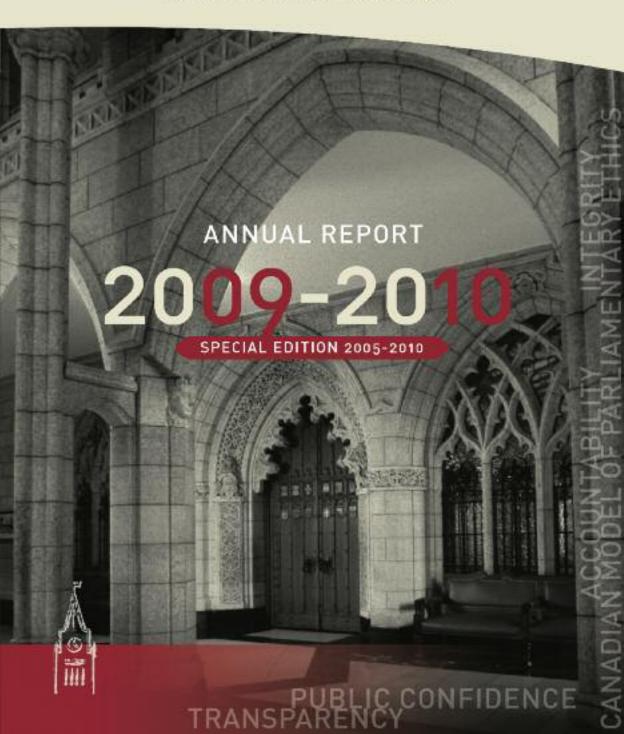


OFFICE OF THE SENATE ETHICS OFFICER



Annual Report of the Senate Ethics Officer 2009-2010

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June 10, 2010

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

Dear Mr. Speaker:

It is my honour and pleasure to submit to you the fifth Annual Report of the Senate Ethics Officer, pursuant to section 20.7 of the *Parliament of Canada Act*, R.S.C. 1985, c. P-1, as am. by S.C. 2004, c.7; S.C. 2006, c.9. It covers the period from April 1, 2009 to March 31, 2010.

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

Yours sincerely,

Jean T. Fournier Senate Ethics Officer

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INTEGRITY ACCOUNTABILITY



Conflict of Interest Code for Senators

Purposes

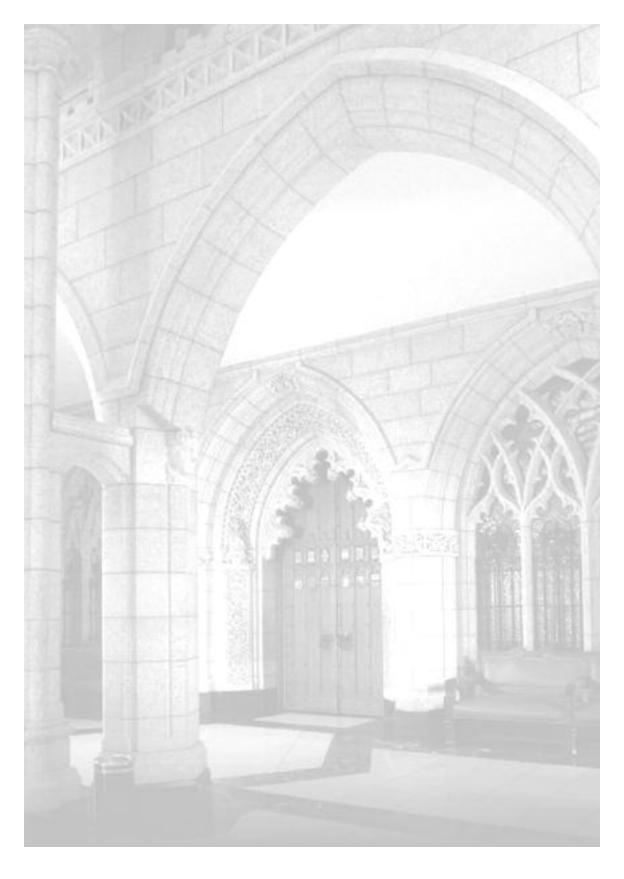
- 1. The purposes of this Code are to
 - (a) maintain and enhance public confidence and trust in the integrity of Senators and the Senate;
 - (b) provide for greater certainty and guidance for Senators when dealing with issues that may present foreseeable real or apparent conflicts of interest; and
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

Principles

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

Privacy

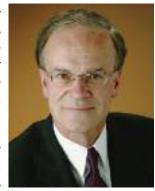
- (2) The Senate further declares that this Code shall be interpreted and administered so that Senators and their families shall be afforded a reasonable expectation of privacy.
 - Sections 1 and 2 of the Conflict of Interest Code for Senators



FOREWORD BY JEAN T. FOURNIER

This is my fifth Annual Report as Senate Ethics Officer. Under section 20.7 of the *Parliament of Canada Act*, the Senate Ethics Officer is required, within three months after the end of the fiscal year, to submit a report on his activities to the Speaker of the Senate who tables the report in the Senate. The Annual Report 2009-2010 covers the period from April 1, 2009 to March 31. 2010.

I want to express my appreciation to all senators and their staff for their cooperation throughout this last year and, in particular, the 14 new senators whose appointment was



announced by the Prime Minister on August 27, 2009 and on January 29, 2010. The experience and the knowledge that they bring to the Senate will, no doubt, be of great service to our country.

I view this Annual Report as more than a report on the activities of my Office for this year. The tabling of this Report is an important milestone. It marks the 5th anniversary of the adoption by the Senate of the *Conflict of Interest Code for Senators* and of the appointment of the first Senate Ethics Officer by the Governor in Council following a resolution of the Senate. A solid foundation has been established in a few short years. Anniversaries are occasions for sitting back, reflecting, listening, improving, and celebrating even. This particular anniversary presents an opportunity to take stock of what has been achieved to date and to examine how far we have to go to achieve the goals of the legislation and of the Code.

One may ask why draw attention to the 5th anniversary of the Senate ethics regime and not wait for the 25th? By that time, most people will have difficulty remembering the original event. But this anniversary marks an important event for senators and for the Senate that most of us can recall. It enables us to recognize and celebrate how much has been accomplished and to look ahead. Every journey proceeds in stages. The 5th anniversary of the Senate ethics regime – and this Annual Report – are an opportunity to step back, evaluate the progress that has been made and identify issues in the Code that may require consideration at this time in order to clarify it and strengthen transparency, accountability and public confidence in the integrity of senators and the Senate.

This anniversary is also an opportunity to compare the Senate ethics regime with the parliamentary ethics regimes in other jurisdictions in Canada and in other countries with which we often compare ourselves, namely Australia, the United Kingdom and the United States. Like Canada, these countries have developed over the years their own distinct models of parliamentary ethics, reflecting their own history, political culture and unique values.

Chapter 1 describes briefly the Senate ethics regime, including the respective roles and responsibilities of the Senate Ethics Officer and the Standing Committee on Conflict of Interest for Senators, as well as the rules and obligations that senators are required to follow. In Chapter 2, the main activities of the Office during the year 2009-2010 are reviewed. Chapter 3 provides a number of examples of advice and opinions given to senators in a variety of situations. Finally, Chapter 4 offers some thoughts on possible amendments to certain provisions of the Code.

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

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

The Senate Ethics Officer

I began my work on April 1, 2005. I was appointed by the Governor in Council following adoption by the Senate of a resolution approving my appointment for a seven year term. The Senate Ethics Officer may be removed from office only for cause, by the Governor in Council, on address of the Senate. My mandate is to administer, interpret and apply the Code. The status, duties and powers of my office are broadly similar to those of the Conflict of Interest and Ethics Commissioner, established in 2004 and formerly entitled the Ethics Commissioner, in respect of his or her responsibilities concerning members of the House of Commons, and to those of provincial and territorial ethics commissioners who administer conflict of interest laws applicable to members of legislative assemblies across the country.

I am an independent Officer of the Senate. There are many provisions of the *Parliament of Canada Act* that clearly demonstrate the importance Parliament attaches to the independence of the Senate Ethics Officer, including the appointment process, the security of tenure, financial autonomy and reporting relationships. Similar provisions apply to the Conflict of Interest and Ethics Commissioner in respect of his or her

responsibilities concerning members of the House of Commons and public office holders. Moreover, section 41 of the Code makes explicit that I am independent in interpreting and applying the Code as it relates to an individual senator's personal circumstances. I am able to state unequivocally that, since my appointment, there has been no attempt to compromise my independence.

"The ethicist sheds light and guides, more than he sets rules or sanctions."

Professor Daniel M. Weinstock, Université de Montréal, 2006

The Code

The Conflict of Interest Code for Senators was adopted in May 2005 and amended in May 2008. It is a set of rules established by senators for senators. The Code sets out a series of rules and obligations with which senators are expected to comply as well as various procedures for the administration and application of the Code. The Senate rules are broadly similar to those in place in other jurisdictions. They cover such matters as the furthering of private interests, the use of influence, insider information, declarations of private interests, gifts and other benefits, sponsored travel and federal contracts and business arrangements. The rules guide behavior and, if followed, help to ensure that the public interest is given precedence over private interests. The Code also includes provisions regarding the carrying on of activities outside official parliamentary duties, which are almost identical to those of the Conflict of Interest Code for Members of the House of Commons. While I may provide advice from time to time on possible amendments to the Code based on my experience in administering the Code and my knowledge of rules of conduct in other jurisdictions, the Senate is ultimately responsible for the Code and leadership from senators is paramount in building an ethical institution. Additional information regarding the most important aspects of the Code is provided in Chapter 1 of this Report.

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

John F. Kennedy, 1961

Annual Disclosure by Senators

Disclosure is the essence of an effective and credible ethics regime. The Senate disclosure process in place since 2005 is a rigorous one, involving detailed forms to be filled out, the exchange of documents between my Office and individual senators, and face-to-face meetings. The disclosure requirements give the public and other parliamentarians an opportunity to know about financial and other private interests that could possibly influence a senator's actions in carrying out his or her parliamentary duties. The annual disclosure process under the Code is an important means of ensuring that there is a measure of transparency and accountability in the Senate. Moreover, the provisions of the Code seek to strike a balance between the public interest in the disclosure of information on the one hand, and the right to privacy on the other.

The disclosure process generally begins in the fall of each year when Parliament resumes its summer recess. To initiate the process, I send a confidential disclosure statement, which senators must complete and return. The information that must be declared annually includes any sources of income over \$2,000, any assets and liabilities over \$10,000, any outside activities and any federal government contracts or business arrangements.

Based on this information, I send a letter of advice to each senator regarding his or her particular obligations under the Code and recommend measures, if necessary, to ensure that senators are in compliance with the Code. I am also required to prepare a public disclosure summary, which I review with each senator to identify omissions or ambiguities and to ensure that the information is complete and up-to-date. These summaries are placed in the Public Registry and are available for public inspection.

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

Organisation for Economic Co-operation and Development, 2002

Senators have an ongoing obligation throughout the year to disclose changes in their circumstances by filing the proper forms according to the procedures set out under the Code. This ensures that their confidential and public files contain accurate and up-to-date information at all times.

