



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

2021-2022 Annual Report

June 2022

Pierre Legault
Senate Ethics Officer

Annual Report of the Senate Ethics Officer 2021-2022

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This document is also available electronically at the following address:
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Catalogue number: Y7-1E-PDF
ISSN: 1928-2052



Senate Ethics
Officer
Conseiller sénatorial
en éthique

June 22, 2022

The Honourable George Furey
Speaker of the Senate
A112, Senate of Canada Building
Parliament Buildings
Ottawa, Ontario K1A 0A4

Dear Mr. Speaker:

It is my honour and pleasure to submit to you the Seventeenth Annual Report of the Office of the Senate Ethics Officer, pursuant to section 20.7 of the *Parliament of Canada Act*, R.S.C. 1985, c. P-1, as amended. by S.C. 2004, c.7; S.C. 2006, c.9. It covers the period from April 1, 2021 to March 31, 2022.

Yours sincerely,

A handwritten signature in blue ink, consisting of a large, stylized 'P' followed by a horizontal line and a small crossbar.

Pierre Legault

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MESSAGE FROM THE SENATE ETHICS OFFICER

This is my fifth annual report since my appointment as Senate Ethics Officer (SEO) in January 2018.

The Office of the Senate Ethics Officer and I have, of course, continued to fulfil my mandate under the *Ethics and Conflict of interest Code for Senators* (Code). 2021-2022 was the second full year we lived and worked under the COVID pandemic. We continued to work remotely and we fully adapted our practices, tools, and processes to allow senators to remotely fulfil their disclosure obligations under the Code.

The pandemic has also impacted senators' activities and their disclosures. As we slowly move out of the pandemic, we have seen the re-emergence of sponsored travel with four Statements of Sponsored Travel towards the end of 2021-2022. Senators have been active outside of the Senate and the number of Statements of Material Change has increased again.

Eight new senators were appointed during the past year. All were briefed about their obligations under the Code and all fulfilled their disclosure obligations. You will find their Public Disclosure Summaries in the Public Registry. Unfortunately, because of the pandemic, I did not meet these new senators or any other senators in person. However, I did meet with them *via* video calls and they have also continued to consult me by email and by phone throughout the year. I have continued to provide advice to senators with a view to preventing conflicts of interest from arising rather than addressing them once they have arisen.

The Code was modified twice during the fiscal year. A first series of modifications to the Code focused on procedural and technical improvements, primarily related to the annual disclosure process. A second series of amendments harmonized the Code with the new *Senate Harassment and Violence Prevention Policy*. A new definition of "harassment and violence", a new ethical obligation, and a new part on harassment and violence were added. The role of the Senate Ethics Officer in harassment and violence cases was redefined and is in line with the comments I made in the second Meredith Inquiry Report published in 2019.

We introduced new tools to better inform senators and the public. The *Guideline on Gifts and Other Benefits* and the *Guideline on Sponsored Travel* are our first ever guidelines under the Code. They were approved by the Standing Committee on Ethics and Conflict of Interest for Senators, as required by the Code. These guidelines are general in nature and are not opinions or advice. They help to better understand the Code and how we interpret and apply it. We also did considerable preparatory work on other future guidelines. We embarked on a project to create a portal that senators would use to fulfil their disclosure obligations under the Code.

This report will provide more details on these and other issues, projects and trends.

The Office continued to rely on the Senate Administration for the provision of security, finance, information technology and human resource services under a cost-recovery agreement. I thank the staff of the Administration for their services and support.

I want to thank all senators for their understanding and support throughout the year and for their commitment to respecting the Code.

Finally, I am profoundly thankful and grateful to the employees of my Office who have continuously demonstrated considerable resilience, adaptability and commitment.



MANDATE OF THE SENATE ETHICS OFFICER

The position of Senate Ethics Officer (SEO) was created under the *Parliament of Canada Act* (the Act). The SEO performs the duties and functions assigned by the Senate for governing the conduct of senators. The SEO is responsible for the interpretation, administration and application of the *Ethics and Conflict of Interest Code for Senators* (the Code). The Code defines a set of principles and rules which guide senators in the exercise of their functions. It also provides a means by which to maintain and enhance public confidence and trust in the integrity of senators and the Senate. The Code ensures that questions related to the conduct of senators may be addressed by an independent, non-partisan advisor. It was adopted by the Senate in May 2005, and was revised in 2008, in 2012, twice in 2014 and, again twice in 2021.

The SEO is supported by the Office of the Senate Ethics Officer (the Office).

After consulting the SEO, the *Standing Committee on Ethics and Conflict of Interest for Senators* (the Committee) may give general directives to the SEO on the interpretation, application, and administration of the Code, but not as it relates to the circumstances of a particular senator.

Three Major Functions

The mandate of the SEO includes three major functions: providing opinions and advice to senators, administering the annual disclosure process and conducting preliminary reviews and inquiries.

Opinions and Advice

The first of the SEO's major functions is to provide advice and guidance to senators with respect to the Code, and, in particular, to assist them in understanding their obligations under the Code and identifying ethics and conflict of interest issues – real, potential and apparent – that could be relevant to their circumstances.

This advisory function is essential to the success of an ethics and conflict of interest regime. It provides a means by which legislators can better understand how ethics and conflict of interest rules apply to their individual circumstances, especially when their application may not be so clear.

Senators are encouraged to seek advice before acting, and to avail themselves of the SEO's advice in order to effectively prevent ethics and conflict of interest issues from arising. This approach best serves the public interest because it avoids costly and time-consuming inquiries. It also ensures that the focus is not on addressing conflicts once they have arisen, but rather on preventing them from arising.

The Code provides that written opinions and advice are to be kept confidential, but they may be made public by the senators to whom they relate, or by the SEO with the particular senator's written consent. However, some opinions related to contracts with the federal government must be made public.

Annual Disclosure Process

The SEO is also responsible for administering the annual disclosure process, which is an essential feature of any ethics and conflict of interest regime. It ensures a measure of transparency and accountability which, in turn, inspires public confidence in the system.



The Code provides that senators must annually file, within 30 days of the anniversary of their summons to the Senate, a Confidential Disclosure Statement. Newly appointed senators must file their initial statements within 60 days after being summoned to the Senate.

These disclosure statements include information concerning senators' activities outside their parliamentary duties and functions, their assets and liabilities over \$10,000, their sources of income over \$2,000, and any federal government contracts, as well as the activities and financial interests of their spouses or common-law partners. The Code sets out the list of interests that senators are required to report confidentially to the SEO.

The SEO provides each senator with a letter, which draws attention to any provisions of the Code that are relevant to their circumstances. Where senators have specific questions about a particular situation, they should raise the matter with the SEO and provide the necessary information to assist the latter in formulating useful advice.

