of parliamentarians using their position of influence to obtain preferential treatment in the awarding and management of government contracts, for themselves, their families or their friends, to the disadvantage of other potential candidates or bidders.

Coming back to your request for my opinion, with the *Senate Code* and the Office both being so new, and without any past rulings to draw upon, I intend to set out in detail how the Code, in my view, applies specifically to your situation. This will subsequently allow me to draw upon my analysis, as appropriate, to provide advice to other Senators who may also have private interests in contracts with the federal government, recognizing at the same time that no two situations are alike and that each should be judged on its merit. This pragmatic approach will allow for the development of guidelines, for the assistance of Senators and the general public, to interpret the Code on this and other key issues.

Opinions and Advice under the Code

As noted earlier, this opinion along with its recommendations is provided to you pursuant to Section 8 of the Code. I draw your attention in particular to sub-sections 8(1) and 8(4).

Section 8(1) reads:

In response to a request in writing from a Senator on any matter respecting the Senator’s obligations under this Code, the *Senate Ethics Officer* shall provide the Senator with a written opinion containing any recommendation that the *Senate Ethics Officer* considers appropriate.



Section 8(4) reads:

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

One point of clarification is appropriate. My responsibility as Senate Ethics Officer relates exclusively to the Senate Code which sets out, for the first time, comprehensive standards on conflict of interest for Senators. The recent controversy over whether you were in compliance with the *Parliament of Canada Act* **before** the Senate Code came into force is not, therefore, a matter that I will or can address. In any event, Sections 22 to 28 of the Code have now replaced Sections 14 and 15 of the *Parliament of Canada Act* which were repealed last month.

Parliamentarians contracting with Government

Before I address the various sections of the Code which are relevant to your situation, I would like to review briefly the question of Members of Parliament holding government contracts in the United Kingdom and the United States.

The British House of Commons in 1957 decided to remove from the *House of Commons Disqualification Act, 1931* any prohibition against the holding of government contracts by Members of Parliament because, it seems, Members have not abused their rights over a considerable period of time. We note as well that the House of Lords' 2002 Code of Conduct contains **no** restrictions regarding government contracts with Members.

In the United States the general rule is that Senators may not enter into a contract or agreement with the government. "Any such contract is deemed void, and both the member and the officer or employee who makes the contract on behalf of the government may be fined". However, there are exceptions. For example, a corporation with a relationship to a Member of Congress may enter into a contract with the federal government for the general benefit of the corporation. Thus, the U.S. Department of Justice has ruled that a Member of Congress "may be a stockholder even a principal stockholder, or an officer of a corporation that holds a Government contract without incurring criminal liability". The U.S. Senate Code of Conduct generally prohibits any outside activity that "is inconsistent or in conflict with the conscientious performance of official duties".

Considerations

I now move to the specific situation you find yourself in as a Senator and an officer of a major real estate company with federal government contracts. The Code for



Senators contains several sections which bear directly on your circumstances and offer guidance on (1) what steps you will need to take to comply with the Code and on (2) what limitations the Code will place on your activities as a Senator given present and future contracts between Alexis Nihon and the Government of Canada.

1. Principles of the Code

The Senate Code has, in Sections 22-28, very specific rules of conduct concerning government contracts. Before considering these sections, however, I would like to begin by underlining the importance of the Principles of the Code which serve as the setting against which subsequently to apply the rules.

Section 2.(1) sets out these Principles as follows:

Given that service in Parliament is a public trust, the Senate recognizes and declares that Senators are expected

- (a) **to remain members of their communities and regions and to continue their activities in those communities and regions while serving the public interest and those they represent to the best of their abilities;**
- (b) **to fulfill their public duties while upholding the highest standards so as to avoid conflicts of interest and maintain and enhance public confidence and trust in the integrity of each Senator and in the Senate; and**
- (c) **to arrange their private affairs so that foreseeable real or apparent conflicts of interest may be prevented from arising, but if such a conflict does arise, to resolve it in a way that protects the public interest.**

I would highlight the **first** of these Principles as particularly relevant to your situation.

That Senators are expected to remain involved in activities in their communities and regions reflects an important parliamentary tradition; that by being engaged in their communities they bring a valuable perspective to their parliamentary responsibilities.