Annual Meetings with Senators

I began the practice of annually meeting with individual senators in 2005. The meetings usually commence in October of each year and end in March. I continue to believe that face-to-face meetings, whenever possible, are very valuable, both for individual senators and for myself in the discharge of my responsibilities. The meetings are an important opportunity to discuss each senator's annual disclosure statement, my annual letter of advice to them, as well as the details of each senator's public disclosure summary. The meetings ensure that the information I use to prepare a public disclosure summary for each senator, which is placed in the Public Registry, is current and accurate, and allows me to provide sound and timely advice.

They are an occasion for senators to raise questions and concerns regarding their obligations under the Code and to signal future matters that could be problematic. A face-to-face meeting to discuss an issue is often the most effective and efficient way to elicit the facts and information required in order to provide advice and for a proper resolution of the matter. Many of my counterparts follow a similar approach. This practice goes back some 20 years ago when Ontario became the first jurisdiction in Canada to establish formal rules of conduct for legislators and to appoint an independent ethics commissioner.

In eight jurisdictions in Canada, an annual meeting is statutorily required. In one other jurisdiction, an annual consultation between the member and the ethics commissioner is required. Three jurisdictions leave the matter to the discretion of the commissioner. What is clear from the experience in Canada over the years is that those annual meetings are considered essential and have proven to be a key ingredient to the success of the Canadian model of parliamentary ethics.

Advice and Prevention

In each of the last five years, I provided over 200 opinions and advice to senators, both formal and informal, reflective of the level of trust and confidence that has developed between senators and the Office. Section 42 of the Code explicitly states that individual senators may request confidential opinions and advice from the Senate Ethics Officer respecting their obligations under the Code. The main areas in relation to which senators seek advice include: activities outside their official parliamentary duties, sponsored

travel, gifts and other benefits, declarations of private interests, contracts or business arrangements with the federal government or any federal agency or body, and disclosure requirements. Almost all of these requests are made before acting or deciding and this helps to avoid conflicts of interest.

I am pleased with the fact that over the years senators have readily availed themselves of the services of the Office and raised questions and concerns before acting. This, in my view, shows that the Office is doing what it was intended to do – to avoid conflicts rather than attempt to deal with them once they have already arisen. The emphasis on advice and prevention is one of the distinguishing characteristics and recognized strengths of the Canadian model of parliamentary ethics.

My experience is that parliamentarians are very busy people with many competing demands on their time and energies. Often they do not have the time to delve into the details concerning the relevant rules of conduct. There may be numerous precedents relating to conflict of interest of which they may be unaware; there can also be nuances in interpretation. Helping parliamentarians understand all this by means of the advisory function is vital. The former Conflict of Interest Commissioner in British Columbia, the Honourable H.A.D. Oliver, referred to this practice as "preventative political medicine". This aspect of my work occupies the largest part of my time and of my counterparts in other Canadian jurisdictions, more so than the investigative function that inevitably draws the greatest media attention. To quote Robert Clark, a distinguished former Ethics Commissioner from the province of Alberta, the role of a commissioner is "90% priest and 10% policeman".

Previous Annual Reports provided examples of the advice I have given to senators and highlighted some of the considerations that might be relevant. Given the interest expressed by senators and others in these case summaries, this year again we are including in the Annual Report a sample of the kind of advice I might provide to assist the reader in better understanding how the Code works in practice.

Inquiries and Investigations

Over the last five years, no formal complaints were made against any one senator under subsection 44(2) of the Code. This, in my view, reflects well on senators and on the work of the Office. I see a clear correlation between the number of requests for opinions and advice and the number of inquiries that are undertaken. The more requests there are for opinions and advice, and the more that emphasis is placed on prevention and education, the less there is need for costly and time-consuming investigations. In most Canadian jurisdictions, investigations are a rare occurrence even though they remain a necessary tool. When ethics commissioners were first appointed in Canada, some 20

years ago, the focus, especially in the media, was on investigations. The expectation was that this would be an ethics "Lone Ranger", police commissioner or prosecutor, someone who would root out corruption and track down the culprits. But through experience, we have learned that it is in fact the advisory function that is essential to an effective parliamentary ethics regime. The Canadian approach is preventative not punitive.

Amendments to the Code

As noted earlier, this anniversary is an opportunity to recognize how much progress has been made over the last five years since the establishment of the Senate ethics regime. It is also an occasion to consider what changes, if any, might be made to the Code at this time to maintain and enhance public confidence and trust in the integrity of senators and the Senate. Chapter 4 of the Annual Report offers some observations on this matter. Of course, it will be within the discretion of the Standing Committee on Conflict of Interest for Senators to decide on which changes to recommend to the Senate and, ultimately, the Senate will determine which amendments should be made to the Code. However, I look forward to the opportunity to share some of my thoughts on this, based on five years of working with the Code, and to dialogue with the Committee in this regard.

Acknowledgements

This anniversary is also an opportunity to thank, once again, those who have supported the Office since its inception.

I want to thank the members of the Standing Committee on Conflict of Interest for Senators for their assistance over the past five years. The Committee was established on June 6, 2005. The members are: the Honourable Serge Joyal, P.C. (Chair), the Honourable Raynell Andreychuk (Deputy-Chair), the Honourable David Angus, Q.C., the Honourable Sharon Carstairs, P.C., and the Honourable Fernand Robichaud, P.C.

The tabling of my Annual Report is generally followed by a meeting with the Committee to discuss the Report before the summer recess or when Parliament resumes in the fall. I met three times with the Committee last year, once to review the Annual Report for the activities of my Office and twice to discuss possible amendments to the Code. This is typical of the number of meetings I have had annually with the Committee over the years.

Second, I want to take this opportunity to express, once again, my appreciation to each member of my staff who has been with the Office since the beginning in 2005: Mrs. Louise Dalphy, Administrator and Ethics Advisor; Ms. Deborah Palumbo, Assistant Senate Ethics Officer and General Counsel; Mr. Willard Dionne, Director; and Mr. Jacques Lalonde, Chief Advisor. The Office remains both small and busy. I am grateful to each and every one of them for their dedication and teamwork.

Finally, I want to acknowledge the assistance and support that our Office has received from the Senate Administration throughout the year in the following areas: security, finance, human resources and information technology. These services were provided on a cost recovery basis pursuant to a written agreement.

1. THE CONFLICT OF INTEREST REGIME FOR SENATORS

What follows is a brief description of the duties and responsibilities of the Senate Ethics Officer, of the role of the Standing Committee on Conflict of Interest for Senators, of some of the most important aspects of the *Conflict of Interest Code for Senators* and of other rules and laws with which senators are expected to comply.

(1) The Senate Ethics Officer

The main responsibilities of the Senate Ethics Officer are to:

- advise individual senators on a confidential and ongoing basis concerning their obligations under the Code and to assist them in remaining in compliance with the requirements of the Code;
- oversee the ongoing annual disclosure process in which senators are required to disclose their financial and other interests;
- conduct inquiries in order to determine whether a senator has complied with his or her obligations under the Code;
- maintain a registry, available to the public, containing information concerning the financial and other interests of senators that are required to be publicly disclosed under the Code: and
- submit an annual report of the Office's activities to the Speaker of the Senate for tabling in the Senate.

The authority of the Senate Ethics Officer derives both from the *Parliament of Canada Act* and the *Conflict of Interest Code for Senators*.

The Parliament of Canada Act was amended in 2004, at which time, a number of sections were added to the Act, including sections 20.1 to 20.7. These provisions established the position of Senate Ethics Officer, defined the mandate of the Office and provided additional details in this regard. The status, duties and powers of the Senate Ethics Officer are broadly similar to those of the Conflict of Interest and Ethics Commissioner in respect of his or her responsibilities concerning members of the House of Commons, and to those of provincial and territorial ethics commissioners who administer conflict of interest laws applicable to members of legislative assemblies across the country. The Parliament of Canada Act provides that both the Senate Ethics Officer and the Conflict of Interest and Ethics Commissioner carry out their duties and responsibilities under the general direction of a committee of each House of Parliament that is designated or established for that purpose.

The Senate Ethics Officer is an independent Officer of the Senate. There are many provisions of the *Parliament of Canada Act* that clearly demonstrate the importance Parliament attaches to the independence of the Senate Ethics Officer, including the appointment process, the security of tenure, financial autonomy and reporting relationships. For example, the Senate Ethics Officer is appointed by the Governor in Council after consultation with the leader of every recognized party in the Senate and after approval of the appointment by resolution of the Senate. This method of appointment ensures that the Senate Ethics Officer has the broadest support in the Senate, irrespective of party affiliation. The incumbent is appointed for a renewable term of seven years and may be removed from office, only for cause, by the Governor in Council on address of the Senate.

The Senate Ethics Officer has the rank of a deputy head of a department of the Government of Canada and the *Parliament of Canada Act* ensures that the Senate Ethics Officer has the control and management of his or her Office independent of the Senate. For example, the Senate Ethics Officer is responsible for preparing the estimates of the budget required to operate the Office, which are separate and distinct from the estimates of the Senate as a whole. He or she submits the estimates to the Speaker of the Senate who, after considering them, transmits them to the President of the Treasury Board. They are then laid before the House of Commons with the estimates of the Government for the fiscal year.

Three months after the end of each fiscal year, the Senate Ethics Officer is required to submit a report of his or her activities to the Speaker of the Senate, who tables the report in the Senate. These aspects of the *Parliament of Canada Act* confer on the Office of the Senate Ethics Officer a status of independence and autonomy and they provide an effective shield against improper or inappropriate influence.

Section 41 of the Code refers explicitly to the Senate Ethics Officer's independence. It provides that he or she is an independent Officer of the Senate who performs the duties and functions assigned by the Senate under the Code. It also makes explicit that he or she is independent in interpreting and applying the Code as it relates to an individual senator's particular circumstances.

(2) The Standing Committee on Conflict of Interest for Senators

Pursuant to subsection 20.5(3) of the *Parliament of Canada Act*, the Senate established the Standing Committee on Conflict of Interest for Senators (see sections 35 to 40 of the *Conflict of Interest Code for Senators*) to provide "general direction" to the Senate Ethics Officer. (The House of Commons Standing Committee on Procedure and House Affairs performs a similar function with respect to the Conflict of Interest and Ethics Commissioner in respect of his or her role concerning members of the House of Commons.)

The Senate has effectively delegated responsibility to this Committee to oversee the conflict of interest regime in the Senate and to act as the link between the Senate and the Senate Ethics Officer.

The Committee has an important role to play with respect to any inquiries and investigations that may be undertaken under the Code. It makes recommendations to the Senate concerning sanctions, where it considers them necessary, in cases where a senator has failed to comply with the requirements of the Code. The Senate then is able to act on such recommendations and exercise its constitutional right to discipline its own members by making final determinations in this regard.

The Committee is also responsible for undertaking periodic comprehensive reviews of, and recommending changes to, the Code. In a sense, the Committee is the conscience of the Code. As the person responsible for the administration, interpretation and application of the Code on a day-to-day basis, the Senate Ethics Officer brings issues of concern to the Committee's attention and submits proposals to it in order to clarify and strengthen the Code.