The Office also prepares a public disclosure summary for each senator based on the information that was provided in the senator's Confidential Disclosure Statement. The Code sets out the list of interests that must be publicly disclosed. Again, this list includes senators' activities outside their parliamentary duties and functions, as well as their income over \$2,000, and their assets and liabilities valued at over \$10,000. The information about spouses and common-law partners is not publicly disclosed.

Senators are then required to review their Public Disclosure Summaries, sign and return them to the Office. These summaries are then placed in the paper Public Registry located in the Office. They are also published in an online Public Registry available on the Office's website. This registry contains all the information that is required to be made public under the Code.

In addition, senators are required to annually file a Statement of Compliance confirming that they have read the Code within the last 30 days and that, to the best of their knowledge and belief, they are in compliance with the Code as of the day the statement is filed.

The disclosure process is an ongoing process that continues throughout the year, even after completion of the annual Confidential Disclosure Statements and their publication in the Public Registry. Senators are required to ensure that their Confidential Disclosure Statements are kept up to date throughout the year by filing material change forms with the Office within 30 days after any material changes occur in their circumstances. These forms are included within each senator's public disclosure file. They are published as soon as possible after they are received.

In addition, senators must file a Statement of Gifts or Other Benefits with the SEO for any gift or benefit received as a normal expression of courtesy or protocol, or that is within the customary standards of hospitality that normally accompany the senator's position, if the value of the gift or benefit (or the cumulative value of all gifts or benefits received from one source in a 12-month period) exceeds \$500. The Statement of Gifts or Other Benefits is placed in the senator's public disclosure file.

It should be noted that courtesy gifts are exceptions to the general prohibition concerning senators receiving gifts and other benefits that could reasonably be considered to relate to a senator's position.

Similarly, sponsored travel must be reported in a statement which forms part of a senator's public disclosure file if the travel costs exceed \$500.

Over the course of the year, senators must also publicly declare any private interests that may be affected by matters before the Senate, or a committee of the Senate of which they are members. These public declarations are also placed in the public disclosure files of senators.



The following information about a senator must be disclosed publicly:

- employment outside the Senate, a profession, or a business;
- a senator's positions in corporations, income trusts and trade unions, associations and not-for-profit organizations;
- the source and nature, but not the amount, of any income over \$2,000 that senators have received in the last 12 months, or are likely to receive in the next 12 months;
- the nature, but not the value, of any assets and liabilities over \$10,000;
- 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 involving a senator or the senator's family, directly or indirectly, through a subcontract or by virtue of a partnership or significant interest in a private corporation;
- a trust in which a senator could derive an income or other benefit;
- any declarations of private interests;
- any Statements of Gifts or Other Benefits and Sponsored Travel; and
- any Statements of Material Change.

Preliminary Reviews and Inquiries

It is also the SEO's responsibility to conduct inquiries in order to determine whether senators have complied with their obligations under the Code where there are allegations of non-compliance. Below is an explanation of the process regarding preliminary reviews and inquiries.

First, the SEO must conduct a preliminary review – which is distinct from an inquiry – if the SEO has reasonable grounds to believe that a senator has not complied with their obligations under the Code or receives a request to conduct an inquiry from a senator who has reasonable grounds to believe that another senator has not complied with their obligations under the Code.

A request by a senator to the SEO to conduct an inquiry must be in writing and signed by the senator. It must identify the alleged non-compliance and the reasonable grounds for the belief the Code has not been complied with.

The SEO must afford the senator who is the subject of a preliminary review an opportunity to respond within 15 days. This period may be extended by the SEO depending on circumstances. The SEO must provide the senator with a preliminary determination letter that includes the SEO's reasoned decision as to whether an inquiry is warranted.



A preliminary review is conducted confidentially pursuant to the Code. However, where the SEO determines that an inquiry is not warranted, the preliminary determination letter is made public (unless the matter is not in the public domain) when the Committee tables it in the Senate. If the SEO determines that an inquiry is warranted, the matter remains confidential until the inquiry report of the SEO is tabled in the Senate.

The Code does not provide a mechanism for the public to trigger a preliminary review or an inquiry. However, the SEO examines all information pertaining to a senator provided by members of the public, including the media, and may self-initiate a preliminary review under the Code as described above.

Second, the Code provides that the SEO must conduct an inquiry in either of the following circumstances: where the SEO determines that an inquiry is warranted after conducting a preliminary review; or where the senator who was the subject of a preliminary review requests that an inquiry be conducted because the SEO has made a finding that an obligation under the Code may have been breached but has determined that an inquiry is not warranted.

The SEO must give the senator who is the subject of an inquiry access to information about the relevant facts, access to documents, and a reasonable opportunity to make representations in writing or in person and to be represented at the various stages of the inquiry process. What is reasonable is at the discretion of the SEO.

This process may often be lengthy and includes inviting the senator to attend an initial interview to ascertain facts and obtain evidence. The senator testifies under oath. Witnesses are also identified and invited to provide their testimony under oath.

The SEO may seek information and documents from the senator, the witnesses and others.

The senator who is the subject of the inquiry will be invited to a second interview towards the end of the process -- the final interview in the inquiry process -- where they will have an opportunity to respond to the allegations and to make representations on the testimony of witnesses and the documentary evidence. The senator will be offered a final opportunity to make representations when the senator is invited to read parts of the draft inquiry report, ordinarily on the process, the allegations and the findings of fact.

The length of an inquiry is the result of a combination of factors. Some of these factors are related to the very nature of an inquiry, to the circumstances of a particular inquiry (these are normally identified in inquiry reports), or to factors external to the inquiries. Examples of these factors include the following:

- An inquiry is a complex, impartial and objective process that is meant to balance the rights and privileges of the Senate to discipline its own members and the right of individual senators to a fair process.
- The Code requires that senators who may be the subject of an inquiry be given information and reasonable opportunities to make representations at various stages of the inquiry process. Senators who are the subject of an inquiry and other participants to an inquiry can be, and often are, represented by counsel. The inquiry process established by the SEO must be fair and follow due process. Giving senators a reasonable time and multiple opportunities during the various stages of an inquiry to make representations lengthens the time required to complete the process.



