



**CANADA**

**OFFICE OF THE SENATE ETHICS OFFICER**

**OPINION REGARDING SENATOR HOUSAKOS**

**PURSUANT TO SUBSECTION 42(1)  
OF THE  
*CONFLICT OF INTEREST CODE FOR SENATORS***

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## **1. Request for an Opinion**

On October 20, 2009, the Honourable Leo Housakos, a member of the Senate of Canada, requested that I provide him with a written opinion pursuant to subsection 42(1) of the *Conflict of Interest Code for Senators* (the Code) concerning certain allegations raised by the media respecting Senator Housakos' obligations under the Code in connection with a \$1.4M contract to conduct a prefeasibility study for the replacement of Montreal's Champlain Bridge (the contract). The contract was awarded on September 21, 2009 by the Jacques Cartier and Champlain Bridges Corporation (JCCBI), a wholly owned subsidiary of the Federal Bridges Corporation Limited (FBCL), a federal Crown corporation.

In particular, it was alleged that Senator Housakos had used his official position as a Senator to influence the awarding of the contract in order to benefit BPR, a Montreal company with which the Senator was associated at the time of his appointment to the Senate, and which formed part of Consortium BCDE, the winning consortium.

Subsection 42(1) of the Code provides:

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

The Senator's request for an opinion regarding the matter was made public in a press release issued by the Senator's office that same day. He confirmed his request in writing on November 5, 2009.

A written opinion under the above-noted provision is confidential and may only be made public by the Senator or with his or her written consent. Senator Housakos has advised that he intends to make this opinion public.

## **2. Gathering of Facts**

In order to prepare this opinion, I reviewed a number of documents and interviewed representatives from the organizations that could have had a role in the events leading up to the allegations.

The following individuals were interviewed: Senator Housakos, Mr. Pierre Lavallée, President and Chief Executive Officer of Groupe BPR Inc., Mr. Paul Kefalas, President and member of the board of directors of the JCCBI, Mr. Serge Martel, a member of the board of

directors and Secretary of the JCCBI, Ms. Micheline Dubé, President and Chief Executive Officer of the FBCL, and Mr. Glen Carlin, General Manager of the JCCBI. I also spoke with Mr. Jacques Gagnon, the Assistant Deputy Minister at the Ministère des Transports du Québec (Transports Québec).

All of the individuals interviewed were cooperative and credible and where more than one individual had information concerning a particular matter, the information I received from the different parties was generally consistent. In some cases, the interviews were followed up with additional information.

In the course of conducting these interviews, I was satisfied that there were no other individuals who were likely to have any material information to provide.

In addition to these interviews, I reviewed a number of documents related to the issues to which I make reference throughout my opinion. These documents are as follows:

- Annual Report of FBCL, 2007-2008
- Annual Report of FBCL, 2008-2009
- Special Examination Report of the Auditor General of the Federal Bridges Corporation Ltd. and its subsidiaries, September 19, 2008
- Letter of offer from BPR to Senator Housakos, dated December 15, 2008
- Press Release from Transport Canada of announcement by the Honourable Christian Paradis, Minister of Public Works and Government Services, of the Government of Canada's investment in Montreal's Champlain Bridge, dated May 20, 2009
- JCCBI request for proposals of May 28, 2009 and tender documents
- Minutes of the Steering Committee of JCCBI, dated July 17, 2009
- Submission to the board of directors of JCCBI concerning the results of the Evaluation Committee's review of the technical portions and the price component of the proposals of the bidders for the contract to conduct a prefeasibility study for the replacement of the Champlain Bridge (July 21, 2009)
- Report of the Evaluation Committee concerning the evaluation of the technical proposals submitted in relation to the contract to conduct a prefeasibility study for the replacement of the Champlain Bridge (July 21, 2009)
- Letter of resignation as President of Terreau Inc. from Senator Housakos to Pierre Lavallée, President and CEO of Groupe BPR Inc., dated September 3, 2009
- Press Release from JCCBI announcing awarding of contract to Consortium BCDE to conduct prefeasibility study for the replacement of Montreal's Champlain Bridge, dated September 21, 2009

### 3. Relevant Provisions of the Code

The relevant provisions of the Code are as follows:

#### 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.

#### 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.

#### Use of influence

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

**Clarification: furthering private interests**

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

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

**Partnerships and private corporations**

**22.** A Senator shall not have an interest in a partnership or in a private corporation that is a party, directly or through a subcontract 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

[...]