The Committee is comprised of five members: two are elected by secret ballot from the caucus of Government senators, two are elected by secret ballot from the caucus of Opposition senators, and these four members elect the fifth by secret ballot.

(3) The Conflict of Interest Code for Senators

The Conflict of Interest Code for Senators was adopted by the Senate on May 18, 2005 as a document separate from, but of equal standing to, the Rules of the Senate. Amendments were recommended by the Standing Committee on Conflict of Interests for Senators in 2008 as a result of a review required under section 53 of the Code. These changes were adopted by the Senate on May 29, 2008.

The Code outlines a series of rules that are aimed at fostering transparency, accountability and public confidence in the Senate. What follows is a short description of some of the more important aspects of the Code in order to illustrate the nature of the obligations that senators are expected to meet.

A. Purposes (section 1)

The term "conflict of interest" is not explicitly defined in the Code, but the motivation for adopting a code of conduct is clearly set out in section 1. First, the Code is intended to maintain and enhance public confidence and trust in the integrity of senators and of the Senate. Canadians expect their representatives to make decisions that are in the public interest, rather than in their own private interests.

"In the management of public sector ethics, codes, commissions and cops all have their place...But what works in encouraging political ethics, in sustaining a political system that values political decency? My preference is to avoid cumbersome legal prescription and rule-compliance approaches. Talk is better than chalk..."

Professor John Uhr, Australian National University, 1996 Canberra, Australia

Second, the Code is intended to provide greater certainty and guidance for senators in dealing with foreseeable, real or apparent conflicts. This is important as a matter of fairness. Conflicts of interest may arise inadvertently despite the best of intentions. Indeed, situations may arise in which there is no real conflict, but rather there is only an apparent conflict. However, the appearance of a conflict may be just as damaging to one's reputation as a real conflict. Having a clear set of rules and standards is helpful in raising awareness with respect to, not only what would be a real conflict, but also what could be perceived as a conflict.

"The greatest difficulties arise in that broad grey area that exists between behaviour that is clearly forbidden and behaviour that is clearly honest or ethical. Within this grey area, there is a wide continuum ranging from abuses or conflicts that are real, through those that are potential, to those that are apparent. One of the reasons why codes of conduct and appropriate ethical rules are important is precisely to address the difficulties created by this grey area: to reassure the public; and to protect public office holders themselves".

John C. Tait, Q.C., Chair of the Task Force on Public Service Values and Ethics, 1996

The third purpose of the Code builds on the second purpose already discussed above in that it refers to the establishment of clear standards on which to measure conduct. But it also highlights the importance of having a transparent system where questions may be addressed by an independent, impartial adviser. The model, in which an independent officer is charged with the responsibility of administering and applying a set of rules that

is outlined, either in a code of conduct or in legislation, has been in place for many years and has worked successfully in Canadian provinces and territories.

The Canadian model of parliamentary ethics has proven to be an effective system because it provides objectivity and credibility to ethics regimes. It is also important because conflict of interest questions are often complex. They are not always easy to resolve and they often require a great deal of time and thought in order to find the best solutions. Having an impartial adviser who reviews these questions and issues on a daily basis and applies a common set of rules and standards to all parliamentarians and legislators is both in the public interest, as well as in the interest of both Houses and legislatures across the country.

B. Principles (section 2)

The Code also contains certain principles set out in section 2 that serve to guide the interpretation of the various provisions of the Code. These principles read as follows:

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

The first principle is an important one given the unique role the Senate plays in Canada's constitutional framework. The Senate's one hundred and five members are summoned by the Governor General on the advice of the Prime Minister. They are expected to represent regional interests and to reconcile the national interest with regional aspirations. In order to do so, it is key for them to foster a better understanding of the issues that affect the regions they represent. They are able to do so by remaining connected to their communities and regions. Moreover, senators come from various backgrounds, professions and fields of expertise. This diversity enhances the knowledge and experience they are able to bring to their examination of public policy issues and it is one of the strengths of the Senate.

It is important to note that, unlike Cabinet ministers, senators do not control the public finances and they are constitutionally limited in this regard. As such, there are more restrictions that apply to Cabinet ministers in terms of their outside activities. By contrast, and as already noted above, senators are not only permitted, but they are expected, to continue to be involved and active in their communities and regions in order to better represent regional interests.

Having said that, these outside activities may give rise to situations in which a conflict, or the appearance of a conflict, may develop between a senator's private activities and the public interest. In such cases, paragraph 2(1)(c) of the principles is important; it indicates that any such conflict or apparent conflict is to be resolved in favour of the public interest.

"Conflict of interest in the public sector is the clash of a private interest with a public duty. It involves the potential to further private, personal interest at the expense of fulfilling public duty and acting in the public interest.... That people have interests is obvious. People act in and are of the world—they have interests, and this remains so whether they are public officials or private actors. Interests are inescapable for they are the stuff of being human....
[W]hat becomes important is not so much their presence as what is done about them when one has interests which clash with duties. Conflicts may be both avoidable and unavoidable and again it is what one does when they arise which is critical."

Professor Gregory J. Levine, University of Western Ontario, 2007

The **second principle** outlined in the Code provides that senators are expected to fulfill their public duties while upholding the highest standards in order to avoid conflicts of interest. This recognizes the trust that Canadians have placed in their parliamentarians as they carry out their duties and functions, as well as the high standards that Canadians expect of them.

The **third principle** makes reference to apparent conflicts. Senators are expected to arrange their private affairs so that, not only real, but also apparent conflicts may be prevented from arising.

The principles of the Code strike a delicate balance between permitting senators to play the unique constitutional role they were intended to play, while ensuring that their private affairs and outside activities do not take precedence over the public interest where these two come into conflict.

C. Activities Outside Official Parliamentary Duties (section 5)

The Conflict of Interest Code for Senators (Senate Code) authorizes senators who are not ministers to engage in activities outside their official parliamentary duties and functions provided they are able to comply with the provisions of the Code. More specifically, section 5 of the Code authorizes such activities, including practicing a profession, carrying on a business or holding official positions in corporations and other bodies, by senators who are not ministers of the Crown. As a matter of interest, section 7 of the Conflict of Interest Code for Members of the House of Commons (MP Code) is virtually identical to section 5 of the Senate Code. It provides that nothing in the MP Code precludes members, who are not ministers of the Crown or parliamentary secretaries, from engaging in outside activities (the list of outside activities being identical to that contained in section 5 of the Senate Code), as long as they are able to fulfill their obligations under the MP Code. In fact, the conflict of interest laws in some other Canadian jurisdictions also permit members of legislative assemblies to engage in activities outside their official duties and responsibilities as members of a legislature.

D. Rules of Conduct

The Conflict of Interest Code for Senators builds on the overarching principles set out in section 2 through a number of rules of conduct. These rules deal with furthering private interests, use of influence, use of information, declarations of private interests, gifts and other benefits, sponsored travel and federal government contracts.

(a) Private Interests (sections 8 to 16)

In the performance of their parliamentary duties and functions, senators are prohibited from acting or attempting to act in any way to further their private interests, or those of a family member, or to improperly further another person's or entity's private interests (section 8). Moreover, they are not to use or attempt to use their position to influence the decisions of others in order to further these same interests (section 9).

The use of, attempt to use, and the conveying of, information that is not generally available to the public to further these private interests is also prohibited (section 10).

The Code sets out what is covered by the phrase "furthering private interests" (section 11). It includes taking action to increase or preserve the value of assets, to eliminate or reduce liabilities, and to become a director or officer in a corporation or organization.

However, it excludes, for example, matters of general application and those that apply to a broad class of the public.

A senator is expected to declare, orally or in writing, the general nature of a private interest where the senator has reasonable grounds to believe that he or she or a family member has such an interest in a matter that is before the Senate, or a Senate committee of which the senator is a member. Moreover, the senator is not permitted to participate in debate or to vote on the matter and, in the case of committee matters, the senator must withdraw from the proceedings in question (subsections 12(1), 13(1), (2) and section 14).

A senator who is only participating in a committee proceeding but is not a member of the committee is also prohibited from participating in debate on a matter in which he or she has reasonable grounds to believe he or she, or a family member, has a private interest that might be affected by the matter before the committee. In such cases, the senator must also withdraw from the proceedings in question (subsection 13(3)).

Where a senator made a declaration of a private interest out of an abundance of caution, but he or she later determines that the declaration was in fact unnecessary, he or she may retract the declaration in accordance with the rules provided under the Code for doing so (subsection 12(7)).

(b) Gifts, Other Benefits and Sponsored Travel (sections 17 and 18)

Senators and their family members are not permitted to accept any gifts or benefits that could reasonably be considered to relate to the senator's position (subsection 17(1)). An exception is made for gifts or benefits that are expressions of courtesy, protocol or that are within the customary standards of hospitality that normally accompany a senator's position (subsection 17(2)). However, even if the gift or benefit falls under the exception, if its value exceeds \$500.00, or if the total value received from one source in one year exceeds \$500.00, then the senator must file a statement with the Senate Ethics Officer disclosing the nature, value, and source of the gifts or benefits, and the circumstances under which they were received (subsection 17(3)).

This disclosure must occur within 30 days after the receipt of the gift or benefit, or within 30 days after the value of all such gifts or benefits received from the same source in a one year period exceeds \$500.00, as the case may be (subsection 17 (3)).

A senator and guests of the senator may, however, accept sponsored travel that relates to the senator's position. Where the cost of any such travel exceeds \$500.00, and where the travel is not paid for by the senator, or his or her guests, or through any international

and interparliamentary affairs programs recognized by the Parliament of Canada, the Senate, the Government of Canada, or the senator's political party, the trip must, however, be disclosed to the Senate Ethics Officer within 30 days after the end of the trip (section 18).

(c) Federal Government Contracts (sections 20 to 26)

A senator may not be a party, directly or indirectly, to a contract or other business arrangement with the federal government or any federal agency or body under which the senator receives a benefit. There are two exceptions to this rule: (1) the contract or arrangement is in the public interest due to special circumstances; and (2) the contract or arrangement is unlikely to affect the senator's obligations under the Code. In the case of either exception, the Senate Ethics Officer must provide a written opinion regarding the matter (section 20), which is then made public pursuant to paragraph 31(1)(d). Participation in federal government programs is also permissible if certain conditions are met (section 23).

A senator may own securities in a public corporation that has contracts with the federal government or any federal agency or body unless the interest is so significant that the Senate Ethics Officer is of the view that it is likely to affect the senator's obligations under the Code (subsection 21(1)). Again, there is a public interest exception in the case of interests in a public corporation (subsection 21(2)). Moreover, participation in a federal government program is not considered to be a contract (subsection 21(3)). Finally, a senator may comply with the Code by placing the securities in a trust under such terms set by the Senate Ethics Officer (subsection 21(4)).

A senator is prohibited from having an interest in a partnership or a private corporation that is a party, directly or through a subcontract, to a contract or other business arrangement with the federal government or any federal agency or body under which the partnership or corporation receives a benefit. Again, the two exceptions outlined above (i.e., public interest and obligations not affected under the Code) apply (section 22) and, in such circumstances, the Senate Ethics Officer's opinions authorizing such contracts are made public pursuant to paragraph 31(1)(e). Participation in federal government programs is also permissible provided certain conditions are met (section 23). Finally, such an interest is permissible if a trust, with certain specified conditions, is established (section 24).