- An inquiry is a process for gathering evidence and facts, testimony and documents against which the provisions of the Code will be applied. Gathering these should be, but is often not, a straightforward process. The scheduling of witnesses depends on the availability of senators and others who, due to the parliamentary calendar, are sometimes unavailable during parliamentary breaks, which sometimes extend for months at a time. Information and documents, both written and electronic, should be made readily available without delay and without raising questions but, often, they are not. The time required to establish contacts with witnesses and to obtain documents may be lengthy. In addition, the evidence obtained throughout the course of an inquiry may lead to the need to interview more witnesses and to obtain and assess additional documents and evidence.
- The Office of the SEO was created in 2005. The first inquiry was initiated in 2013. Up until 2014, the Code was singularly focused on conflicts of interest. In 2014, the Code was amended to add broad ethics rules (sections 7.1 and 7.2). The number of inquiries, while still limited in number, started to increase at that time as did their complexity.

Harassment and Violence

The SEO also has a role to play in harassment and violence cases. In this regard, there were a number of changes made to the Code in 2021. The SEO's involvement in such cases, however, is limited to transmitting an investigation report under the *Senate Harassment and Violence Prevention Policy* to the Committee; and to recommend remedial, corrective, or disciplinary measures in such cases based on the report of the investigator, if the Committee directs the SEO to do so. In other words, the SEO no longer has the mandate to conduct preliminary reviews and inquiries in matters pertaining to harassment and violence.

Other Rules and Laws

The SEO's jurisdiction is limited to the Code. The Code, however, is not the only set of rules that governs the conduct of senators. Senators are subject to a number of other rules and laws, which are outside the purview of the SEO.

Senators are subject to the *Senate Administrative Rules* and other Senate policies and directives relating to the proper allocation and use of Senate resources. These rules, policies and directives are within the jurisdiction of the Standing Senate Committee on Internal Economy, Budgets and Administration.

Senators are also subject to section 16 of the *Parliament of Canada Act*, which prohibits a senator from receiving or agreeing to receive outside compensation, whether directly or indirectly, for services rendered 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.

In addition, sections 119, 121 and 122 of the *Criminal Code* are other examples of laws that apply to senators relating to the misuse of a public office. Section 119 deals with offences that relate 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.



Independence of the Senate Ethics Officer

The SEO is an independent, non-partisan Officer of the Senate. This independence is essential in order to ensure public confidence and credibility in the Senate ethics and conflict of interest regime. A number of provisions of the Act and of the Code confer this status of independence and autonomy on the SEO, including the provisions in the Act concerning the appointment process, the security of tenure, financial autonomy, and the management of the Office.

For example, the Act ensures that the SEO alone has “the control and management of the Office”. In fact, the Office is a separate employer distinct from the Senate and does not fall under its jurisdiction. It provides that the SEO is responsible for preparing the estimate of the budget for the Office. This estimate is separate and apart from the estimates of the Senate. The estimate of the SEO is provided to the Speaker of the Senate who, after considering it, transmits it to the President of the Treasury Board who, in turn, lays it before the House of Commons with the estimates of the Government of Canada for the fiscal year.

The independence of the SEO in respect of opinions and advice given to individual senators is also clear and is expressly provided for in the Code. This independence also applies to any preliminary reviews, inquiries, and any inquiry reports.

These, and other provisions, ensure that the SEO is able to carry out the functions of the SEO in an impartial manner, free from any outside influence or coercion.



Provisions of the Parliament of Canada Act on the independence of the Senate Ethics Officer

- The SEO 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. This is to ensure that the appointment has the broadest support of the Senate, irrespective of political party line. The SEO has the same privileges and immunities as senators.
- The SEO 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 again confer on the SEO a status of independence and autonomy and they provide an effective shield against improper or inappropriate influence.
- The SEO 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 is run independently from the Senate and its Internal Economy Committee. Any staff for the Office is hired by the SEO.
- The SEO 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 of Canada for the fiscal year. The Senate reviews the SEO's proposed budget as a part of the annual review of the Main Estimates. This procedure ensures the independence of the SEO and places the responsibility for the estimates of the Office on the SEO. It also emphasizes the direct relationship that Parliament has established between the SEO and the Senate itself, to which the SEO ultimately reports.
- The SEO is required, within three months after the end of each fiscal year, to submit a report of the Office to the Speaker of the Senate, who must table the report in the Senate.



THE YEAR IN REVIEW: 2021-2022

During the course of 2021-2022, the SEO delivered on the mandate of the SEO by providing opinions and advice to senators and administering the annual disclosure process. In addition, the Committee consulted the SEO on two sets of amendments to the Code. These concerned two main areas: (1) harassment and violence matters; and (2) the annual disclosure process. In addition, the SEO engaged in outreach activities with senators, including retiring senators, the media, the public and officials and organizations who have an interest in ethics and conflict of interest.

Opinions and Advice

Senators are encouraged at any time to consult the SEO on any concerns or questions relating to their obligations under the Code in order to promote continued compliance with the Code.

The SEO responds to these requests as promptly as their nature, complexity and the workload permit. Some requests may require more research and consideration than others. The opinions and advice are kept confidential, unless the senators who made the requests decide to release them to the public or provide written consent for the SEO to release them.

Senators continue to reach out to the SEO and to the Assistant SEO and General Counsel for advice and opinions, as well as to ask for clarifications and to raise questions concerning their obligations under the Code. This year, the SEO and the Assistant SEO and General Counsel provided 141 verbal and written opinions and advice to senators. This is a substantial decline from the previous year when 243 opinions were provided.

Annual Disclosure Process

Every year, senators are subject to a disclosure process (annual disclosure process), whereby they must disclose to the SEO, by means of a Confidential Disclosure Statement, information relating to their particular circumstances, such as their activities outside of the Senate and those of their spouse (e.g. their employment and any director or officer positions in for profit or not-for-profit organizations), as well as their income, assets and liabilities, and those of their spouses.

Upon receiving the Confidential Disclosure Statements, the SEO reviews the information and provides senators with a written opinion or advice relating to their particular circumstances. Following this review, the SEO prepares a Public Disclosure Summary containing information related to a senator, which is required to be published under the Code. Senators must examine the information and sign the Public Disclosure Summary prior to the document being placed in the Public Registry. As part of this process, senators must also sign a Statement of Compliance confirming that they have read the Code within the last 30 days, and that they are, to the best of their knowledge, in compliance with the Code.