- (b) the contract or other business arrangement is unlikely to affect the Senator's obligations under this Code.

**4. Facts**

**(a) Facts Concerning the History of Senator Housakos' Association with BPR, His Appointment to the Senate, and His Disclosure Obligations under the Code**

*Senator Housakos' Association with BPR*

BPR, which was founded almost fifty years ago, is one of Quebec's four largest engineering firms. It offers a full range of engineering and project management services to industrial and commercial firms, large institutions and municipalities.

In addition to engineering services, it also offers technological services: Terreau concerning environmental waste management, Hospitalis in the area of health care management, BPR CSO for water management, and InfoRisque concerning flooding alerts (water).

BPR currently has more than 2,400 employees in more than 40 business offices in Canada, France, the United States, South Africa and Jamaica. Its activities impact on the municipal, industrial, transportation, energy and building sectors and cover a vast range of multidisciplinary engineering services.

In an interview with Mr. Pierre Lavallée, the President and Chief Executive Officer of Groupe BPR Inc., he advised that BPR engineering and BPR technological services are separate and distinct in their operations.

During this same interview, Mr. Lavallée explained that, in the summer of 2008, he and Senator Housakos were engaged in preliminary discussions concerning the possibility of the Senator joining the technological side of BPR and playing a lead role in the increasingly important and rapidly growing area of waste management. They discussed the possibility of the Senator being appointed to a senior executive position in a company called Terreau Inc., a wholly-owned subsidiary of Groupe BPR Inc. that had existed under a previous name since 2005, was renamed Terreau Inc. in 2007, but was inactive at the time the Senator and Mr. Lavallée were engaged in these discussions. Terreau Inc. operates Terreau, a limited partnership involved in environmental waste management. Before Terreau Inc. was reactivated, the activities in this area were being carried out by a small division of BPR Inc.

Mr. Lavallée explained that he and the Senator discussed the possibility of reactivating Terreau Inc. for the above purpose. Mr. Lavallée stated that the Senator was informed that if Terreau Inc. was not yet reactivated by the date on which the Senator was expected to begin his employment, the Senator would be given a position in BPR Inc., a wholly-owned subsidiary of Groupe BPR Inc., in the interim. In this regard, they discussed a position as Vice-President of Business Development for BPR Inc., as well as the possibility of being a member of the board of directors of BPR Inc.

Mr. Lavallée said that, after a series of these discussions, on December 15, 2008, Senator Housakos officially accepted Mr. Lavallée's offer of employment as President and CEO of Terreau Inc. and as a member of the board of directors of Terreau Inc.

The letter of offer, a copy of which was provided by Mr. Lavallée to me, stated that the Senator's employment was to begin on January 1, 2009 and that his mandate would be limited to the technological side of BPR and to Terreau Inc. in particular. The letter of offer also provided that the Senator's immediate supervisor would be the President and CEO of Groupe BPR Inc., Mr. Lavallée. The letter stated that, once the Senator officially began working as part of Terreau Inc., he would also be a member of the board of directors of Terreau Inc., as well as a member of the "management committee of BPR Technologies".

Moreover, the letter of offer also stipulates, and this was confirmed by Mr. Lavallée in the interview, that the Senator would be entitled to acquire shares in Groupe BPR Inc. after one full year in office, in other words, as of January 1, 2010. The Senator's performance with Terreau Inc. would determine the number of shares he would be offered annually.

The letter is also clear that the Senator's employment would be based in Montreal, although his position would require him to travel from time to time throughout Quebec, in Ontario, and in Europe. This letter of offer was signed by both parties, i.e., Senator Housakos, and Mr. Lavallée as the President and CEO of Groupe BPR Inc., in Montreal on December 15, 2008. It was understood that the Senator's first priority would be to consult with prospective clients, develop a business plan and to bring this to the board of directors of Terreau Inc. for approval. At that time, Senator Housakos had not yet been appointed to the Senate.

On January 1, 2009, Terreau Inc. was reactivated. On January 15, 2009, the first meeting of the board of directors of Terreau Inc. was held; however, Senator Housakos was absent. The second board meeting was held on April 6, 2009, at which time the Senator was in fact present and, as such, on that date, his appointment as President and board member of Terreau Inc. was confirmed.

Since Terreau Inc. was active as of January 1, 2009, there was no need to provide the Senator with an officer position or a position on the board of directors of BPR Inc.