E. Disclosure Process (sections 27 to 34)

The Code requires each senator to submit to the Senate Ethics Officer an annual confidential disclosure statement listing sources of income, assets, liabilities, outside activities, and government contracts in accordance with sections 27 and 28. All sitting senators are required to file annually, on or before a date to be established by the Senate Ethics Officer with the approval of the Standing Committee on Conflict of Interest for Senators (subsections 27(1) and (2)). Newly appointed senators are required to submit the statements within 120 after being summoned to the Senate (subsection 27(3)).

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

"In a sense the creation of conflict of interest or ethics offices or commissions can be compared to preventative medicine, as distinct from treating disease after its outbreak. One by one, bad apples always get rooted out. If the preventative medicine program does effective work, bad apples should be rare and hopefully, non existant (sic)."

The Honourable E.N. (Ted) Hughes, Former Commissioner of Conflict of Interest of British Columbia, Annual Report, 1991-92

Senators must continue to remain in compliance with the Code at all times. This is done by reporting to the Senate Ethics Officer any material changes to the information provided in their confidential disclosure statements within 60 days of any such change occurring (subsection 28(4)). Moreover, and as already noted earlier, an annual review of the senator's confidential disclosure statement and compliance arrangements is conducted by the Senate Ethics Officer (subsection 27(1)).

Based on the information contained in the confidential disclosure statement and any other additional information provided that may be relevant, the Senate Ethics Officer must prepare a public disclosure summary related to each senator (section 30). These summaries are then made available for public inspection at the Office of the Senate Ethics Officer (subsection 33(1)).

F. Opinions and Advice (section 42)

The Senate Ethics Officer provides opinions and advice to senators regarding their obligations under the Code pursuant to section 42. Although the Code requires that these opinions and advice be kept confidential, they may be made public by the senator to whom they were given, or by the Senate Ethics Officer with the senator's written consent (subsection 42(4)). Moreover, some opinions related to contracts with the federal government or any federal agency or body must be made public under section 31 of the Code.

The importance of this advisory function should not be underestimated. While each senator is responsible for arranging his or her affairs in such a way as to prevent any foreseeable real or apparent conflicts of interest, if a senator has any doubt about whether there may be a conflict or a perceived conflict, he or she is encouraged to consult the Senate Ethics Officer on a confidential basis to resolve the matter. This approach is preventative, not punitive. The focus is not on addressing conflicts of interest once they have arisen, but rather on preventing them from arising.

G. Inquiries and Investigations (sections 44 to 49)

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

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

Once an inquiry is completed, the Officer is required to prepare a written report that includes recommendations to the Standing Committee on Conflict of Interest for Senators (section 45), which may then report to the Senate (subsections 46(4), (5), (6), (7) and (8)). Any appropriate action or sanctions would be determined by the Senate. The reports of the Senate Ethics Officer are not available to the public.

H. Committee Review (section 53)

The Standing Committee on Conflict of Interest for Senators is required to undertake a review of the provisions of the Code and its operation every five years. The Committee must submit a report to the Senate on this review, including its recommendations respecting changes to the Code (section 53).

(4) Other Rules and Laws

There are other rules and laws with which senators are expected to comply, in addition to the rules that were brought into effect when the Office of the Senate Ethics Officer was established.

For example, section 16 of the *Parliament of Canada Act* 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.

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

The Senate Administrative Rules, which were adopted by the Senate, came into force on May 6, 2004 and were revised in 2007, contain provisions relating to the proper allocation and use of Senate resources. Sections 1 and 6 of Chapter 3:01 of these Rules provide that Senate resources must only be used for parliamentary functions and for the service of the Senate.

The provisions referred to above in the *Criminal Code*, the *Senate Administrative Rules*, and section 16 of the *Parliament of Canada Act* do not come within the purview of the Senate Ethics Office.

KEY OBLIGATIONS OF SENATORS UNDER THE CONFLICT OF INTEREST CODE

- Senators may not act in any way to further their **private interests**, or those of their family members, or to improperly further another person's or entity's private interests when performing parliamentary duties and functions (section 8).
- 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 (section 9).
- 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 (section 10).
- Senators are expected 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 (subsection 12(1)). They **may not participate** in debate on that matter, **nor** are they **permitted to vote**, though they may abstain (subsections 13(1) and (2) and section 14). In the case of committees, senators **must also withdraw** from the proceedings (subsection 13(2)). 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, or their family members, have a private interest and they too must withdraw from the proceedings in question (subsection 13(3))
- Senators may not accept, nor may a family member accept, any gift or other benefit that could reasonably be considered to relate to their position, except as permitted under the Code. Gifts, benefits and sponsored travel that are acceptable under the Code must be declared to the Senate Ethics Officer if they exceed \$500.00 in value (sections 17 and 18) and these must be publicly declared pursuant to paragraph 31(1)(i).

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KEY OBLIGATIONS OF SENATORS UNDER THE CONFLICT OF INTEREST CODE (CONTINUED)

- Senators may not be parties to, or have interests in corporations or partnerships that are parties to, contracts with the Government of Canada or any federal agency or body under which they receive a benefit, unless specifically authorized by the Senate Ethics Officer (sections 20-26).
- Senators are expected to **disclose** their private interests to the Senate Ethics Officer on an annual basis and those interests required to be publicly disclosed under the Code are then placed on the public record (sections 27-34).
- Senators must report to the Senate Ethics Officer any material change to the information in their confidential disclosure statements, within the prescribed time (subsection 28(4)).
- Senators must cooperate with the Senate Ethics Officer with respect to any inquiry (subsection 44(12)).

2. THE YEAR IN REVIEW: 2009-2010

(1) Opinions and Advice

Last year my Office provided senators with over 200 opinions and advice on matters of varying complexity. This number confirms that senators are asking before acting or deciding. One of my primary responsibilities as Senate Ethics Officer is to advise individual senators, on a confidential and ongoing basis, concerning their obligations under the *Conflict of Interest Code for Senators* and to assist them in remaining in compliance with the Code. I consider the advisory function the most important aspect of my mandate and it occupies the greatest part of my time. As the old saying goes: "An ounce of prevention is worth a pound of cure".

"... I think that one of the duties of the Commissioner is to protect the members from getting into trouble. I know we have to represent the public and protect the public, but you're protecting the public if you protect the member from getting into difficulties through prudent advice."

The Honourable Gregory Evans, Q.C., former Integrity Commissioner in Ontario from 1988-1999

Each senator is responsible for arranging his or her affairs in such a way as to prevent any foreseeable real or apparent conflict of interest. That said, if a senator has any doubt about whether there may be a conflict or perceived conflict, particularly in those grey areas that often lead to problems for those who have entered public life, he or she is encouraged to consult me. The main areas in which senators sought advice this past year include: activities outside their official parliamentary duties, financial interests, sponsored travel, gifts and other benefits, declarations of private interests, and disclosure requirements.

As noted earlier, Chapter 3 of the Annual Report provides summaries of some examples of opinions and requests in a variety of situations. The actual advice I give to individual senators is based on a careful analysis of the Code and each senator's circumstances. Obviously, each situation must be evaluated on its own particular facts and different circumstances will lead to different conclusions.

I intend to continue to emphasize prevention by providing sound and timely advice to senators and by meeting with individual senators at least annually, whenever possible. We will also continue to improve the Office website, which provides a useful tool for senators and their staff and is a convenient source of information for the general public. There were 5,998 visits to our website this year.

(2) Request for an Opinion by Senator Housakos

Senator Housakos asked me for a written opinion under subsection 42 (1) of the *Conflict of Interest Code for Senators* as to whether he had contravened the Code. The senator was alleged to have used his position in order to influence the decision of a federal Crown corporation concerning the awarding of a Government contract to benefit a corporation, which was part of the winning consortium and with which the senator was associated at the time the contract was awarded. The \$1.4M contract involved conducting a prefeasibility study for the replacement of Montreal's Champlain Bridge. I made my opinion publicly available on December 21, 2009, at the request of Senator Housakos.

Section 9, concerning the use of influence, was the section of the Code at issue in that case. I found that, while the senator did have a private interest in the corporation, that interest, in and of itself, did not result in a breach of section 9 of the Code. The fact that the senator held this interest would only lead to a breach of section 9 where the senator used or attempted to use his influence as a senator in order to further this private interest in a manner described in subsection 11(1) of the Code. Following a review of both the process for awarding the contract as well as the results of a special examination report of the Auditor General undertaken in 2008 concerning the Crown corporation in question (which included its contracting practices and policies), I concluded that there was no evidence that Senator Housakos used or attempted to use his position as a senator to influence the decision to award the contract to the winning consortium and that the allegations against him were unsubstantiated and without merit. A copy of my opinion can be found in Appendix C to this Report.

(3) Disclosure by Senators

As I mentioned earlier in this Report, I am of the view that holding annual meetings with senators in the context of the annual disclosure process is of great value both to the senators and to myself. This year, only one senator refused to meet with me.

At the time of writing this Report, I had already sent each senator a letter of compliance confirming that he or she met the requirements of the Code. Senators had completed and returned their annual disclosure statements, and a certified copy of each senator's public disclosure summary was placed in the Public Registry, along with any statements regarding gifts and other benefits, sponsored travels, material changes, declarations of

private interests, and any letters of opinion concerning federal contracts and business arrangements.

A senator's obligation to disclose is not limited to completing an annual disclosure statement. Senators have an ongoing obligation throughout the year to disclose changes to their circumstances by filing the proper forms according to the procedures set out under the Code. This ensures that their confidential and public files contain accurate and up-to-date information at all times. Specifically, they are required to disclose the following:

- (1) any **gifts or other benefits** received as an expression of courtesy or protocol, or received within the customary standards of hospitality that normally accompany a senator's position where these exceed \$500 in value, or any such gifts or other benefits received from one source in a one-year period where their total value exceeds \$500 (section 17):
- (2) any **sponsored travel** where the travel costs exceed \$500, unless they are paid by the senator, or his or her guests, or through the programs for international and interparliamentary affairs of the Parliament of Canada, by the Senate, the Government of Canada or the senator's political party (section 18);
- (3) any **private interest** a senator or a family member may have in a matter that is before the Senate or a committee of the Senate of which the senator is a member (subsection 12(1)); and
- (4) any material changes to the information provided in their confidential disclosure statements (subsection 28(4)).

(4) Budget

For the year 2009-2010, the Office's total authorities were \$856,000 (Main Estimates: \$806,000 and Supplementary Estimates: \$50,000). Actual expenditures for 2009-2010 were \$784,000, \$72,000 less than the sums approved.

The 2010-2011 Main Estimates are \$823,200.

Our 2009-2010 financial statements were audited by the firm van Berkom & Ritz Chartered Accountants. I am pleased to report that we received a favourable report on the audit. The result of the audit is contained in Appendix H to this Report.

(5) Outreach and External Activities

I made a presentation on the Senate ethics regime to a group of participants of the Parliamentary Officers' Study Program on May 6, 2009. The program is hosted by the Senate, the House of Commons and the Library of Parliament and it offers participants from many countries the opportunity to observe, discuss and exchange views with senior Canadian parliamentary officials on a variety of subjects.