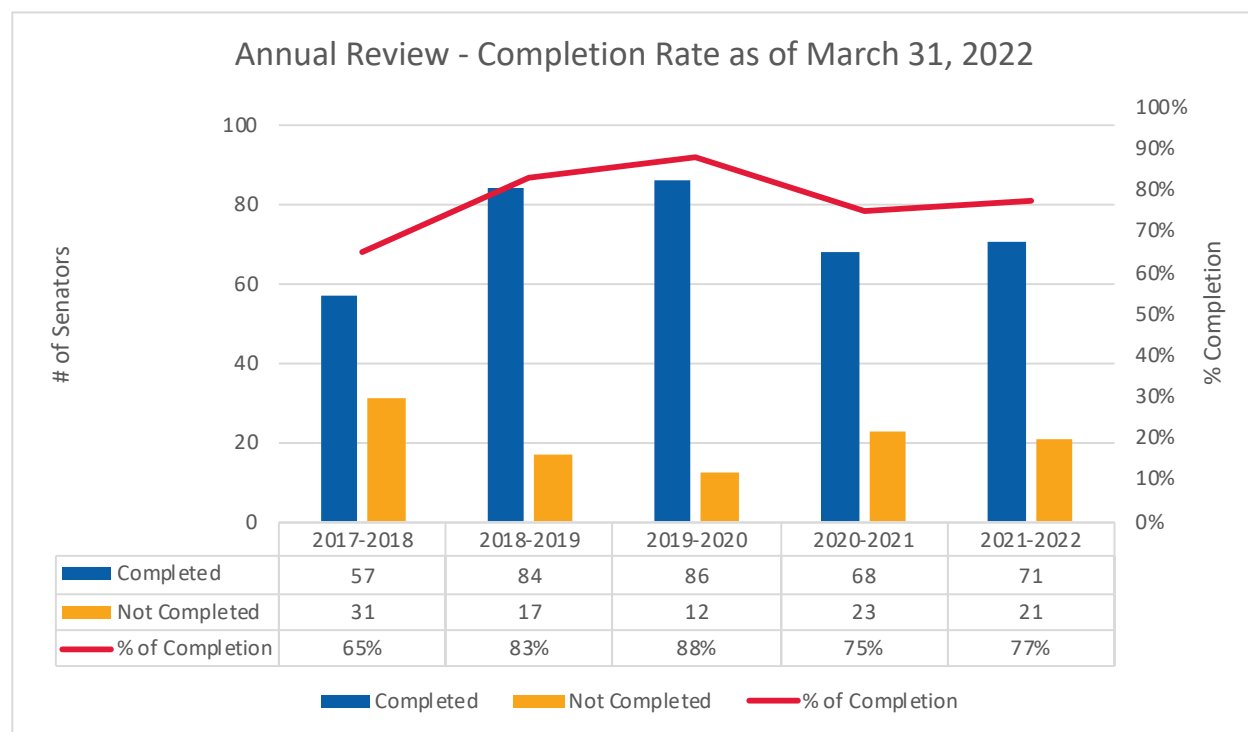
At any point during this annual disclosure process, should the SEO have questions related to the information in a senator's Confidential Disclosure Statement, the SEO may request clarifications from a senator. There may be more than one such request made to a senator. Each time a request for information is made, a senator has 30 days to respond to the SEO. This may have an impact on the overall processing time for a Confidential Disclosure Statement.

Since Fiscal Year 2019-2020, senators were required to file their statements on the anniversary dates of their appointment to the Senate. However, since 2021-2022, senators are required to file them within 30 days of their anniversary dates.



As of March 31, 2022, the annual disclosure process was completed for 71 senators (or 77%). Files for 21 senators (or 23%) remained outstanding. These numbers do not include senators who retired during the year.

By comparison, in 2020-2021, the annual disclosure process was completed for 68 senators (or 75%). Files for 23 senators (or 25%) remained outstanding. In 2019-2020, the process was completed for 86 senators (or 87.8%) while files for 12 senators (or 12.2%) remained outstanding. In 2018-2019, the process was completed for 84 senators (83%) with 17 (17%) outstanding files. In 2017-2018, the numbers were as follows: 57 senators' files were completed (65%) and 31 files were outstanding (or 35%).



The decline in completion rate in 2020-2021 was attributed to the impact of the pandemic. There was a slight improvement in 2021-2022. However, it is unlikely that this will improve substantially in future years. The reason is that the Senate amended the Code in June 2021 to require senators to file their annual Confidential Disclosure Statements within 30 days of the anniversary date of their summons to the Senate, rather than on the anniversary date of their summons. The practical impact of this modification is that some senators now file their Confidential Disclosure Statements the following fiscal year while for others whose anniversary date is later in the fiscal year, the examination of their Confidential Disclosure Statements and the time allocated by the Code to senators to review and sign their Public Disclosure Summaries are such that they cannot be completed during the year.

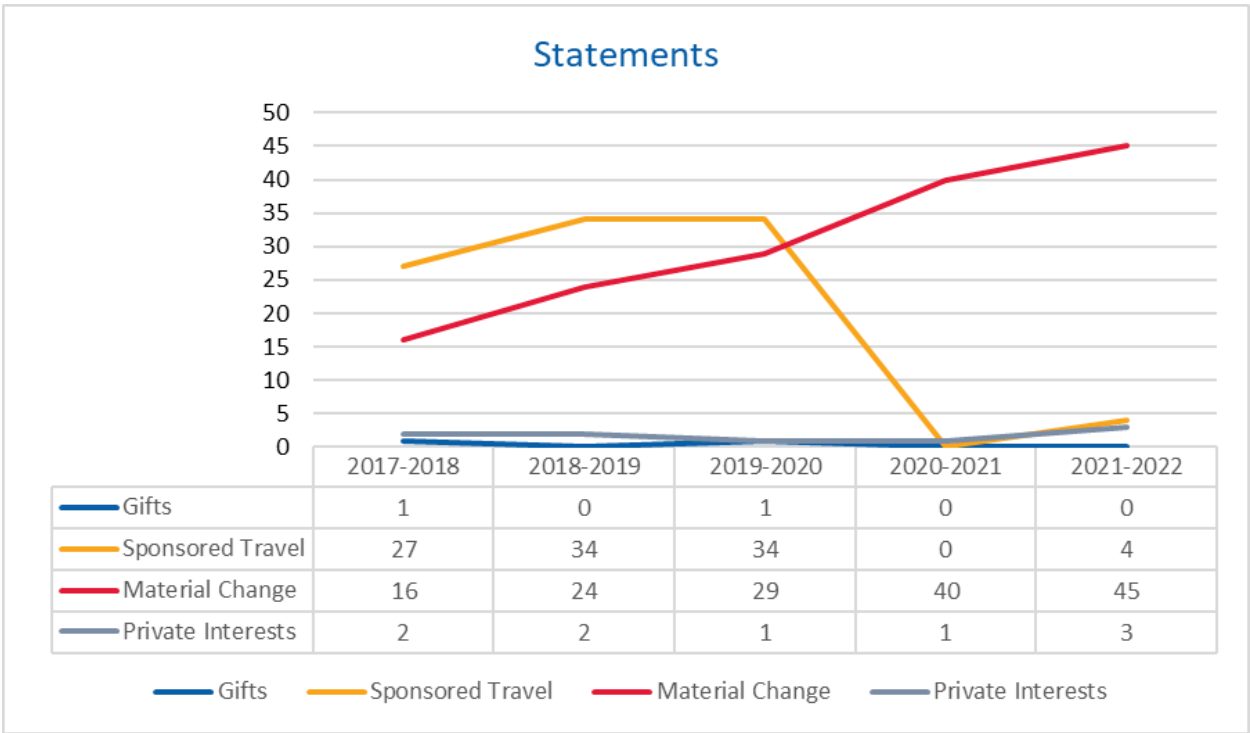
The SEO also responded to 51 requests for clarification from senators related to the annual disclosure process. In 2020-2021, the Office received 43 such requests. It received 31 in 2019-2020 and 104 in 2018-2019.