#### *Senator Housakos' Appointment to the Senate*

On December 22, 2008, the Prime Minister, the Right Honourable Stephen Harper, announced the appointment of Senator Housakos to the Senate. According to Mr. Lavallée, Senator Housakos contacted him that same day and the two discussed whether the Senator could still continue to hold his position with Terreau Inc. Mr. Lavallée stated that, after



consultations, the Senator decided to pursue his activities with Terreau Inc. while at the same time carrying out his duties as a Senator.

The Senator was officially appointed to the Senate on January 8, 2009, the date of Her Majesty's Writ of Summons, and was sworn in on January 26, 2009.

#### *Meetings with Senate Ethics Officer and Disclosure Requirements*

I held an initial meeting with Senator Housakos on February 4, 2009 in order to discuss his obligations under the Code and to answer any questions he might have concerning his obligation to file a confidential disclosure statement under section 27 of the Code. At that time, the Senator explained that he was on the boards of directors of BPR and Terreau Inc. He inquired as to whether he could continue to do so. I advised him that the Code authorizes Senators who are not Ministers of the Crown to participate in outside activities, including engaging in employment, and being a director or officer in a corporation, or a partner in a partnership, as long as they are able to fulfill their obligations under the Code (section 5). However, I cautioned him about section 9 of the Code, which pertains to the use of influence.

The Senator sent his confidential disclosure statement to my office that same day (February 4, 2009). It confirmed what the Senator had stated at the meeting on February 4, 2009: that he was on the board of directors of BPR and on the board of directors of Terreau Inc. It also noted that he was an officer of Terreau Inc. The Code requires each Senator to disclose to me "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" (paragraph 28(1)(a)). Shortly after February 4, 2009, the Senator was contacted to clarify what officer position he held in Terreau Inc. He explained that he was its President, in addition to being a member of its board of directors.

In an interview with the Senator, he explained that he declared that he was a member of the board of directors of BPR in his confidential disclosure statement of February 4, 2009 although he in fact never held such a position because, as noted earlier, during the first few months of his appointment to the Senate, he was still not clear about what position he would hold, if any, in BPR. He stated that he thought he might still be asked to hold an official position in the company, in addition to his position with Terreau Inc. He explained that he wanted to be fully transparent with my office and provide more information, rather than less, in advance. In an interview with Mr. Lavallée, he confirmed that the Senator's appointment to the Senate caused some confusion as to how BPR should proceed concerning the Senator's employment with the corporation.

In the interview with Mr. Lavallée, he also noted that he could understand why Senator Housakos would file a statement with my office indicating that he was sitting on the board of

directors of BPR in light of the discussions the two had had leading up to the offer of employment. He added that the letter of offer of December 15, 2008, might also have left doubt about the Senator's role vis-à-vis BPR. The letter provides that, "[b]arring any legal, administrative or fiscal constraints", the Senator would become a member of the board of directors of Terreau Inc. but would also sit on "the management committee of BPR Technologies". As already noted, at the time the letter was signed, Terreau Inc. was still an inactive corporation. Moreover, the Senator had not been confirmed as President and board member of Terreau Inc. until the second meeting of the board of directors on April 6, 2009.

Once I received the Senator's confidential disclosure statement, I prepared a letter of advice to the Senator. I prepare letters of advice for all Senators as part of the disclosure process, which takes place, first upon a Senator's appointment to the Senate, and thereafter annually in order to provide guidance to them concerning their obligations under the Code and, in particular, to address the provisions of the Code that are directly relevant to them in light of the information that they disclose confidentially to me. (*Note: For a more detailed description of the annual disclosure process in the Senate, please see Senate Ethics Officer's Annual Report, 2008-2009, pp. 12, 13, 70, 71, and 72.*)

The letter of advice to Senator Housakos, dated February 18, 2009, confirmed the advice provided to the Senator at our meeting of February 4, 2009; namely, that the Code does not prohibit Senators from engaging in outside activities, including sitting on boards or holding office in corporations, partnerships or other entities, provided Senators are able to fulfill their obligations under the Code (section 5). The letter, however, cautions the Senator with respect to section 9 of the Code, concerning the use of influence. I advised the Senator that the use of influence in regards to decisions of government respecting the awarding of contracts or other financial benefits is of particular concern. He was cautioned against personally having any dealings with government officials in order to obtain, or seek to obtain a financial benefit for BPR or Terreau Inc., including contracts or financial assistance. He was also provided with advice on various other provisions of the Code that were relevant to his circumstances.

I again met with Senator Housakos on March 3, 2009 to answer any questions he had concerning the letter of advice, as well as his public disclosure summary.