It is only recently that Canadian federal parliamentarians have become subject to conflict of interest codes but for a number of years successive Prime Ministers have set out rules for those parliamentarians who are also members of the Cabinet. To reflect the fact that Cabinet Ministers have considerable executive powers the *Conflict of Interest and Post-Employment Code for Public Office Holders* places tight restrictions on the types of assets Ministers may hold and specifically prohibits them from engaging in outside employment, practicing a profession, having a directorship in a corporation, etc. The role, responsibilities and powers of legislators are, however, quite distinct with the result that the two new federal codes permit a wide range of



outside activities. This distinction between Ministers and other parliamentarians is reflected in the various conflict of interest codes applied in most provinces and territories as well as in the United Kingdom.

One of the better statements on the importance of continuing community and professional engagement was made by the UK Committee on Standards in Public Life in their first report in 1995. The Committee, set up by the then Prime Minister, was specifically dealing with the House of Commons but subsequently took the same position with respect to the House of Lords. In addressing paid outside employment they stated:

“We believe that those Members who wish to be full-time MPs should be free to do so, and that no pressure should be put on them to acquire outside interests. But we also consider it desirable for the House of Commons to contain Members with a wide variety of continuing outside interests. If that were not so, Parliament would be less well-informed and effective than it is now, and might be more dependent on lobbyists. A Parliament composed entirely of full-time professional politicians would not serve the best interests of democracy. The House needs if possible to contain people with a wide range of current experience which can contribute to its expertise”.

Equally strong views were expressed on this matter, from a Canadian perspective, by Senator Richard J. Stanbury and Don Blenkarn, M.P. in their 1992 Report to the Senate and to the House of Commons on conflict of interest:

“The Canadian tradition has seen a mix of politicians who have given up outside activities for their parliamentary activities, and “citizen politicians”, citizens who entered politics after pursuing active business or professional lives, and who retain those businesses during their tenure in public life. We believe this mix enhances the quality of Parliament as a whole, contributing to an expression of diverse views and the representation of a broad range of interest.

Insofar as Parliament includes individuals who are active in the outside community, or who come to Parliament after building successful business or professional careers, there will be situations where a Member’s public duties could impact on their private interests. Government and Parliament are today so deeply involved in a myriad of issues touching on diverse aspects of business and the professions, that it is virtually impossible for this not to occur.



Committee members recognize that it is not necessarily wrong or improper for a conflict between a Member's public duties and private interests to arise. To say otherwise would be to demand that all Members sever all ties with their former lives. Not only do we believe such a demand would work excessive hardship (and dissuade talented and capable individuals from public life), but we believe it is unnecessary. What is important is to ensure that any conflict that could arise is and is seen to be always resolved in the public interest”.

2. Section 5 of the Code

We note that the *Senate Code* is quite explicit on the legitimacy of outside activities. The language is similar to that in Section 7 of the *Conflict of Interest Code for Members of the House of Commons*. Section 5 of the Senate Code reads as follows:

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

- (a) engaging in employment or in the practice of a profession;**
- (b) carrying on a business;**
- (c) being a director or officer in a corporation, association, trade union or non-for-profit organization; and**
- (d) being a partner in a partnership.**

The outside activities that parliamentarians engage in will cover a very wide spectrum. Some of these will be of a commercial nature but many others will not. The essential point is nothing prevents a Senator from being involved in these activities. Some of these may, however, raise real or potential conflicts which Senators will have to resolve in a way that upholds the highest standards (Principle 2.(1)b)) and protects the public interest (Principle 2.(1)c)). Strict enough conflict management rules must be in place to deter unethical practices and maintain the good reputation of Parliament, but they should not be needlessly strict to the point of discouraging persons of ability and experience from entering public life. In my view, specific factual circumstances should be evaluated and differential standards applied as appropriate.

3. Government Contracting under the Code

The Senate Code **does not** contain a blanket prohibition against a Senator having any direct or indirect contractual relations with the Government of Canada or its agencies, although a quick reading of Sections 22 and 24 might suggest otherwise.