Over the course of the year, senators must also report any sponsored travel or gifts they received, as well as changes to their Confidential Disclosure Statements, to the SEO. In addition, they are required to report any declarations of private interests in the Senate or in committees when they have reasonable grounds to believe that they or their family members 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 are members.

This year, there were no Statements of Gifts or Other Benefits (none in 2020-2021 and in 2019-2020). Also, there were four Statements of Sponsored Travel (none in 2020-2021, 34 in 2019-2020 and 34 in 2018-2019). There were three declarations of private interests, (one in 2020-2021, one in 2019-2020), the same number as last year. Finally, there were 45 Statements of Material Change throughout the year (40 in 2020-2021, 29 in 2019-2020 and 24 in 2018-2019). As the restrictions imposed by governments in response to the pandemic ease off, the Senate has been sitting more often in 2021-2022 and senators have again started to accept sponsored travel.

We expect this trend to continue in 2022-2023.



Preliminary Reviews and Inquiries

The Office has not completed any preliminary reviews or inquiries during the year 2021-2022.



Harassment and Violence

No cases were referred to the SEO Involving harassment and violence during the year 2021-2022.

Outreach and Best Practices

Outreach to Senators

Ordinarily, the SEO regularly meets individually with senators to discuss the Code in order to give senators the opportunity to raise concerns and in order for the SEO to provide feedback on a number of issues, including questions related to the particular circumstances of senators. Again in 2021-2022, because of the pandemic, the SEO did not meet any senators in person. However, the SEO met with them by video conference and senators have also continued to consult with the SEO by email and by phone throughout the year. As of March 31, 2022, the SEO had 81 consultations with senators.

The SEO meets all new senators upon their appointment. This year, eight senators were appointed to the Upper Chamber (none were appointed in 2020-2021, three senators were appointed in 2019-2020 and 16 senators were appointed in 2018-2019). The SEO briefed new senators on their obligations under the Code, including their responsibility to file an initial Confidential Disclosure Statement within 60 days of the anniversary of their appointment to the Senate, and annually thereafter. The SEO provided advice on the particular circumstances of these senators and answered their questions. Senators were informed of the need to disclose to the SEO any changes to their Confidential Disclosure Statements throughout the year and within the timeline prescribed by the Code. They were also made aware that the Code requires that certain information be publicly released. The onboarding process for each senator can be an extensive one over a number of months depending on their affairs.

Seven senators left the Senate on or prior to their mandatory retirement age of 75 and, sadly, two senators passed away while in office.

Media and the Public

The Office frequently receives requests from the media and comments from the public.

The public generally raises complaints concerning senators, requests inquiries and asks that sanctions be imposed on certain senators. Over the past year, the main area of concern from the public remained the behaviour of certain senators, particularly their use of social media and the comments they make publicly.

It should be noted that the Code does not provide a formal complaints mechanism for the general public. However, the SEO always welcomes and carefully considers all feedback and information from the public, as well as from the media.

If the SEO has reasonable grounds to believe that a senator has not complied with their obligations under the Code, the SEO may self-initiate a preliminary review which may lead to an inquiry.

Even if the SEO does not initiate a preliminary review as a result of a media or public complaint, the SEO may, in that context, provide advice to a senator on the senator's obligations under the Code.



Members of the public often expect the SEO to follow up with them concerning their requests. The media seek information concerning the circumstances of particular senators or the status of an inquiry as well. However, the Code imposes strong confidentiality obligations on the SEO and the Office, which precludes the SEO from commenting or providing information on individual senators. This includes informing others about the actions taken in relation to each complaint or providing a status update on an inquiry. The only exception in terms of confidentiality with respect to an inquiry is that the SEO may officially acknowledge its existence if the SEO believes it is in the public interest to do so, and this has been done in the past.

The Office continues to respond to requests for information from senators, their staff, the media and the general public, as promptly as circumstances permit. The number of requests for information varies each year. There were two requests from the media in 2021-2022, compared to none in 2020-2021, 21 in 2019-2020, and 53 in 2018-2019. The Office received 61 comments and requests from the public in 2021-2022 compared to 77 in 2020-2021, 72 in 2019-2020 and 114 in 2018-2019.

Best Practices

The Office participates in seminars, conferences and events in order to exchange information about ethics and conflict of interest with other experts in the field, to remain current on recent developments in these areas, and to educate and inform others on the work of the Office and of the Code.

In February, the SEO and the Assistant Senate Ethics Officer and General Counsel participated in an information session for the Senate Legislative Sector and provided an overview of the role, under the Code, of the Senate, of the SEO, and of the Committee. The session also provided a review of some of the provisions of the Code and an in-depth discussion on the recusal process, outlined under the Code, as well as the role of the clerks in the process.

In July, the SEO participated in a podcast of Quebec Ethics Commissioner Ariane Mignolet. With Conflict of Interest and Ethics Commissioner Mario Dion, they discussed conflict of interest and ethics jurisdictions across Canada and the benefits of belonging to networks of ethics practitioners.

The SEO is a member of the Canadian Conflict of Interest Network (CCOIN). CCOIN is a key organization in the area of ethics and conflict of interest related to members of legislative bodies in Canada. It is comprised of the various ethics and conflict of interest commissioners from across the country. CCOIN not only provides a useful resource for sharing information and practices, but it is also a key resource throughout the year for ethics and conflict of interest commissioners to seek members' views and information on related issues while maintaining the confidentiality of the information with which they are entrusted. Due to COVID-19, the annual CCOIN conference did not take place. Instead, the SEO attended two virtual meetings in September 2021 and March 2022, along with federal, provincial and territorial colleagues.

The Office is also one of the founding members of the “Réseau francophone de l'éthique et de la déontologie parlementaires” (Réseau). The Réseau is an international, non-profit association of parliamentary ethics organizations in francophone jurisdictions. It was created at the instigation of the “Assemblée parlementaire de la Francophonie.” The Réseau promotes exchanges between francophone parliaments and entities responsible for ethics oversight. Together, they focus on ethics issues and on promoting them throughout the international parliamentary francophone community. The SEO was re-appointed administrator of the Réseau for a further two-year mandate.