I prepared the Senator's public disclosure summary on the basis of the Senator's confidential disclosure statement in accordance with section 30 of the Code, and using additional information provided for clarification. As a result, the Senator's public disclosure summary, dated February 4, 2009 stated that the Senator was President and a member of the board of directors of Terreau Inc., as well as a member of the board of directors of "BPR Engineering Inc.". As was noted earlier, what had in fact been discussed between Senator Housakos and Mr. Lavallée was a position on the board of directors of BPR Inc., but only if

Terreau Inc. was not reactivated by the time the Senator was to begin his employment. The Senator's public disclosure summary was placed in the Public Registry at the Senate Ethics Office on March 3, 2009.

Shortly after the Senator's appointment to the Senate, the Senator's biography on the parliamentary website noted that he was, at the time, serving as "President/CEO of Terreau inc." and that he also held the position of "Vice-President (Business Development) with BPR Engineering in Montreal", rather than a position on the board of directors of BPR. This suggests that there was some confusion on the part of Senator Housakos concerning the exact nature of his association with BPR at that time.

In the interview with Mr. Lavallée, he explained that during the Senator's nine months working as President of Terreau Inc., he communicated with the Senator regularly but only concerning Terreau matters. He stated that they did not discuss the engineering services of BPR with the Senator since he did not have any responsibility in this area. He explained that, given the fact that Terreau Inc. had just been reactivated, the Senator was dealing primarily with the preparation of a business plan for Terreau and other organizational matters.

#### *Senator Housakos' Resignation from Terreau Inc.*

In the interview with Mr. Lavallée, he stated that he and Senator Housakos spoke on September 3, 2009 concerning the Senator's work schedule. At that time, the Senator advised Mr. Lavallée that his responsibilities in the Senate were more onerous than he had expected and that, due to this and other commitments, he would have to resign as President of Terreau Inc. To this end, the Senator sent a letter to Mr. Lavallée, dated September 3, 2009, resigning from his position with Terreau Inc., effective October 1, 2009, a copy of which I have reviewed.

On September 4, 2009, I sent out my annual letters to all Senators requesting that they file their confidential disclosure statements for the year by October 2, 2009. The office received Senator Housakos' confidential disclosure statement on October 6, 2009. In it, he stated that he was not a director or officer in any corporations, income trusts, or trade unions, nor was he a partner in any partnerships. When I received the statement, I contacted the Senator that same day for clarification and he confirmed that he was no longer associated with BPR and had resigned as President and board member of Terreau Inc.

On October 15, 2009, Senator Housakos updated his biography on the parliamentary website. The website makes reference to the Senator's past employment as President of Terreau Inc., "a company specializing in composting" but no longer mentions BPR.

## **(b) Facts Regarding JCCBI Contract to Conduct Prefeasibility Study Concerning the Replacement of the Champlain Bridge**

### *Background on FBCL and JCCBI*

JCCBI is a wholly-owned subsidiary of the FBCL. The FBCL is a Crown Corporation incorporated under the *Canada Business Corporations Act* and is listed under Part I, Schedule III of the *Financial Administration Act*. It is responsible for three important bridges and other infrastructure in the Montreal area. It is also responsible for three international bridges in Ontario. These are operated by its three subsidiaries, one of which is JCCBI.

The FBCL ensures that the bridges and structures in its care and control are safe and efficient for users. Over 148 million vehicles and more than \$76 billion worth of merchandise transit on the FBCL's structures each year. The FBCL provides the Government of Canada with oversight and accountability for the bridges under its control and provides strategic direction to its subsidiaries. It reports to Parliament through the Minister of Transport, Infrastructure and Communities.

JCCBI is a small organization that employs 44 people. Its board of directors is comprised of five members named by the FBCL. Its mandate is to manage, operate and maintain the Jacques Cartier and Champlain Bridges, the Bonaventure Expressway, the federally owned section of the Honoré Mercier Bridge, the Melocheville Tunnel, and the Champlain Bridge Ice Control Structure, in order to provide the public with safe and efficient transport. JCCBI is financed mainly through parliamentary appropriations.

Due to the small number of staff it employs, JCCBI regularly outsources its professional engineering services in order to meet its objectives and goals. It, along with other subsidiaries of the FBCL, manage contracts mainly for bridge management projects, including bridge inspection and surveillance of construction contracts.