The Code sets out provisions for Senators being a party, directly or through a subcontract, to contracts with the federal government or its agencies; where they own securities in a public corporation that contracts with the federal government or its agencies; or have an interest in a partnership or private corporation that is a party, directly or through a subcontract, to a contract with the federal government or its agencies. I attach, for ease of reference, the full text of sections 22-28.

As I mentioned at the outset, given the newness of the Code, this is my first opportunity to review the contract provisions. It will help me in coming to a conclusion on your specific situation to review these provisions broadly.

Section 22 which is entitled “Government contracts”, at first examination, would not seem to apply to your situation. It reads as follows:

Government contracts

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

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

Your involvement with Alexis Nihon is that of unit-holder, trustee and officer. The contracts with the federal government are not with you personally or through a subcontract. Nonetheless section 22 offers important guidance, in my view, in subsection (b) where it is stated that such a contract may be permissible if I conclude that the contract is unlikely to affect your obligations under the Code.

The specific provisions of the Senate Code are more complex with respect to share-holdings (or unit-holdings) in public corporations. In my view most do not apply to your situation.

Section 23(1) states:

Public corporations

23. (1) A Senator may own securities in a public corporation that contracts with the Government of Canada or any federal agency or body unless the holdings are



so significant that the Senate Ethics Officer provides a written opinion that they are likely to affect the Senator's obligations under this Code.

With 12% of the equity you are the second largest unit-holder in Alexis Nihon. Are your holdings, nonetheless, so significant as to affect your obligations under the Code? In these early days of the Code, I find this a difficult line of enquiry. I think it more fruitful, for reasons I will explain, to approach the question from the opposite direction, i.e. are your holdings unlikely to affect your obligations under the Code?

Section 23.(2) on public interest would seem to have no application to your situation.

Public interest

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

There would not appear to be any "special circumstances" for which Section 23.(2) might be applicable.

Section 24 (partnerships and private corporations) does not directly apply to your situation but, as is the case with section 22, offers important guidance. This section reads as follows:

Partnerships and private corporations

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

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

In effect, if Alexis Nihon was a private corporation a contract would be permissible if I, as the Senate Ethics Officer, were to conclude that the contract is unlikely to affect your obligations under the Code; the same test as set out in Section 22.



Lastly in this discussion of contracts, section 27 of the Code grandfathers contracts that existed before a Senator's appointment to the Senate (or before the entry into force of the Code) but not to their renewal or extension. This provision applies to the three contracts previously referred to, but since the intent of Alexis Nihon is to pursue future leasing contracts with the federal government I consider it important to determine definitely on what basis, if any, Alexis Nihon can continue to compete for federal contracts as long as you are a Senator.

4. Your Obligation as a Senator under the Code

The specific rules set out in the Code on contracting by public corporations (Section 23) relate to Senators as shareholders (unit-holders), not as directors (trustees) or officers of the corporation. Nonetheless Section 5 of the Code allows Senators to be a director or officer in a corporation, *so long as they are able to fulfill their obligations under this Code.*

When this is coupled with the critical standard of Sections 22 and 24 as to whether *the contract is likely to affect the obligations of the Senator under the Code, the test becomes clear.*

The question then is whether your position as director, CEO and a significant shareholder of Alexis Nihon creates a situation where the company's contracts with the federal government affect negatively your obligations under the Senate Code?

What are your obligations under the Code?

First, I assume you will continue to be engaged in the management of Alexis Nihon. This means that, from time to time, as CEO you will become involved in corporate decisions to bid on new leasing contracts with the federal government. As a Senator, however, the Senate Code in Section 11 states:

Use of influence

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

In my view this requires that *in no circumstance* may you become involved in any negotiation or discussion with officials of the federal government on matters related to the company's government contracts, both existing and potential. It would require



that you *not have any dealings whatsoever* with officials in Public Works and Government Services Canada.

Second, your duties as a Senator may make you privy to information that is not generally available to the public. Section 12 of the Code states:

Use of information

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

Conveying information

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

These require that if any such insider information comes to your knowledge, which could affect favourably the interests of Alexis Nihon, it be held confidential and not conveyed under any circumstances to other members of the company's management or board.