Again, due to COVID-19, the in-person 2021-2022 annual general meeting of the Réseau was cancelled. Instead, the SEO attended a virtual meeting that took place over two days in November 2021. The SEO moderated two panels. The first panel was entitled « *Applicabilité et adaptabilité des règles déontologiques pendant la pandémie* ». The second panel focused on the « *Règles encadrant le harcèlement chez les parlementaires : l'exemple du Sénat canadien* ». The session started with an insightful presentation by Senator Raymonde Saint-Germain on the new *Senate Harassment and Violence Prevention Policy* and its interaction with the Code. The SEO described the modifications to the Code with respect to harassment and violence and the role of the SEO in this respect, followed by a discussion between participants and Senator Saint-Germain.

The SEO is a member of the Council on Governmental Ethics Law (COGEL), an international organization whose members work in the fields of government ethics, elections, lobbying, and campaign finance across North America. The SEO and members of the Office virtually attended the annual COGEL conference in December 2021. The SEO was invited to be a panelist in a session called “*Breaking Bad: Ethics during a Global Pandemic and Disasters - Should ethics rules cover ‘bad behavior’?*”. Most codes of conduct cover conflicts of interest and acceptance of gifts, nepotism, post-employment, etc., but not general conduct. The panel discussed jurisdictions that have broader codes, and what are the advantages and pitfalls if codes cover “transgressions”, such as elected officials who have been caught violating COVID restrictions, traveling during a crisis, sending inappropriate tweets and posting misinformation on Facebook, among other “misbehavior.”

Budget and Administration

The Office is a public, independent, separate employer. It is a very small one with limited personnel, yet it has all the same obligations as any employer in the public service.

With the exception of one additional position in recent years (the additional position was not staffed in 2021-2022), the Office has the same number of employees as it had in 2005 when it was created. Yet, the administrative burden has increased over the years. Despite this, the Office has continued to deliver on the SEO's core mandate. Also, the Office did not conduct inquiries prior to 2013. Inquiries are formal, resource intensive activities that the Office has managed with its core resources. The resources of the Office are seriously strained when more than one inquiry or major project is underway.

As mandated by the Government of Canada, the Office adopted and implemented a *Policy on COVID-19 Vaccination*.

For the year 2021-2022, the Office's total budget was \$1,352,901. The actual expenditures were \$934,719.46. An important portion of the operating budget of the Office is to augment the operational capacity of the Office if and when there is a surge in work required as a result of inquiries, major projects or for other reasons. This, and prudent management, explains why our budget was not fully expended last year.

The Office continues to rely on the Senate Administration for the provision of security, finance, information technology and human resources services under a cost-recovery agreement. These services are provided to the Office under the direction of the SEO, not of the Senate.

The Office's financial statements for the year 2021-2022 are audited by the firm KPMG. They form part of the Public Accounts. The financial statements are posted on the Office's website once their audit is completed.



The Year in Numbers

0	Statements of Gifts or Other Benefits
4	Statements of Sponsored Travel
3	Declarations of Private Interests
45	Statements of Material Change
0	Inquiries
0	Preliminary Reviews
2	Media Requests
61	Public Requests and Comments
141	Opinions and Advice



COMMENTARY

The necessary restrictions imposed on me by the nature of the Office and the Code, particularly on the confidentiality of our work and of the information we have, leave me few opportunities to comment on the development of the Office, the development of the Code itself, and the advice as it evolves regarding senators' obligations under the Code. This section of the annual report is one of those rare opportunities.

This commentary offers observations on three issues of note during the last year.

Development of the Office

For a second consecutive fiscal year, due to the pandemic, the Office's employees have worked remotely, save for the occasional and necessary visits to our brick-and-mortar office as some of our tasks cannot be accomplished remotely.

We have implemented all the measures put forward by health authorities and, as already mentioned, the Office has adopted and implemented a *Policy on COVID-19 Vaccination* as mandated by the Government of Canada for all federal entities.

By the end of the second year of the COVID-19 pandemic, we had become quite adept at functioning remotely, virtually and cohesively after modifying the processes and workflow of our annual disclosure process and how we provide advice to senators. Senators have also adapted well and collaboratively to this new environment imposed on us all by the circumstances. I am grateful to them and to the staff of my Office for their cooperation in making this workable and as easy as it can possibly be.

Last year, I reported that the upside of this changing environment was a clarification of the processes, workflow and tools used in the Annual Disclosure Process. I also wrote that I saw the changes as a temporary adaptation borne out of immediate necessity. I now think that many of these changes will be permanent.

I embarked on a renewal exercise over two and a half years ago, after having had the opportunity to examine and think about the position of the SEO and of the Office, how we provide services to senators, and the tools that we use to provide them.

The first concrete result was the adoption of a new branding that was first used in my 2019-2020 Annual Report. In the summer of 2020, we fully operationalized the new branding across our Office and in our communication tools with senators and the public.

In 2020-2021, I reported that we had completely and significantly rebuilt the Office's website and launched it in March 2020. As a first for our Office, the new website included FAQs to better inform senators and the public on the Code and its administration. Over the past year, we have added new FAQs with the aim of keeping them current and responsive to issues we have identified. Also, in response to the Committee, we have modified the website to add greater search features to the Public Registry.

The work we had undertaken on guidelines came to fruition in 2021-2022. The first ever guidelines under the Code, the *Guideline on Gifts and Other Benefits* and the *Guideline on Sponsored Travel*, were finalized. They were approved by the Committee as required and posted on our website. The guidelines are a significant new tool to assist senators and the public in understanding how the Code is interpreted and administered resulting in more transparency on the Code. Work has already begun on other guidelines.



Later in the year, we started to draft the curriculum of information sessions on the Code that we would like to offer to senators and, subsequently, to their staff. These information sessions will supplement the individual and tailored advice we provide to senators. We expect these sessions to be delivered in 2022-2023.

The combination of the new website and the information it contains, the FAQs and the new guidelines created over the past years represent a substantial increase in the tools made available to senators and to the public to better inform on the Code and its administration. We will continue to update the content of these tools.

I referred above to the work we did in relation to the annual review process -- which is the process whereby senators fulfil their disclosure obligations under the Code. This work and the transition from a paper-based process to one based on emails and pdfs was required in order to very rapidly adapt to a COVID era. We must take this one step further and adopt an electronic disclosure system that will offer an integrated, safe, durable, and long-term solution.