### *Prefeasibility Study Concerning Champlain Bridge*

On May 20, 2009, Transport Canada issued a press release concerning the Honourable Christian Paradis' announcement of a \$212 million contribution towards rehabilitation projects for Montreal's Champlain Bridge. The press release provided that the investment followed a request from JCCBI to accelerate funding for a 10-year rehabilitation program commencing in 2009.

In addition to these rehabilitation projects, the press release announced that JCCBI and Transports Québec would soon be tendering a prefeasibility study to examine long-term options for the Champlain Bridge, which would allow the federal government to make future decisions in this regard.

On May 28, 2009, JCCBI put out a public call for tenders concerning the contract to conduct a prefeasibility study of the Champlain Bridge. JCCBI used MERX, the electronic tendering service used by the federal government and some provincial and municipal governments to advertise opportunities for government contracts across Canada. The closing date for the Request for Proposals for this particular contract was July 8, 2009.

Subsection 41(2) of the *Financial Administration Act* (FAA) excludes Crown corporations from the application of regulations concerning the conditions under which contracts may be entered into. As such the *Government Contracts Regulations* do not apply to them unless the legislation of the Crown corporation specifically requires that it be subject to subsection 41(1) of the FAA. Consequently, the Treasury Board policies do not apply to them. However, like other Crown corporations, the JCCBI models its contracting policies and procedures after the Treasury Board contracting rules and adapts them to its particular circumstances. Indeed, in interviews with Mr. Glen Carlin, General Manager at JCCBI, and Ms. Micheline Dubé, President and Chief Executive Officer of the FBCL, we were advised that JCCBI's rules and procedures in this regard are in line with Treasury Board contracting policies.

Moreover, a Special Examination Report of the Auditor General, dated September 19, 2008, and conducted pursuant to section 138 of the *Financial Administration Act*, provides a detailed examination that documents the conclusions and recommendations of the Auditor General concerning both the FBCL and its subsidiaries, including JCCBI, in a number of areas, including contracting practices and procedures. The report concludes that JCCBI has "good contracting practices but needs to improve some of them". In particular, with respect to contracting policies and procedures, the report reads as follows:

JCCBI has policies and procedures in place for defining, awarding, monitoring, and amending inspection and surveillance contracts, as well as construction contracts. Most important elements of JCCBI policies are consistent with best practices. The policies set parameters for defining, monitoring, and amending contracts. JCCBI employees are experienced and apply the procedures in accordance with the policies. (page 35)

And further on page 35, with respect to the management of contracts:

Requests for proposals clearly indicate qualifications and experience requirements from contractors. Every JCCBI construction and inspection contract that we reviewed was subject to a competitive process and awarded in accordance with the policies. Appropriate consideration is given to qualifications versus price. The technical statements of requirements are based on results of inspections and the designs of engineering contractors. Although we found some contract amendments, they did not relate to unclear technical

requirements. JCCBI hires surveillance contractors to monitor work and ensure that it is performed according to contract requirements.

#### *Process for Awarding the JCCBI Contract*

What follows is a description of the process that was followed for awarding this particular contract, as described by Mr. Carlin.

As already noted above, the public call for tenders, advertised on MERX, began on May 28, 2009 and ended on July 8, 2009.

Four proposals were submitted, including that from the Consortium BCDE. The tender documents provided to all interested parties included the detailed criteria that were used to evaluate the technical portion of the submissions. The criteria were developed beforehand by a steering committee, the JCCBI-MTQ Steering Committee, comprised of two members from JCCBI and two members from the Transports Québec. Two observers were also present for most of the meetings of the Steering Committee: a representative from FBCL and a representative from Transport Canada. Mr. Carlin relayed that he and the ADM of Transports Québec, Mr. Jacques Gagnon, were the co-chairs of this Committee. The criteria were then approved by the board of directors of JCCBI on April 29, 2009.

A two envelope procurement system was utilized in which the technical score was valued at 75%, while the price component was valued at 25%. This information was also provided in the tender documents so that bidders understood the weight that would be given to each of these components. In an interview with Mr. Carlin, he advised that the technical score carried more weight in light of the fact that JCCBI's primary objective was to select the bidder that was able to provide the best technical expertise given that this study would serve as the basis for any future decision by the Government of Canada concerning the fate of the Champlain Bridge.

A four person Evaluation Committee was struck, with two representatives from Transports Québec and two representatives from JCCBI. All four individuals were technical experts or engineers. Mr. Carlin advised that none of the members of the board of directors of JCCBI were in any way involved in the work of this Evaluation Committee.

