

SENATE



SÉNAT

STANDING COMMITTEE ON ETHICS
AND CONFLICT OF INTEREST FOR
SENATORS

CANADA

COMITÉ PERMANENT SUR L'ÉTHIQUE ET
LES CONFLITS D'INTÉRÊTS DES
SÉNATEURS

Ethics and Conflict of Interest Code for Senators
DIRECTIVE 2015-02

Rules of General Conduct (section 7.1)

Pursuant to subsection 37(2) of the *Ethics and Conflict of Interest Code for Senators*, the Standing Committee on Ethics and Conflict of Interest for Senators directs the Senate Ethics Officer to interpret, apply and administer the Code in accordance with this directive.

Given by the Committee on Monday, July 27, 2015.

Directive

Section 7.1 of the *Ethics and Conflict of Interest Code for Senators* requires that a Senator's conduct shall uphold the highest standards of dignity inherent to the position of Senator and that a Senator shall refrain from acting in a way that could reflect adversely on the position of Senator or the institution of the Senate. These rules of general conduct are applicable to all conduct of a Senator, whether directly related to parliamentary duties and functions or not, which would be contrary to the highest standards of dignity inherent to the position of Senator and/or would reflect adversely on the position of Senator or the institution of the Senate. A breach of the rules of general conduct provided under section 7.1 of the Code, as any other breach of the Code, is subject to the enforcement process established under the Code and, in particular, to the Senate Ethics Officer's responsibilities therein.

Explanatory Note

The Senate of Canada and its members enjoy certain powers, privileges, rights and immunities without which they could not discharge their constitutional legislative and deliberative duties and functions. As part of its parliamentary privileges, the Senate has the right to govern its internal affairs without outside interference and has disciplinary authority over its members. The *Ethics and Conflict of Interest Code for Senators* (the "Code"), adopted by the Senate, is an expression of these privileges. The Senate's privilege to regulate the conduct of its members is not limited to the conduct of its members in the Senate Chamber; it includes all conduct of a Senator, whether directly related to parliamentary duties and functions or not, that could undermine the fundamental integrity, dignity and authority of the Senate. This privilege is well-recognized by the courts as authoritatively established.

Section 7.1 of the Code, which requires that a Senator's conduct shall uphold the highest standards of dignity inherent to the position of Senator and that a Senator shall refrain from acting in a way that could reflect adversely on the position of Senator or the institution of the Senate, is rooted in and constitutes an exercise of the Senate's privilege of disciplinary authority over its members. These rules of general conduct are applicable to all conduct of a Senator, whether directly related to parliamentary duties and functions or not, which would be contrary to the highest standards of dignity inherent to the position of Senator and/or would reflect adversely on the position of Senator or the institution of the Senate. It is and has been the intent of the Committee, when it recommended the addition of section 7.1 to the Code, and of the Senate, when it concurred in the Committee's recommendation, that this provision be applicable to all conduct of a Senator (Committee, *Fifth Report*, presented on June 13, 2014 and adopted by the Senate on June 16, 2014).

The Senate Ethics Officer is an independent officer of the Senate who performs the duties and functions assigned by the Senate under the Code (subsection 41(1)). A breach of the rules of general conduct provided under section 7.1 of the Code, as any other breach of the Code, is subject to the enforcement process established under the Code and, in particular, to the Senate Ethics Officer's responsibilities therein.

Section 7.1 of the Code is consistent with subsection 20.5(1) of the *Parliament of Canada Act* (the "Act") which states that: "The Senate Ethics Officer shall perform the duties and functions assigned by the Senate for governing the conduct of members of the Senate when carrying out the duties and functions of their office as members of the Senate." The intent of this provision is to establish that the mandate of the Senate Ethics Officer is assigned by the Senate. It also ensures and makes clear that those Senators who are also public office holders, and as such subject to conflict of interest rules applicable to public office holders, are also subject, as Senators, to the Code and the disciplinary authority of the Senate over its members. Subsection 20.5(1) of the Act does not limit in any way the privilege of the Senate to discipline its members for all conduct, whether directly related to parliamentary duties and functions or not, that could undermine the fundamental integrity, dignity and authority of the Senate. The Senate's privileges are moreover expressly preserved by subsection 20.5(5) of the Act which states that: "For greater certainty, this section [20.5] shall not be interpreted as limiting in any way the powers, privileges, rights and immunities of the Senate or its members." The existence and scope of the Senate's privilege to discipline its members are authoritatively established and the Code constitutes a valid exercise of this privilege consistent with the Act.