On May 29, 2009, I participated in a roundtable with Officers of Parliament organized by the Congress of the Humanities and Social Sciences at Carleton University, in Ottawa. My presentation was entitled "The Independence and Accountability of the Senate Ethics Officer". The roundtable was chaired by Carleton University Professor Robert Sheppard.

I spoke at the Australian Public Sector Anti-Corruption Conference in Brisbane, Australia, on July 29, 2009. The Conference was an opportunity for Australian and international public officials to learn about contemporary anti-corruption trends and strategies and to network with parliamentarians and senior representatives of leading Australian public sector agencies. My presentation was entitled "Strengthening Parliamentary Ethics: A Canadian Perspective". A copy can be found in Appendix G to this Report.

In Canberra, I met with Senator Gary Humphries who is a member of the Senate Committee on Senators' Interests and Rosemary Laing, Deputy Clerk of the Senate and Registrar of Senators' Interests. Both Houses of Parliament in Australia have well established regimes for the declaration and registration of members' interests. The Senate and House of Representatives each have their own Registrar. I also met with other senior parliamentary ethics officials in Brisbane and Sydney.

From September 10 to 12, 2009, I participated in the annual meeting of the Canadian Conflict of Interest Network (CCOIN), which was held in Whitehorse (Yukon). CCOIN includes the 15 federal, provincial and territorial ethics commissioners from all jurisdictions in Canada. We gather on an annual basis to discuss various topical issues that involve parliamentary ethics and conflicts of interest across Canada.

In October 2009, I made two presentations to students at the University of Ottawa on the Canadian model of parliamentary ethics in an international perspective.

The year in numbers

SEO meetings with senators as part of the annual disclosure process under the Code	101
Opinions and advice by the SEO to senators, oral and written	215
Allegations of non-compliance with the Code by one senator against another senator	0
Website visits	5,998

3. THE CODE IN PRACTICE: SELECTED EXAMPLES

The examples that follow are based on the experience gained during the Office's five years of operation; however, it is important to note that they are illustrative only and are abbreviated. The advice given by the Senate Ethics Officer is based on a careful analysis of the Code and each senator's circumstances. Obviously, each situation must be evaluated on its own particular facts and different circumstances will lead to different conclusions. Senators are expected to contact the Office of the Senate Ethics Officer for specific advice and guidance where they have any doubts about the best course of action.

"It takes 20 years to build a reputation for character and five minutes to ruin it. If you think about that, you will do things differently."

Warren Buffet, Chairman and CEO, Berkshire Hathaway Inc.

A. Activities Outside Official Parliamentary Duties

1. Issue

A senator asks to what extent the Code permits senators to engage in activities outside their parliamentary duties.

Considerations

Paragraph 2(1)(a) of the Code provides that senators are "to remain members of their communities and regions and to continue their activities in those communities and regions while serving the public interest and those they represent to the best of their abilities." As is the case for members of the House of Commons under the Conflict of Interest Code for Members of the House of Commons, senators who are not ministers of the Crown may engage in a wide range of activities, some of which are listed in section 5 of the Code. For example, senators are permitted to sit as members of boards of directors of not-for-profit and for-profit organizations. However, under the Code, they are required to disclose certain positions they hold to the Senate Ethics Officer who then makes this information available to the public.

Moreover, senators must ensure that they arrange their affairs to prevent their private interests from coming in conflict, or appearing to come in conflict, with the public interest and, where this occurs, they are expected to resolve the matter in favour of the public interest. A number of sections of the Code highlight the importance of ensuring that the

public interest always prevails over private interests (paragraph 2(1)(c) and sections 8, 9, and 10).

It is worth noting that the rules that apply to Cabinet ministers are much more restrictive than those that apply to senators and members of the House of Commons, reflecting the fact that Cabinet ministers have considerable executive powers. The role, responsibilities and powers of legislators are, however, quite distinct with the result that both senators and members of the House of Commons are permitted a wide range of outside activities.

2. Issue

A senator inquires as to whether the provision in the Conflict of Interest Code for Senators authorizing senators to engage in activities outside their parliamentary duties and functions is also found in the Conflict of Interest Code for Members of the House of Commons.

Considerations

Both the conflict of interest code applicable to senators and that applicable to members of the House of Commons authorize private members to engage in outside activities provided they are able to comply with the provisions of the code applicable to them. In fact, the two pertinent sections in the Senate and House codes are virtually identical.

Section 5 of the Senate Code reads:

- 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 notfor-profit organization; and
 - (d) being a partner in a partnership.

Section 7 of the House Code provides as follows:

- 7. Nothing in this Code prevents Members who are not ministers of the Crown or parliamentary secretaries from any of the following, as long as they are able to fulfill their obligations under this Code:
 - (a) engaging in employment or in the practice of a profession;
 - (b) carrying on a business;
 - (c) being a director or officer in a corporation, association, trade union or nonprofit organization; and
 - (d) being a partner in a partnership.

In addition, the conflict of interest laws in some other Canadian jurisdictions also permit members of legislative assemblies to engage in certain activities outside their official duties and responsibilities as members of a legislature.

3. Issue

A senator asks whether he can accept an invitation from a not-for-profit organization to be an Honorary Patron of its fundraising campaign. The senator's role would be limited to allowing the use of his or her name and position on the organization's letterhead or other printed and electronic material for the duration of the campaign.

Considerations

Acceptance of this honorary position would be permissible under section 5 of the Code, but would require public disclosure pursuant to paragraph 31(1)(b). Given the senator's involvement with this organization, certain precautions would have to be taken. Specifically and for the duration of the campaign, the senator would be asked to refrain from making representations on behalf of the organization, to the Government of Canada or any federal agency or body, in order to obtain financial assistance or contracts. Moreover, in order to avoid any apparent conflict of interest, the senator would be advised to refrain from being involved in any announcement of federal funding to the organization, should the situation occur.

4. Issue

A senator is asked to become a member of the Board of Directors of a not-for-profit organization that receives federal financial assistance.

Considerations

Although it is acceptable for a senator to sit as a director of a not-for-profit organization (paragraph 5(c) of the Code), this outside activity is subject to certain limitations. For example, the senator would be asked to refrain from making any representations on behalf of the organization for the continued receipt of federal financial assistance. The senator would also be asked to refrain from dealing with federal officials in order to obtain contracts from the federal government or any of its agencies or bodies. These restrictions would address the perception that might be created that the organization is receiving financial assistance due to the senator's involvement with it (section 9 and paragraph 2(1)(c)). The senator would also be asked to abstain from being involved in any future announcements of federal funding to the organization, again, in order to address the perception of a conflict. Finally, public disclosure of the senator's position on the Board of Directors of this organization would be required pursuant to paragraph 31(1)(b) of the Code.

5. Issue

A senator asks whether she may accept an invitation to be an Honorary Patron of a onetime event organized by a not-for-profit organization.

Considerations

This activity is permissible pursuant to section 5 of the Code. Since it is a one-time event, public disclosure is not required under paragraph 31(1)(b). However, until the event is completed, the senator would be advised not to make representations in order to obtain federal financial assistance or contracts for the organization in question (section 9 and paragraph 2(1)(c)).

6. Issue

A senator asks whether it would be permissible to approach a minister or a federal official in order to seek funds for a not-for-profit organization. She does not sit on the Board of Directors nor does she hold any other official position in this organization.

Considerations

Since the senator does not hold an official position in the organization, the senator could make representations on its behalf, including those that concern financial assistance.

7. Issue

A senator inquires whether he may accept a position as Honorary Chairperson of a fundraising committee of a not-for-profit organization where the duties and functions of the position would require the senator to personally solicit funds.

Considerations

Under section 5 of the Code, senators are permitted to engage in outside activities, including holding official positions in organizations, as long as they are able to fulfill their obligations under the Code. However, senators would be asked to comply with certain conditions depending upon the circumstances. In this particular case, the senator would be asked to refrain from making any representations on behalf of the organization to the Government of Canada or any federal agency or body in order to obtain financial assistance. The senator would also be asked to refrain from being involved in any announcements of federal funding to the organization. These restrictions would address the perception that might be created that any federal financial assistance was obtained due to the senator's involvement with the organization in question (section 9 and paragraph 2(1)(c) of the Code). In addition, the senator would be advised to use the letterhead of the organization – not that of the Senate – in carrying out his responsibilities on the fundraising committee, and to ensure that any fundraising is carried out in his capacity as the Honorary Chairperson of the organization's fundraising committee, not

in his capacity as a senator. Finally, the senator's honorary position would have to be publicly disclosed under paragraph 31(1)(b) of the Code.

8. Issue

A senator would like to send a letter using Senate letterhead, not only to her Senate colleagues, but also to individuals and organizations outside the Senate in order to solicit funds on behalf of a not-for-profit organization. The senator does not hold an official position within it.

Considerations

The Code would not preclude a senator from sending out such a letter. Section 9 provides that a senator shall not use or attempt to use his or her position as a senator to influence the decision of another person in order to further the senator's private interests, or those of a family member, or to improperly further another person's or entity's private interest. The word "improperly" suggests that the Code permits the furthering of another person's or entity's private interest in some circumstances, but not all. Indeed, senators play a key role in advocating for, and championing, important social causes. Since the senator does not hold an official position in the organization in question, it cannot be said that she is "improperly" furthering its private interests by writing a letter to promote the organization's goals and to solicit the funding necessary for it to achieve those goals. The senator would, however, be cautioned that the Senate Ethics Officer's jurisdiction is limited to the rules contained in the *Conflict of Interest Code for Senators* and that some of the *Senate Administrative Rules* may also be relevant to the above question, most notably the rules pertaining to the use of Senate resources.

9. Issue

A senator was asked to sit on the Board of Directors of a public corporation and inquires as to whether the Code imposes any restrictions in this regard.

Considerations

Paragraph 5(c) of the Code explicitly authorizes senators, who are not ministers of the Crown, to participate in outside activities, including sitting on the boards of commercial corporations. However, any such positions must be publicly disclosed under paragraph 31(1)(a). In addition, a senator in such circumstances would be asked to comply with certain restrictions. For example, he or she would be required to refrain from personally having any dealings with government officials and, in particular, federal government officials, in order to obtain on behalf of the corporation any financial benefit, including contracts or financial assistance. This restriction would ensure that the senator not only complies, but appears to comply (paragraph 2(1)(c)), with section 9 of the Code. This provision prohibits senators from using or attempting to use their position to influence

the decision of another in order to improperly further their own interests, those of their family members, or to improperly further another person's or entity's private interests, as defined under subsection 11(1).

10. Issue

A senator asks whether his directorship in a private corporation, which has recently become inactive but has not yet been officially dissolved, must continue to be publicly disclosed.

Considerations

Paragraph 31(1)(a) of the Code requires the public disclosure of "any corporations" of which a senator is a director or officer. This provision does not exclude inactive corporations from its operation. Indeed, an inactive corporation remains a legal entity until it is officially dissolved. Consequently, a senator's directorship, in these circumstances, must continue to be made public.