The role of the Evaluation Committee was to assess the various proposals using the criteria, developed by the four-person Steering Committee referred to above, that were required to be met concerning the technical portion of the proposals and then to advise the Steering Committee of its conclusions. The Evaluation Committee conducted its review on July 15 and 16, 2009.

The envelopes containing the technical portion of the proposals were opened on July 9, 2009. The Evaluation Committee reviewed them and reported to the Steering Committee; its conclusions were unanimous with BCDE holding the highest score on the technical portion of the competition.

The Steering Committee unanimously approved the assessment and conclusions of the Evaluation Committee at its meeting on July 17, 2009. The minutes of the meeting of the Steering Committee confirm this.

The price envelopes were opened on July 21, 2009. The total scores for both technical merit and price were calculated for each of the bids and, on this basis, the Steering Committee recommended that the contract be awarded to the Consortium BCDE given that it had the highest total score of all four proposals.

According to Mr. Carlin, the board of directors of JCCBI considered and unanimously approved the recommendation of the Steering Committee on July 23, 2009. This approval was dated (July 23, 2009) and signed by the Secretary of the board, a copy of which I was provided. The approval of the board of directors of JCCBI was the final authority in the process for awarding the contract; no further approvals were required given the value of the contract.

On September 21, 2009, JCCBI issued a press release announcing that it, along with Transports Québec, had awarded the contract to conduct the prefeasibility study to Consortium BCDE. The contract is valued at \$1.4M. BCDE is comprised of the following: BPR, Cima+, Dessau, and Egis Structures & Environnement. JCCBI is financing 60% of the study and Transports Québec is financing 40% of it.

At the interview with Mr. Carlin, he also stated that he was not aware of any formal complaint being launched concerning the process by any of the other bidders.

## **5. Senator Housakos' Position**

Senator Housakos has stated, both publicly and privately in the course of an interview, that he did not have any role in Consortium BCDE's bid for the contract to conduct a prefeasibility study for the replacement of the Champlain Bridge.

A press release issued by the Senator's Office on October 20, 2009, reads: "Senator Housakos had absolutely no role in a consortium, which included BPR, winning the bid in order to study the aging Champlain Bridge".

In the interview, the Senator stated that he did not, at any point, discuss the contract in question with anyone, including any of the following parties: any of the members of the board of directors of JCCBI, JCCBI officials, the Minister of Transport or any of his officials, the Minister

of Public Works and Government Services or any of his officials, or officials from Transport Québec. He explained that, not only was he not involved in the tender process, but that he was not even aware of the fact that BPR was part of a consortium that had been preparing a bid for the contract until the matter became public. He stated that he had very little contact with BPR representatives during the relevant period and that, although he did speak with Mr. Lavallée on occasion, they only spoke about matters concerning Terreau Inc., not BPR engineering services.

## 6. Analysis

### (a) Use of Influence

The allegation against Senator Housakos is that he used his position as a Senator to influence the decision of a Crown corporation to award the contract in question to BCDE, a consortium of which BPR, a corporation with which the Senator was associated at the time of his appointment to the Senate, is a part.

The key provision in this matter is section 9 of the Code, which reads:

#### Use of influence

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

This provision raises two issues:

(1) Did the Senator have a private interest in BPR?

(2) If so, did the Senator use or attempt to use his position as a Senator to influence the decision of JCCBI in awarding the contract to BCDE in order to further his interest in BPR?

*(1) Did the Senator have a private interest in BPR?*

As already noted earlier, there was a great deal of confusion concerning the Senator's association with BPR as a result of the events described earlier. This, in turn, resulted in inconsistent information that was made publicly available.



In any event, the evidence clarifies that Senator Housakos was not at any point in time on the board of directors of Groupe BPR Inc. or BPR Inc., nor did he hold an official position in either of these companies. He was, however, President and a member of the board of directors of Terreau Inc. Given the close association between Groupe BPR Inc. and Terreau Inc., in my view, the Senator did have a private interest in BPR. As noted earlier, Terreau Inc. is a wholly-owned subsidiary of Groupe BPR Inc. and the letter of offer to the Senator of December 15, 2008 was from Mr. Lavallée, President and CEO of Groupe BPR Inc. Moreover, the letter stated that once the Senator officially held a position in Terreau Inc., he would also serve on the “management committee of BPR Technologies”. Finally, the letter also advised the Senator that, after a full year in office (on January 1, 2010), he would be entitled to acquire shares in Groupe BPR Inc. Clearly, the Senator would have a business interest in the performance of BPR until he severed his ties with it and Terreau Inc. on October 1, 2009.