Third, the Code requires more generally that in the performance of your Senate duties you do not attempt to further your private interests. Section 10 states:

Furthering private interests

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

Sections 14 to 18 set out the procedures for declaring a private interest that might be affected by a matter that is before the Senate or a committee. These sections are not yet in force. They are being examined with the intent to provide explicit guidance to you and other Senators by the return of Parliament in the fall.



One last consideration. Should you establish a trust for your holdings in Alexis Nihon as is provided for in Section 23.(4)? I would recommend against this. As I have just explained it will be possible for you to meet your obligations under the Code, provided certain steps are taken. If you were to place your holdings in a trust it would also be necessary to resign as trustee and CEO. In other words you would need to withdraw completely from any involvement with the company.

Summary Conclusions and Recommendations

Based on the information available to me, I conclude that the Gatineau lease between Alexis Nihon and the federal government does not create a real or apparent conflict of interest for you as a Senator. For the reasons already stated, the lease will not prevent you from fulfilling your obligations as a Senator. It has also been demonstrated that the lease was awarded after a public, fair and competitive bidding process; a process that would lead a reasonable person to conclude that neither you or Alexis Nihon received any special advantage or consideration as a result of your position as a Senator. This is an important point of clarification because of allegations of preferential treatment. The fact that the contract was awarded some time before your appointment and signed several months **after** you were appointed does not change my conclusion that the awarding of the contract was aboveboard;

Furthermore, I conclude that as a Senator you should abstain from involvement in all or any negotiations and discussions with officials of the federal government on matters relating to the company's government contracts, both existing and potential. This is not limited to the acquisition of new leases but also the terms and conditions of leases similar to those currently held by Alexis Nihon in the Montreal region, or their renewal. This specifically requires that you not have any dealings whatsoever with decision-makers or officials in Public Works and Government Services Canada.

I note as well that you took reasonable steps to ascertain your ethical obligations, both before and following your appointment as a Senator. Now that the Senate Code is in place and with the recent appointment of a Senate Ethics Officer, it would seem timely for both the Prime Minister's Office and the Privy Council Office to review existing appointment procedures for Senators to allow potential candidates to be briefed in advance about their obligations under the Code, well before they discover to their consternation what they have gotten themselves into.



Recommendations

I am of the view that you can continue to be a unit-holder, trustee and CEO of Alexis Nihon and that the company can continue to hold its existing leasing contracts with the federal government and compete for future contracts provided that you take the following steps in order to live up to your obligations under the Code:

1. I recommend that you send a letter of direction to a designated Senior Officer in the company, possibly the Executive Vice-President and Chief Operating Officer, instructing him that under the *Conflict of Interest Code for Senators* you are required to refrain from having any dealings whatsoever with the federal government and that he and other employees of the company, should deal with those issues to your complete exclusion. The letter should be approved by my Office and will be included in your public disclosure file;
2. I also recommend that you retain a senior and well respected outside counsel to periodically assure you, the Board and myself that management continues to understand how critically important these compliance measures are. I believe it would be equally desirable for me to speak to your management team about the importance of keeping you distanced from any of their direct dealings with the federal government;
3. You have informed me that you will be seeking a resolution from the Board with respect to your compliance obligations under the Code. I agree that Board approval is essential given your fiduciary responsibilities as an officer of Alexis Nihon and I would propose to include a copy of the resolution as part of your public disclosure file;
4. I propose that we examine these arrangements in the fall of 2006 to ensure that they are sufficient for my purposes and are not unnecessarily onerous for you and Alexis Nihon. Given the publicity surrounding this matter, I would want to review at that time the latest information on the nature, extent and value of Alexis Nihon's federal leases, as well as what proportion of your business such contracts represent;
5. Should any inside information come to your knowledge as a Senator, which could affect favourably the interests of Alexis Nihon, I remind you that you must hold it confidential and not convey it under any circumstances to other members of the company's management or Board;



6. Finally, in the unlikely event that a matter is brought before the Senate or a committee of which you are a member, that might directly affect your interests as an officer of Alexis Nihon, you will have to declare the nature of the interest in accordance with sections 14, 15 and 16 of the Code.

These steps which I have recommended will, in my judgment, ensure that you are in full compliance with your obligations under the *Conflict of Interest Code for Senators*. Inevitably questions will arise from time to time and I remain available to offer my advice.

Yours sincerely,

Jean T. Fournier