11. Issue

A senator would like to engage in fundraising activities on behalf of a national political party. She asks whether there are any restrictions in this regard under the Code.

Considerations

A senator who is involved in political fundraising is advised that he or she should take certain precautions in order to avoid a real or apparent (paragraph 2(1)(c)) breach of section 8. First, the senator should not personally solicit political donations from any person with whom he or she has present or foreseeable future dealings in his or her capacity as a senator, or from any person who has dealings with a committee in which the senator is a member. This restriction is important in order to avoid the perception that a donation that was made by a person may be influencing a senator in the performance of her parliamentary duties and functions. Second, a senator would also be advised not to use Senate letterhead to solicit contributions to registered parties, candidates, nomination contestants, registered associations and leadership contestants in order to remain, and to appear to remain, in compliance with section 9 of the Code. Finally, the senator would be cautioned that the Senate Ethics Officer's jurisdiction is limited to the rules contained in the Conflict of Interest Code for Senators but that there are other rules and laws that may also be relevant to the above question. For example, some of the internal rules of the Senate (the Senate Administrative Rules) relate to the proper allocation and use of Senate resources and, of course, the Canada Elections Act contains provisions governing electoral financing.

B. Sponsored Travel

12. Issue

A senator requests advice on whether he is required to file a *Statement of Senator's Sponsored Travel* to publicly disclose his participation in a parliamentary program abroad sponsored by a Senate committee and an international organization.

Considerations

Subsection 18(1) of the Code provides a number of situations where disclosure of a sponsored trip is not required. This is the case for trips sponsored by any Senate Committee. However, the senator's travel is also sponsored in part by an organization that is not covered in the exceptions provided by the provision. Since the Code does not explicitly address this kind of situation, the senator would be advised to disclose both sponsors for reasons of transparency.

13. Issue

A senator asks under what circumstances the Code permits senators to accept sponsored travel.

Considerations

Subsection 18(1) of the Code provides that a senator and guests of the senator may accept sponsored travel if it arises or relates to the senator's position. Where the cost of any such travel exceeds \$500.00 and is not paid for by the senator or any guests of the senator, or through international and interparliamentary affairs programs recognized by the Parliament of Canada, or by the Senate, the Government of Canada or the senator's political party, the trip must be disclosed to the Senate Ethics Officer within 30 days after the end of it. As well, paragraph 31(1)(i) requires that any such trip be publicly disclosed.

14. Issue

A senator inquires as to whether the Code prohibits a senator from accepting an offer by the sponsor of a conference to pay for the travel costs and accommodation for two nights for the senator. She is taking part in a symposium as a guest speaker in her capacity as a senator.

Considerations

Since the travel arises from or relates to the performance of the senator's parliamentary duties and functions, it falls within subsection 18(1) of the Code. This provision provides that such travel is acceptable but that where the costs exceed \$500 and the trip does not fall within an explicit exception, the senator must file a statement of sponsored travel with the Senate Ethics Office within 30 days after the end of the trip. The declaration

must include the name of the person or organization paying for the trip, the destination, the purpose and length of the trip and the general nature of the benefits received (subsection 18(2)). This declaration is then placed on the public record pursuant to paragraph 31(1)(i) of the Code.

15. Issue

A senator is asked to travel to the United States for the Canada-United States Inter-Parliamentary Group's annual meeting. The senator inquires as to whether this trip must be publicly declared.

Considerations

Subsection 18(1) of the Code provides, in part, that any travel that is paid through a program for international and interparliamentary affairs of the Parliament of Canada need not be publicly declared. The Canada-United States Inter-Parliamentary Group is a parliamentary association that is funded through the Joint Interparliamentary Council (JIC). JIC operates under the authority of the Senate Standing Committee on Internal Economy, Budgets and Administration and the Speaker of the House of Commons as the Chair of the House of Commons Board of Internal Economy and it determines the level of funding to be distributed to each association. Since the travel is funded by the Senate and the House of Commons rather than by an outside party, there is no requirement for a public declaration in these circumstances.

16. Issue

A senator is asked by a commercial corporation of which he is a director to attend an event abroad as its representative. The organization offers to pay the senator's accommodation and airfare.

Considerations

These benefits are acceptable under the Code and are not subject to public disclosure under sections 17 and 18 since they relate to the senator's professional outside activities.

17. Issue

A senator is invited by a foreign government to attend a series of meetings abroad as part of her parliamentary duties and functions. The host country is offering to pay the travel and accommodation costs. The senator inquires whether she may accept the offer under the Code.

Considerations

Under subsection 18(1), sponsored travel that arises from or relates to a senator's position is acceptable. However, since the cost of the travel exceeds \$500, the senator

would be required to file a statement of sponsored travel with the Senate Ethics Office within 30 days after the end of the trip. This statement would include the name of the government paying for the trip, the purpose and length of the trip, as well as a general description of the benefits received (subsection 18(2)). This information would then be placed on the senator's public file under paragraph 31(1)(i) of the Code.

18. Issue

A senator asks if he may accept free accommodation and travel costs to attend a conference. He has been invited by a not-for-profit organization of which he is a member of the Board of Directors.

Considerations

The senator may accept the offer of free accommodation and travel since he would be attending the conference as a member of the Board of Directors of the organization who offered to pay his expenses. Moreover, there is no requirement for a public declaration in this regard since the benefit falls outside section 18 of the Code. The reason for this is that it relates to the senator's outside activities, not his parliamentary duties and functions. Subsection 18(1), which requires the public disclosure of certain benefits that exceed \$500 in value, only pertains to benefits that arise from or relate to a senator's position.

C. Gifts and Other Benefits

19. Issue

A senator is offered a gift that relates to her position in the Senate.

Considerations

Since the gift relates to the senator's position, it is not acceptable under subsection 17(1) of the Code, unless it falls under subsection 17(2) as a normal expression of courtesy or protocol or is within the customary standards of hospitality that normally accompany the senator's position. In the latter case, the gift is acceptable but a public declaration is required under subsection 17(3) if the value of the gift exceeds \$500.

20. Issue

A senator asks whether he may attend a symposium as a guest speaker. The organizer of the symposium has offered to pay the senator's accommodation. The senator is paying for his own travel expenses. The organizer does not, at present or in the foreseeable future, have official dealings with the Senate.

Considerations

Under subsections 17(1) and (2) of the Code, the free accommodation is acceptable since it was received "as a normal expression of courtesy or protocol" and is "within the customary standards of hospitality that normally accompany the senator's position". However, if valued at more than \$500, a public declaration is required under subsection 17(3) of the Code.

21. Issue

A senator asks whether she may accept a free membership in a golf club that has been offered to her in her capacity as a senator.

Considerations

The senator should not accept this benefit since it relates to her position in the Senate and would fall under subsection 17(1) of the Code.

22. Issue

A senator asks whether he may accept free tickets to an NHL hockey game. They have been offered to him by an organization of which he is a member of the Board of Directors.

Considerations

The senator may accept the tickets because they are provided by an organization in which he sits as a member of its board. Section 17 of the Code does not apply in cases where a gift is received in connection with an outside activity. However, care must be taken to avoid any conflict of interest situation. For example, the senator should not, either at the present time or in the foreseeable future, act in any way to further the organization's private interests when performing her parliamentary duties and functions.

23. Issue

A senator asks whether she may accept free accommodation abroad for a month from a friend.

Considerations

Section 17 of the Code prohibits the acceptance of gifts and benefits that could reasonably be considered to relate to a senator's position, with some limited exceptions. If the gift or benefit is not related to a senator's parliamentary duties and functions because it is provided on the basis of a friendship, it may be acceptable depending upon the particular circumstances. Both the nature of the relationship, and whether the senator's judgment could be influenced in the performance of his or her official duties in the particular circumstances, are key. Some of the questions that would require consideration are as follows: were there any exchanges of gifts and benefits in the past; did the relationship

exist prior to the senator's appointment to the Senate; were there occasional and social meetings between the senator and the donor where Senate business was not discussed; and does the donor have any official dealings with the Senate or any of its committees. In other words, whether someone qualifies as a "friend" depends entirely on the particular circumstances.

24. Issue

A senator asks whether he may accept an honorarium for giving a speech at a conference.

Consideration

Whether the honorarium is acceptable depends on the particular circumstances. If the senator was invited as a senator and his participation relates to his parliamentary duties and responsibilities, the honorarium may not be accepted (subsection 17(1) of the Code). However, if the senator was not invited as a senator, he may accept an honorarium if the speech is clearly unrelated to his parliamentary duties (i.e. given in connection with his outside or professional activities) and the honorarium cannot reasonably be seen to have been given to influence the senator. Examples of speech topics that are unlikely to relate to a senator's parliamentary duties and functions are as follows: leadership and motivation, sports/athletics, negotiation and conflict resolution. In case of doubt, the Senate Ethics Officer should be consulted.

25. Issue

A senator is invited as a guest speaker at a symposium outside the country. The travel and accommodation costs would be paid by the Canadian embassy.

Considerations

The sponsored trip and any related benefits are acceptable in this scenario and a public declaration is not required since section 18 of the Code does not apply when the travel costs are paid by the Government of Canada.

26. Issue

A senator asks whether she may accept an invitation from a senior executive of a public corporation to attend, as his guest, a fundraising dinner arranged by a not-for-profit organization to establish a scholarship fund for special needs students. The value of the meal is estimated at \$150.

Consideration

Under subsection 17(1) of the Code, a senator may not accept a benefit that relates to the senator's position, unless it is provided as a normal expression of courtesy or

protocol, or within the customary standards of hospitality that normally accompany the senator's position (subsection 17(2).

As a practical matter, whether a benefit is acceptable depends on the particular circumstances, keeping in mind the full context of the Code. For example, senators should avoid any situations of real or perceived conflict that would raise doubts about their objectivity in carrying out their official duties. In particular, senators should not accept any benefits that might reasonably be seen to have been given to influence them in the exercise of their parliamentary duties or that may place them under an obligation to the donor.

Some of the questions that may require consideration are as follows: Does the benefit fall into the category of protocol, courtesy or hospitality? Has the senator received gifts or benefits from the donor in the past? What is the value of the benefit? Does the donor have any present or foreseeable official dealings with the Senate or one of its committees? As such, the particular facts in each case are key in determining whether a gift or benefit may be accepted. In case of doubt, the Senate Ethics Officer should be consulted.

D. Declarations of Private Interests

27. Issue

A senator inquires as to the definition of the term 'private interest' under the Code.

Considerations

The term "private interest" means those interests that can be furthered under subsection 11(1) of the Code: assets, liabilities, financial interests, income from contracts, businesses or professions, income from employment, and official positions in partnerships, corporations, associations, trade unions and not-for-profit organizations (section 16). As such, a "private interest" under the Code is primarily, although not entirely, financial in nature.

Under subsection 11(1), a senator is considered to further his or her own private interests or the private interests of another person or entity where the senator takes any action for the purpose of achieving, directly or indirectly: (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.

Subsection 11(2) clarifies the circumstances in which a senator is not considered to further his or her own private interests or the private interests of another person or entity. These include situations in which the matter in question is of general application or where the matter affects the senator or other person or entity as one of a broad class of the public.