This is why, in 2020-2021, I reported that we had undertaken a project that will have a considerable impact and achieve these goals. Spurred on by the pandemic, this system will allow senators to securely file all their statements electronically rather than on paper. It will be more efficient, easier and faster for senators to file their statements while doing so with greater accuracy. It will also facilitate the work and turnaround time of my Office. In the last year, we have continued to work on this project and, subject to the Committee's approval, would expect it to become operational in 2023-2024. We tentatively call this transformational system the Senators' Disclosure Portal.

Code Amendments

There have been a number of amendments to the Code in this past year, some of which have focused entirely on harassment and violence in the workplace, while others have focused primarily on the annual disclosure process. These changes have addressed a number of outstanding issues that needed to be addressed and, as such, were welcomed by my Office.

Code Amendments on Harassment and Violence

On April 20, 2021, the Committee tabled its Second Report (Second Report) concerning changes to the Code. The Second Report was adopted by the Senate on August 12, 2021. This report focused entirely on harassment and violence and recommended amendments to the Code in relation to the Senate's revised policy on harassment and violence entitled, *Senate Harassment and Violence Prevention Policy* (the Policy). The purpose of the changes recommended by the Committee to the Code ensure coherence and consistency with the resolution process under the Policy.

I was invited to share my views with the Committee on the proposed amendments before the Committee tabled its Second Report and recommendations in this regard and was pleased to have had the opportunity to do so.

Prior to the adoption of the amendments to the Code concerning harassment and violence under the Code, conduct that constituted harassment and violence fell within the general rules of conduct under the Code, i.e., 7.1 and 7.2. In fact, prior to these amendments, I was required to address allegations of harassment and violence in an inquiry report that was published in 2019 concerning former Senator Don Meredith.



In the annex to that report, I made a number of observations concerning proper roles and responsibilities in respect of such cases. First, I noted that it is the Senate's responsibility as an institution and as an employer to fully investigate allegations of harassment, including sexual harassment and abuse of authority, based on its internal policies concerning these matters, and to take the appropriate remedial measures in accordance with its policies. I explained that the SEO is not the employer and should not usurp the role of the Senate as an employer by being required to interpret and apply the Senate's policies. I commented further that it is not the role of the SEO to conduct these highly specialized investigations.

In other words, I explained that any proceeding under sections 7.1 and 7.2 of the Code cannot be a substitute for the Senate as an employer to conduct investigations and make proper determinations under its own harassment policy regarding allegations of harassment in the workplace.

I was pleased to note that the new amendments to the Code in relation to harassment and violence address the concerns I had expressed in 2019 in this regard.

The new changes added a new provision – section 7.3 – specifically targeting harassment and violence in the workplace. It reads: “A Senator shall refrain from engaging in conduct that constitutes *harassment and violence*.” The same definition as is applied in the Policy for “harassment and violence” applies in the context of section 7.3 of the Code. A new part was also added to the Code that governs the area of harassment and violence and lays out the process for dealing with these matters under the Code.

The new provision creates an automatic breach in cases where a senator engages in conduct that an investigator, under the Policy, determines to be harassment or violence. The result of it, along with the additional new part to the Code, is that, though the SEO is ordinarily required to investigate any allegations of breaches of the Code if the SEO has reasonable grounds to believe a senator has not complied with their obligations thereunder, in cases of harassment and violence, a finding in an investigation report under the Policy that a senator's conduct constitutes harassment or violence is deemed to be a breach of the new 7.3 section. This means that cases of harassment and violence would effectively be an exception to the process laid out under the Code for inquiries.

The changes to the Code would instead require that a final report concerning a senator's conduct under the Policy be provided to the SEO for consideration under the Code. Once the SEO is seized with this report, the SEO must provide it to the Committee as soon as possible without conducting any further investigation into the matter in respect of conduct that constitutes harassment or violence. In other words, and as noted above, the SEO cannot conduct any preliminary review and inquiry in respect of conduct that could constitute harassment and violence. However, the SEO may conduct preliminary reviews and inquiries in respect of conduct other than conduct that constitutes harassment and violence identified in the investigation report.

Once the Committee is seized with the investigator's report, it may direct the SEO to provide recommendations to it regarding remedial, corrective, or disciplinary measures. The Committee would then report to the Senate with recommendations for disciplinary measures, or communicate with the Standing Senate Committee on Internal Economy, Budgets and Administration for the imposition of remedial or corrective measures.

In short, with the changes to the Code, the SEO's involvement in matters concerning harassment and violence in the workplace is limited to (1) transmitting the final investigation report of an investigator under the Policy to the Committee; and (2) if the Committee directs the SEO to do so, recommending remedial, corrective, or disciplinary measures in such cases based on the report of an investigator under the Policy.



This process under the Code is confidential and the investigator's report prepared under the Policy does not become a public document.

Code Amendments Concerning Annual Review Process

On June 2, 2021, the Committee tabled its Third Report, which recommended a number of additional changes to the Code (Third Report). This report was adopted by the Senate on June 18, 2021.

The key changes recommended in this report primarily affect the annual disclosure process.

One of the changes now requires senators to file their annual Confidential Disclosure Statements within 30 days of the anniversary date of their summons to the Senate, rather than on the anniversary date of their summons. This was done in order to provide more flexibility to senators who may, for example, not be in Ottawa on the anniversary of their appointment but might arrive soon after.

Another change requires that newly appointed senators file their first Confidential Disclosure Statement within 60 days of being summoned to the Senate, rather than within 120 days of their summons as was required under the previous version of the Code. This change will assist senators in becoming more familiar with the Code and their obligations more quickly and will reduce any potential period of inadvertent non-compliance. It will also increase transparency on the affairs of new senators.

The Code was also amended to require the SEO to transmit to the Committee the name of any senator who has not filed their Confidential Disclosure Statement, at the end of the 30-day period in the case of an already sitting senator, and at the end of the 60-day period in the case of a newly appointed senator, rather than doing so 30 days after the date on which a senator was required to file.

The new changes also authorize the SEO to grant deadline extensions under the Code. However, this would be permissible only in cases where the SEO is of the view that circumstances exist to warrant the extension, for example, in the case of a medical emergency or a death in the family.

Further changes concern declarations of private interests and enhance transparency. They require that the website of the SEO provide a search feature that allows declarations of private interests to be searched by parliamentary session. Prior to the changes, these declarations could only be searched by fiscal year, by senators' names, and by types of disclosed statements (for example, Statements of Sponsored Travel and Statements of Gifts or Other Benefits, among others).

Principles under the Code

There has been much discussion about the principles of the Code in the last few years and, for this reason, I think that some brief comments in this regard are warranted here.

The Code is comprised of both principles and rules of conduct, the latter being both general and specific.