Having said that, the Code does not prohibit Senators from holding positions in corporations, whether as directors or officers, provided they are able to fulfill all of their obligations under the Code. Indeed, section 5 provides:

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.

The *Conflict of Interest Code for Members of the House of Commons* (MP Code) contains an almost identical provision permitting Members who are not Ministers of the Crown or parliamentary secretaries to engage in outside activities (section 7).

As such, the fact that Senator Housakos had a private interest in BPR by virtue of his position as President and board member of Terreau Inc. is not in and of itself contrary to the *Conflict of Interest Code for Senators* (Senate Code).

Moreover, and as was noted above, the Senator was fully transparent and timely in disclosing his association with BPR and his position with Terreau Inc. in his first confidential disclosure statement of February 4, 2009, in accordance with subsection 27(3) and paragraph 28(1)(a) of the Senate Code. And although he incorrectly identified his relationship with BPR in

his statement, I am satisfied that this was a result of: (a) the negotiations leading up to the offer of employment from BPR on December 15, 2008 whereby Mr. Lavallée advised the Senator that, if Terreau Inc. was not yet reactivated by January 1, 2009, the Senator would be provided with a position in BPR Inc. In this respect, they had discussed a position of Vice-President of Business Development and a position on the board of directors; (b) the letter of offer of December 15, 2008, which provided that the Senator would hold an official position in a company called Terreau Inc., an inactive company that had yet to be reactivated; and (c) the subsequent announcement by the Prime Minister on December 22, 2008 that the Senator would be appointed to the Senate, which raised questions about whether the Senator could continue his association with BPR and, if so, to what extent.

When the Senator filed his second confidential disclosure statement with my office on October 6, 2009, he had already severed his ties with both companies (as of October 1, 2009) and this fact was accurately reflected therein.

As already noted, having a private interest in a corporation is not in and of itself a violation of the Senate Code. Indeed, the Senate Code permits this (section 5). However, using one's public office to further that interest would be problematic.

*(2) Did the Senator use or attempt to use influence to further his own private interest?*

I did not find any evidence that the Senator used, or even attempted to use, his position as a Senator to influence the decision of JCCBI in awarding the contract in question to Consortium BCDE in order to further his private interest in BPR. All of the individuals I interviewed stated that the Senator was in no way involved in the process of awarding this contract, nor did any of them speak with Senator Housakos about the contract. Among those interviewed, both Mr. Kefalas and Mr. Martel who are on the board of directors of JCCBI, told me that they did not discuss the contract in question with Senator Housakos at any point. And while the board was the final authority concerning the awarding of the contract, its only role was to ultimately approve the recommendation of the Steering Committee, which in turn had approved the evaluation and conclusions of the committee of experts (the Evaluation Committee). In other words, the board simply adopted the conclusion of the technical experts. The evidence clearly demonstrates that Consortium BCDE was the bidder with the highest total score of all the proposals that had been submitted.

Moreover, both Mr. Lavallée and Senator Housakos stated that the Senator was not even aware that BPR was part of a consortium that was preparing a bid for the contract. I received no evidence to the contrary and I accept the statements of those interviewed in this regard. The fact that the Senator was never appointed a member of the board of directors or

an officer of any company within BPR other than Terreau Inc. corroborates the evidence provided by those interviewed that the Senator would not have been involved in a contract concerning the engineering side of BPR, as opposed to the technological side in which Senator Housakos was involved. Moreover, in the interview with Mr. Lavallée, he explained that BPR proposals for government contracts are generally matters that are not discussed openly but rather are highly confidential in nature. Information relating to these matters is only shared with employees on an 'as need to know basis' for competitive reasons.

The fact that the Senator was not aware of Consortium BCDE's bid for the contract until it was publicly announced on September 21, 2009 explains why he did not file a material change form notifying me of the contract in question in accordance with subsection 28(4) of the Senate Code. After September 21, 2009, he was in the process of preparing his new confidential disclosure statement. As noted earlier, on September 4, 2009, I sent out my annual letters to Senators requesting that they file their confidential disclosure statements for the year. The Senator filed his statement on October 6, 2009. He did not mention the contract in that statement since he had already severed his ties with BPR and Terreau Inc. as of October 1, 2009.

Moreover, I could find no evidence that the process for awarding the contract in question was unfair or improper in any way. In my view, and based on the information with which I was provided, the process was fair, rigorous and transparent and it followed standards and procedures that JCCBI uses to award other such contracts.