28. Issue

A senator inquires about the circumstances under which he must make a declaration of a private interest in the Senate or in a committee of which he is a member; the manner in which a declaration must be made; and the restrictions that would be imposed upon him under such circumstances.

Considerations

Under subsection 12(1), the senator must make a declaration of a private interest if he has reasonable grounds to believe that he, or a member of his family, has a private interest that might be affected by a matter that is before the Senate or a committee of the Senate of which he is a member. The senator must make the declaration at the earliest opportunity. The declaration may be made orally on the record or in writing to the Clerk of the Senate if the matter is before the Senate, or to the Clerk of the committee if the matter is before a committee. The declaration will be recorded in the *Journals of the Senate* if it was made in the Senate, or in the Minutes of Proceedings of the committee if it was made in committee. It is then sent to the Senate Ethics Officer, who must file it in the senator's public disclosure file (subsection 12(3) and paragraph 31(1)(h)). This public file is placed in the Public Registry, along with all other senators' public disclosure files, at the Office of the Senate Ethics Officer and made available for public inspection (subsection 33(1)).

Once the senator makes a declaration of a private interest in the Senate or in the relevant committee, he may not participate in debate or any other deliberations in the Senate or in a committee with respect to that matter (subsections 13(1) and (2)) and he may not vote on the matter but may abstain (section 14). In addition, if the matter is before a Senate committee, the senator must also withdraw altogether from the proceedings in question (subsections 13(2)).

29. Issue

A senator is not an official member of a particular committee of the Senate; however, she does participate in its proceedings from time to time. A matter is before this committee in which she has a private interest. Since she is not an official committee member, she inquires as to the rules that apply to her under the circumstances.

Considerations

Notwithstanding that the senator may not be an official member of this particular committee, she is still prohibited from participating in its proceedings if they concern a matter in which she has a private interest (subsection 13(3)). In fact, the senator would also be required to withdraw from the relevant proceedings altogether (subsection 13(3)). Moreover, she would not be entitled to vote on the matter given that she is not an official member of the committee.

30. Issue

A matter is before the Senate that concerns company "A". A senator sits on the Board of Directors of, and owns a significant number of shares in, company "B". Company "A" is a competitor of company "B". A senator asks whether he should make a declaration of a private interest.

Considerations

Since the matter before the Senate relates specifically to company "A", whose business is in competition with company "B", of which the senator is a member of the Board of Directors and a shareholder, a declaration of private interest would be required. After making the declaration, the senator may not participate in debate with respect to that matter, nor may he vote on it.

31. Issue

A senator inquires whether she is required to make a second declaration of a private interest under subsection 12(1) of the Code in respect of a bill that is before a committee of the Senate where she had already made such a declaration regarding this measure during the previous parliamentary session.

Considerations

The senator should make a further declaration of a private interest under subsection 12(1) of the Code if the bill in question is reintroduced in the new session. During a prorogation or dissolution of Parliament, all bills die on the *Order Paper* and most parliamentary committees cease to exist. When Parliament resumes, any bills that are reintroduced would be renumbered. In addition, committees are reconstituted and, consequently, there may be changes in their membership. In light of these circumstances, a further declaration in the new Parliament or the new session makes sense in order to ensure that the public record is clear and that there is no confusion regarding which measure may pose a conflict for the senator in question.

32. Issue

A bill before the Senate concerns a sector of the economy (for example, agriculture), which is also the sector of operation of a corporation in which a senator has an interest. The senator inquires whether he must make a declaration of a private interest in the Senate, pursuant to subsection 12(1) of the Code, regarding the matter.

Considerations

Since the bill involves a matter that is of general application and one which affects the corporation as one of a broad class, a declaration of a private interest is not required in these circumstances (paragraphs 11(2)(a) and (b)). A declaration would be required if the bill in question specifically related to the corporation or a competitor of the corporation.

E. Retractions of Declarations of Private Interests

33. Issue

A senator, who is uncertain about whether she is required to make a declaration of private interest, makes one but does so out of abundance of caution. Thereafter, she receives additional information indicating that the declaration was, in fact, not required. She asks what she should do to retract her declaration.

Considerations

Under subsection 12(7), the senator must make a retraction in the same way as she made her initial declaration of private interest. The procedural experts in the Senate and in committees are available to assist senators with the relevant forms and procedures for making retractions. Both the initial declaration and the retraction will remain on the parliamentary record but, under paragraph 31(1)(h) of the Code, the initial declaration will be withdrawn from the senator's public disclosure file, which is kept in the Office of the Senate Ethics Officer.

F. Furthering Private Interests

34. Issue

A senator asks about the provisions under the Code that would be relevant if he operates a business in his home province.

Considerations

The senator clearly has a private interest within the meaning of the Code (sections 11 and 16). As such, he must be mindful of a number of provisions in the Code that are intended to ensure that senators do not place their private interests above the public interest and, where the two do come in conflict, that senators take the necessary measures to resolve the conflict so that the public interest always prevails. One such provision is section 8 of the Code; it requires senators not to act or attempt to act in any

way to further their own private interests, their family members' interests, or to improperly further another person's or entity's private interests. Thus, for example, the senator may not take any action or attempt to take any action that would further his interest in the business in question where there is an opportunity to do so in the Senate or a committee of the Senate or in any other venue in which he is engaged in his parliamentary duties and functions. Indeed, the senator would not be permitted to take part in any deliberations concerning, or to vote on, any measure that might have an impact on his business (sections 13 and 14).

Another such provision is section 9. It provides, in part, that a senator must not use or attempt to use his or her position as a senator to influence the decision of another person in order to further his or her own interests or to improperly further the private interests of another person or entity. As such, section 9 would, for example, preclude the senator, in the case at hand, from making representations to government officials in order to obtain a financial benefit with respect to his business.

Section 10 would ensure that, if the senator obtains information that is generally not available to the public as a result of his position as a senator, he not use or attempt to use the information to benefit his business.

35. Issue

A senator inquires about section 9 of the Code and in what circumstances it would be relevant.

Considerations

Section 9 of the Code is aimed at ensuring that senators do not use, or attempt to use, their position as senators in order to influence the decisions of individuals, entities, or governments in order to benefit themselves or their family members or to improperly benefit another person or entity in any manner listed under subsection 11(1) of the Code. The provision is very broad and is not limited to influencing decisions of governments to further private interests, although the use of influence in regards to decisions of government respecting the awarding of contracts or other financial benefits is always of particular concern. The advice provided to a senator concerning how to ensure that he or she remains in compliance with section 9 would depend upon the particular facts of the case. However, in cases involving decisions of government, senators would, for example, be cautioned against personally having any dealings with government officials and, in particular, federal government officials, in order to obtain, or seek to obtain, a financial benefit, including contracts or financial assistance, on behalf of themselves, their family members, or on behalf of any entities where to do so would be improper (for example, on behalf of a private corporation in which the senator, or a family member of

the senator, holds a position on the Board of Directors). This would include arranging or facilitating meetings with government officials. Taking this precaution also addresses the perception of a conflict (paragraph 2(1)(c)) under section 9.

G. Annual Disclosure Process

36. Issue

A senator inquires as to whether she must file a confidential disclosure form every year.

Considerations

Senators must file a confidential disclosure statement every year on or before the date established by the Senate Ethics Officer, with the approval of the Conflict of Interest Committee for Senators (subsections 27(1) and (2)).

37. Issue

A senator inquires whether he must meet with the Senate Ethics Officer as part of the annual disclosure process every year.

Considerations

Senators, and in particular newly-summoned senators, are encouraged to meet with the Senate Ethics Officer before submitting their confidential disclosure statements (subsection 27(9)). Moreover, the Senate Ethics Officer may request to meet with senators to discuss their confidential disclosure statements and their obligations under the Code after reviewing their statements (subsection 29(1)). A senator would be required to meet with the Senate Ethics Officer if the Senate Ethics Officer advises that the meeting is necessary (subsection 29(2)). As a matter of practice, the Senate Ethics Officer makes every effort to meet with each senator at least once a year as part of the annual disclosure process.

H. Annual Disclosure Requirements

38. Issue

A senator inquires as to what she is required to disclose to the Senate Ethics Officer in the nature of income.

Considerations

Paragraph 28(1)(c) of the Code requires a senator to disclose the nature of any source of income over \$2,000 that the senator has received in the preceding 12 months and is likely to receive during the next 12 months. Under this provision, each and every individual source that has generated income over \$2,000 or that the senator anticipates will generate income over \$2,000 must be reported. Sources of income would include, for example, the name of a particular stock, the name of an employer, a business or

profession and the name of a party with whom a contract has been concluded. With respect to investments, each investment must be reported as a separate source, rather than all investments being reported as a single source of investment income.

As to the nature of the income, it includes, for example, dividends, capital gains, director's fees, wages, professional fees for services rendered, interests from investments, or any amount received as a result of an interest in the shares of a private corporation, including a holding company.

It should be noted, however, that only the nature and source of the income must be reported, not the amount.

39. Issue

A senator inquires about what he is required to disclose to the Senate Ethics Officer under the Code in the nature of assets.

Considerations

Senators are required to provide information regarding the nature, but not the value, of any assets and liabilities over \$10,000 under paragraph 28(1)(g) of the Code.

Some examples of the types of assets that must be reported include, but are not limited to, farms, lands, rental or real property for commercial operations, interests in partnerships, interests in private corporations including holding corporations, publicly traded securities of corporations or foreign governments such as stocks, bonds, stock market indices, trust units, units of mutual funds, commercial papers, stock options and similar instruments.

In the case of publicly traded securities, the name of a particular asset that has a value greater than \$10,000 must be disclosed. In this regard, a list of the names of those specific assets or, alternatively, a statement of account from a financial institution or a broker, may be provided, although the value of the assets may be excluded.

I. Family Members

40. Issue

A senator inquires as to whether the provisions of the Code are pertinent to her spouse.

Considerations

There are a number of provisions in the Code that concern "family members" of senators, the definition of which (in subsection 3(2) of the Code) includes a senator's spouse or common-law partner. These provisions include sections 8, 9 and 10, which prohibit a

senator from furthering or attempting to further their family members' interests, among others, in the circumstances outlined in those provisions.

Under section 12, a senator must make a declaration of any interests his or her family members have in any matter before the Senate or any committee of which he or she is a member. In addition, a senator must not, pursuant to section 13, participate in the debate of any matter before the Senate or a committee of the Senate in which a family member has an interest nor is the senator permitted to vote on such matters (section 14).

Under subsections 17(1) and (2), a family member of a senator is also precluded from accepting, directly or indirectly, any gift or other benefit that could reasonably be considered to relate to the senator's position, unless the matter falls under the exception for gifts or other benefits that are received as a normal expression of courtesy or protocol, or that are within the customary standards of hospitality that normally accompany a senator's position.

Senators are also required to advise the Senate Ethics Officer in their annual confidential disclosure statements if, after making reasonable inquiries, they ascertain that any family member has, directly or through a subcontract, or by virtue of a partnership or a significant interest in a private corporation, an interest in a contract or other business arrangement with the Government of Canada or a federal agency or body (paragraph 28(1)(f)). The Senate Ethics Officer is then required to make this information public as part of the senators' public disclosure summaries, pursuant to paragraph 31(1)(f) of the Code. In addition, the Senate Ethics Officer would advise senators in such circumstances to refrain from any involvement in negotiations or dealings with government officials concerning these contracts or business arrangements, including refraining from arranging or setting up meetings with government officials on behalf of their family members or the entities in which their family members have interests.