The principles are found in section 2 and they generally offer more broad descriptions of exemplary behaviour without including specific definitions of ethical violations. Principles normally serve to interpret the other provisions of the Code.



The principles have evolved over the years as the Code has evolved and changed to reflect the expectations of senators about their own conduct, as well as the expectations of all Canadians. While they were once aspirational in nature, they have become a strong foundation for moving beyond a code that is focused primarily on pure conflicts of interest into a code that also addresses ethical misconduct more broadly.

In June 2014, the Committee began this process of evolution with its recommendation to the Senate to rename the Code to include the word “ethics” in its title and to adopt two new rules of conduct, i.e., sections 7.1 and 7.2. The language used in these two rules is broad-based and general and addresses ethical conduct rather than pure conflicts of interest. This type of language is language that is usually reserved for principles statements and preambles.

Section 7.1 requires senators to uphold the highest standards of dignity inherent to the position of senator and to refrain from acting in a way that could reflect adversely on the position of senator or the institution of the Senate. Some of this language is also reflected in the principles of the Code. For example, paragraph 2(2)(b) – one of the principles – includes 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*”.

Section 7.2, a second rule of conduct that encapsulates a broad principle, requires that senators perform their parliamentary duties and functions with dignity, honour and integrity.

These new rules of ethical misconduct breathed new life into the existing principles of the Code. Broad ethical principles were codified into rules of conduct that would be enforceable and upon which preliminary reviews and inquiries could now be based. This is unusual. In fact, I am not aware of any other laws or codes of conduct applicable to members of legislative bodies in Canada that contain similar rules.

With these rules governing ethical behaviour, the Senate signaled that it is holding its members to the highest standards possible, not only in aspirational terms but in terms of conduct that is expected and required, and upon which a failure to uphold such conduct will result in a breach of the Code and attract penalties and sanctions. This is a shift towards a code of conduct that is more in line with those applicable to a number of professions, for example, judges, lawyers, and doctors. These codes go beyond conflicts of interest and include standards of ethical behaviour to safeguard the profession’s reputation and ensure that it is not brought into disrepute.

As such, there has been a corresponding evolution in the advice I provide to senators as well. The advice is reflective of this evolution and of the intent of the Senate to hold its members to the highest standards of ethical behaviour. It has moved beyond pure conflicts of interest into the broader realm of ethical misconduct and, along with the addition of sections 7.1 and 7.2, the principles of the Code have become a significant tool in providing advice to senators and ensuring that their conduct is consistent with this shifting approach.

It is important to note that 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. However, these activities must always be carried out in a way that respects both the other principles and the rules of conduct. Even a perception that they have not been complied with can lead to a decline in public confidence in the position of senator and of the institution as a whole. Paragraph 2(2)(c) of the Code explicitly refers to this perception and is clear that a senator’s private affairs must be arranged in a way that, not only foreseeable real, but also apparent conflicts of interest may be prevented, and that the public interest is paramount over the two interests. This is particularly true in relation to senators’ personal outside activities.



As such, a careful balance is required to ensure that senators are able to continue to make a positive contribution to their communities and regions and to the Senate as a whole while ensuring that the public interest prevails in any conflict or perceived conflict.

A further principle that was adopted in June 2014 provides that a senator's parliamentary duties and functions must take precedence over any other obligation they have and outside activity in which they are engaged (subsection 2(1)). This makes clear that, again, the intention was to move beyond a code of conduct that is limited to pure conflicts of interest and to address ethical behaviour in a broader sense in order to enhance public confidence and credibility in the institution. This ties in with the principle in paragraph 2(2)(b) in that it refers to maintaining and enhancing public confidence and trust in the integrity of each senator and in the Senate. And we see that further in section 7.1, which requires senators to not act in a way that could reflect adversely on the position of senator or the institution.

In summary, the principles, as they have evolved, and the general rules of conduct all complement one another and signal a move towards a code of conduct that expects exemplary behaviour from senators. They reflect an understanding that maintaining and enhancing public confidence in the position of senator and in the institution is critical in ensuring credibility and trust on the part of all Canadians.

Appendix

SUMMARY OF KEY OBLIGATIONS OF SENATORS IN THE CONTEXT
OF THE *ETHICS AND CONFLICT OF INTEREST CODE FOR SENATORS*



SUMMARY OF KEY OBLIGATIONS OF SENATORS IN THE CONTEXT OF THE *ETHICS AND CONFLICT OF INTEREST CODE FOR SENATORS*

- Senators are required to give **precedence to their parliamentary duties and functions** over any other duty or activity.
- Senators are expected to 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.
- Senators are required to **uphold the highest standards of dignity** inherent to the position of senator.
- Senators must refrain from acting in a way that could **reflect adversely on the position of senator or the institution of the Senate**.
- Senators must **perform** their parliamentary duties and functions **with dignity, honour and integrity**.
- Senators may not act in any way to further their private interests, or those of their family members, or to improperly further another person's or entity's private interests when performing parliamentary duties and functions.
- 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 members, or to improperly further another person's or entity's private interests.
- Senators may not use **information that is generally not available to the public** to further their own private interests, or those of their family members, or to improperly further another person's or entity's private interests.
- Senators are required to make a **declaration**, orally or in writing, when they have reasonable grounds to believe that they or their family members 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 are members. They may not participate in debate on that matter, nor are they permitted to vote, though they may abstain. In the case of committees, senators must also



withdraw from the proceedings. With respect to senators who are only participating in committee proceedings, but are not formal members, they too must refrain from participating in debate on any matter in which they have reasonable grounds to believe they have a private interest and they too must withdraw from the proceedings in question.

- Senators may not accept, nor may a family member accept, **any gifts or other benefits** 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 in value and these must be publicly declared.
- Senators may not be parties to, or have interests in corporations or partnerships that are parties to, **contracts with the Government of Canada** under which they receive a benefit, unless specifically authorized by the Senate Ethics Officer.
- Senators must file a **Confidential Disclosure Statement** with the Senate Ethics Officer on an annual basis disclosing their private interests, and those interests that are required to be publicly disclosed under the Code are then made public via the Office website and also in paper format at the Office of the Senate Ethics Officer.
- Senators must file a **Statement of Compliance**, annually, confirming that they have read the Code within the last 30 days and that, to the best of their knowledge and belief, they are in compliance with the Code as of the day the statement is filed.
- Senators must report to the Senate Ethics Officer any **material change** to the information in their Confidential Disclosure Statements, within the prescribed time.
- Senators must cooperate with the Senate Ethics Officer with regard to **any preliminary review and any inquiry, and respect their confidentiality.**



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Bureau du
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en éthique