Indeed, the Special Examination Report of the Auditor General, dated September 19, 2008, concluded that the contracting procedures used by JCCBI are "consistent with best practices" and that "JCCBI employees are experienced and apply the procedures in accordance with the policies". The report went further to note that every JCCBI contract reviewed was subject to a competitive process and awarded in accordance with its policies in this regard.

This particular contract involved five key steps:

First, a steering committee (the JCCBI-MTQ Steering Committee) comprised of four individuals, two representatives from JCCBI and two representatives from Transports Québec, developed the criteria that the bidders would have to meet for the technological portion of the competition.

Second, a public call for proposals was advertised on MERX, the electronic tendering services used by the Government of Canada and some of the provinces and municipalities to advertise their call for bids nationally.

Third, a group of four technical experts or engineers (the Evaluation Committee), comprised of two representatives of JCCBI and two representatives of Transports Québec, reviewed and evaluated the technical portion of each of the four proposals that had been submitted and then reported its conclusions to the Steering Committee referred to above.

Fourth, the Steering Committee then considered the assessment and conclusions of the Evaluation Committee and unanimously adopted these.

Fifth, the Steering Committee recommended to the board of directors of JCCBI that it adopt the report of the Evaluation Committee and that it award the contract in question to Consortium BCDE, the consortium with the highest total score for both the technical portion of the competition as well as the price portion.

(b) Interest in Entity that has Contract with a Federal Body

Under section 22 of the Senate Code, Senators are not permitted to have an interest in a private corporation that is a party, directly or through a subcontract, to a contract with the Government of Canada or any federal agency or body under which the corporation receives a benefit, unless the Senate Ethics Officer provides a written opinion that the contract is unlikely to affect the Senator's obligations under the Senate Code. This rule is almost identical to section 18 of the MP Code concerning government contracts. In fact, many conflict of interest laws applicable to legislators in the provinces and territories in Canada permit contracts with government in certain circumstances.

The contract in question was awarded on September 21, 2009. Thus, from September 21, 2009 to October 1, 2009, a period of a few days, Senator Housakos did have an interest in a corporation that is a party to a contract with a Government body. However, this contract did not, in my view, affect the Senator's obligations under the Code, and in particular his obligation to comply with section 9. Had the Senator remained President and on the board of directors of Terreau Inc., he would have been required to file a form with my office, i.e. a material change form, notifying me of this contract within 60 days after the contract was awarded to Consortium BCDE, pursuant to subsection 28(4) of the Senate Code. But, as already noted earlier, he did not remain on the board having sent a letter to Mr. Lavallée on September 3, 2009 that he was resigning effective October 1, 2009.

(c) Fundraising Event of May 20, 2009

Questions have also been raised both in the media and in Parliament concerning the Senator's involvement in organizing a political fundraising event in Montreal on May 20, 2009, at which there were some 2,000 guests present. In this respect, it was also reported by the media that two members of the board of directors of JCCBI were in attendance.

Many Senators, like Members of the House of Commons, are involved in organizing fundraising events; this is not an unusual occurrence. As such, the mere fact that the Senator was involved in this event does not result in a contravention of section 9 (use of influence) of the Senate Code. Moreover, the fact that two board members of JCCBI were in attendance at this event, in my view, has no impact on the Senate Code; the Senate Code only applies to Senators. With respect to any suggestion that the Senator used his position to influence the awarding of the contract in question at this event, the evidence I received concerning the process followed by JCCBI in awarding the contract demonstrates that it was fair, rigorous and transparent. In any event, the fundraiser was held before the public call for tenders concerning the contract in question. As such, at that point in time, it was not clear which entities would eventually choose to bid on the contract.

(d) Senator's Membership on the Senate Transport Committee

Lastly, the media also made reference to the Senator's membership on the Standing Senate Committee on Transport and Communications and the fact that legislation concerning federal bridges would be addressed in this Committee. However, an examination of the orders of reference of the Committee during the relevant period clearly indicates that the Committee was not engaged in an examination of any issues related to federal bridges. As such, the Senator's membership on this Committee during this time did not result in a conflict of interest under the Senate Code.

## **7. Conclusion**

In conclusion, I received no evidence to contradict the statements of all the individuals interviewed: they were unanimous in asserting that the Senator did not discuss the contract in question with them and that he did not in any way attempt to influence any of the parties involved in the awarding of the contract.

In light of this evidence and for the above-stated reasons, I am of the view that the Senator did not contravene section 9 of the Code. I therefore find that the allegations against Senator Housakos are unsubstantiated and without merit.