Finally, under paragraph 28(1)(h), senators are required to disclose to the Senate Ethics Officer, as part of their confidential disclosure statements, any information, in addition to that specified in paragraphs 28(1)(a) to (g), that they believe to be relevant to the Code. As such, if a senator's spouse has certain interests that the senator believes could come in conflict with the senator's public duties, the senator should disclose these interests to the Senate Ethics Officer in his or her confidential disclosure statement.

41. Issue

A senator asks whether his spouse may be a party to a contract with the federal government.

Considerations

A senator's spouse may be a party to a federal government contract under the Code. However, confidential disclosure to the Senate Ethics Officer is necessary under paragraph 28(1)(f) and a public declaration is required under paragraph 31(1)(f) of the Code. Furthermore, the senator would be advised to refrain from making representations, on behalf of his spouse, to the Government of Canada or any federal agency or body in order to obtain or extend contracts, or from acting in any way to further his spouse's private interests, or his own private interests, as defined under subsection 11(1) of the Code. Under section 9 and paragraph 2(1)(c) of the Code, his spouse should not receive, or appear to receive, preferential treatment or unfair advantage in the awarding of federal contracts due to representations made by the senator on his spouse's behalf.

J. Federal Contracts

42. Issue

A senator is asked to become a partner in a partnership that is a party to a contract with the federal government. The senator inquires regarding any prohibition or restrictions in this regard under the Code.

Considerations

Section 22 of the Code prohibits senators from having an interest in a partnership or in a private corporation that is a party, directly or through a subcontract, to a contract or other business arrangement with the Government of Canada or any federal agency or body unless the Senate Ethics Officer is of the opinion that: (1) the contract or business arrangement is in the public interest due to special circumstances; or (2) the Senate Ethics Officer is of the opinion that the contract or other arrangement is unlikely to affect the senator's obligations under the Code.

With respect to the first exception, it has to date never been cited. Turning to the second exception, if the senator complies with certain conditions prior to accepting a position as a partner, his or her circumstances would fall thereunder. For example, if the senator agrees to recuse himself or herself from any involvement in negotiations and discussions with federal officials on matters relating to the contract in question, any renewal or extension of it, and any future contracts with the government, the senator would remain in compliance with section 9 of the Code, notwithstanding his or her interest in the partnership and the existence of the contract in question. This recusal would also address the appearance of a conflict under section 9; the appearance of conflicts is addressed in paragraph 2(1)(c) of the Code.

In such circumstances, the senator might also be advised to send a letter of direction to a senior official of the organization setting out his or her obligations under the Code with respect to government contracts. This would ensure that the organization understands that the senator is to be kept at arms length from any negotiations and discussions with government officials regarding these matters. A copy of this letter would be included in the senator's public disclosure file, in addition to letters of confirmation from the partnership that it will respect these arrangements.

The Senate Ethics Officer's written opinion confirming the senator's compliance with the Code would be placed in the senator's public file and would be made available for public inspection, pursuant to paragraph 31(1)(e) of the Code.

Finally, the senator's position as a partner would be publicly disclosed as part of the senator's public disclosure summary in accordance with paragraph 31(1)(a) of the Code.

43. Issue

A senator inquires about the application of the Code to an interest she has in a private corporation that is a party to a contract with the federal Government. The contract was negotiated and signed prior to her appointment to the Senate and would not be renewed or extended.

Considerations

Since the contract in question was signed prior to the senator's appointment to the Senate, section 25 of the Code is relevant. It provides that the prohibitions against senators having interests in contracts with the Government of Canada or any federal agency or body do not apply to contracts or other business arrangements that existed before a senator's appointment to the Senate. However, and although not relevant in this particular case, these prohibitions would apply to renewals or extensions of such pre-existing contracts.

K. Opinions and Advice

44. Issue

A senator inquires about the circumstances in which he may obtain a written opinion from the Senate Ethics Officer and the process for seeking such an opinion.

Considerations

Under subsection 42(1) of the Code, the senator may request a written opinion from the Senate Ethics Officer in order to obtain his views on any matter concerning the senator's obligations under the Code, including, for example, an opinion providing guidance to the senator as to the appropriate course of action in a given situation in order to avoid a

conflict of interest or an opinion concerning whether the senator has contravened certain provisions of the Code.

With respect to the process for seeking a written opinion, the senator must first make a request in writing to the Senate Ethics Officer. A written opinion or advice provided by the Senate Ethics Officer is confidential and may only be made public by the senator in question or with his or her written consent (subsection 42(4)). Written opinions and written advice are binding on the Senate Ethics Officer in relation to any subsequent consideration of the subject-matter of the opinion or advice as long as all the relevant facts that were known to the senator were disclosed to the Senate Ethics Officer (subsections 42(2) and (3)).

"I think we must ask ourselves why we have ethical standards for parliamentarians. In my humble opinion, such standards are not simply a set of dos and don'ts. Ethical standards essentially embody the honour and commitment to public service shared by the members of this chamber, the ethical standard of each and every member of this place."

> The Honourable Serge Joyal, P.C., Senator, Debates of the Senate, November 26, 2002

45. Issue

A senator inquires whether all opinions and advice provided by the Senate Ethics Officer must be in writing.

Considerations

The Senate Ethics Officer provides written opinions and advice at the request of a senator under subsection 42(1) of the Code. Obtaining an opinion or advice in writing is particularly important if the matter is complex in nature and requires a more detailed analysis of the provisions of the Code. However, for more routine requests and matters that require little interpretation of the provisions of the Code, the Senate Ethics Officer may provide advice over the telephone or in person.

L. Investigations and Inquiries

46. Issue

A senator asks about the process for initiating a complaint against another senator.

Considerations

A senator who has reasonable grounds to believe that another senator has not complied with his or her obligations under the Code may request that the Senate Ethics Officer conduct an inquiry into the matter (subsection 44(2)). The request must be in writing, signed by the requesting senator and it must identify the alleged non-compliance with the Code and the grounds for the allegation (subsection 44(3)).

The Senate Ethics Officer is required to forward the request for an inquiry to the senator who is the subject of the allegation and to afford that senator a reasonable opportunity to respond (subsection 44(4)).

The Senate Ethics Officer must then conduct a preliminary review to determine whether or not an inquiry is in fact warranted and he must then notify the requesting senator and the senator who is the subject of the allegation of his decision in this regard (subsection 44(5)). The Senate Ethics Officer must also inform the Conflict of Interest Committee for Senators if he decides that an inquiry is warranted under the circumstances (subsection 44(6)).

There are two other ways in which an inquiry may be conducted by the Senate Ethics Officer: (1) at the direction of the Standing Committee on Conflict of Interest for Senators (subsection 44(1)); and (2) on his own initiative, with the approval of the Committee, if after receiving significant evidence, the Senate Ethics Officer believes that an inquiry may be warranted to determine whether a senator has complied with his or her obligations under the Code (subsections 44(7) and (8)).

4. THE CODE AS A WORK IN PROGRESS: TOWARD GREATER TRANSPARENCY

Codes or rules of conduct cannot be static in a dynamic environment. Over time, changes become necessary as public expectations evolve. Whether codes or rules of conduct apply to individuals in positions of trust in the public or private sectors, they are widely considered to be living documents or works in progress.

"The test is not the legal requirement. It is beyond that; it is about what is right. It is not about doing the minimum or working around the problems; it is about setting an example. It is not about complacency... it is about going the extra distance that makes the difference. We need to ensure ourselves in our every day actions that we do not accept or tolerate ambiguity when dealing with these subjects. It leads to uncertainty, speculation, lack of trust, and frustration, all of which are nonproductive uses of people's energy that gets us into problems."

Alain Belda, CEO, Alcoa, 1999

This was certainly the view of the group of senators who developed the *Conflict of Interest Code for Senators*. In its Third Report to the Senate on May 11, 2005, the Standing Senate Committee on Rules, Privileges and the Rights of Parliament wrote: "... [T]he *Conflict of Interest Code for Senators* is a work in progress. It is our Code, and only time and experience will tell if the choices reflected in this draft were the best possible. If not, we will have the opportunity to revisit it". I share the Committee's view and believe that adjustments and improvements to the Code should be considered from time to time, both to clarify and strengthen it. Legislators in representative democracies "own" their own rules of conduct. It is for them, as creators of their codes or rules of conduct, to undertake periodic reviews of their conflict of interest rules and procedures.

As noted earlier, the Code is five years old. In my view, it has served the Senate well. While all codes have their critics, the Code rests on a solid foundation and generally works well. Important amendments were made to it in 2008, including amendments in the following areas: declarations of private interests, the relationship between the Committee and the Senate Ethics Officer and the perceived lack of independence of the

"Ethics rules only work if there is broad participation in their drafting, and because the Senate has its own code and its own officer, I think the rules have more credibility, in this chamber than might otherwise be the case... It is the personal counseling of the Senate Ethics Officer that is so important to the success of the conflict of interest regime."

Professor Ian Greene, York University, 2006

Senate Ethics Officer concerning opinions and advice provided to individual senators, annual meetings between senators and the Senate Ethics Officer, the retention of documents and the retraction of declarations of private interests. As a matter of interest, the Conflict of Interest Code for Members of the House of Commons has been amended several times since its adoption by the House in 2004.

Over the last year, I have had the opportunity to look more closely at certain provisions of the *Conflict of Interest Code for Senators* that were not addressed in the 2008 review of the Code. In my respectful opinion, there are a number of issues that should be considered by the Senate in the not too distant future to ensure greater transparency, accountability and public confidence in the integrity of senators and the Senate.

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

Alphonse de Lamartine, 1790-1869

The areas for consideration are the public release of the inquiry reports of the Senate Ethics Officer, the public disclosure of information concerning senators' income, assets and liabilities where these are over a certain threshold amount, the confidential and public disclosure of certain income, assets, liabilities and outside activities of family members of senators, the rules regarding gifts and other benefits, and the availability on-line of senators' public disclosure summaries. In my view, the examination of these issues by the Senate need not, and should not, wait until the next formal review of the Code, which is scheduled for 2013.

1. Should the inquiry reports of the Senate Ethics Officer be made public?

My main concern with the current inquiry provisions of the Code is that the reports of the Senate Ethics Officer are not available to the public. The reports are submitted confidentially by the Senate Ethics Officer to the Standing Committee on Conflict of Interest for Senators. By contrast, in most other jurisdictions in Canada, such reports are made public as soon as they are completed by the responsible ethics commissioners¹. They are submitted by them to the Speakers of the various legislative assemblies for tabling. By all accounts, this process which has been in place across Canada for many years – some 20 years in the case of Ontario, Alberta and British Columbia – has worked well and enjoys broad public support, as does the Canadian model of parliamentary ethics.

Not only does the current inquiry process compromise the independence of the Office of the Senate Ethics Officer, it also gives the impression that senators are investigating one another. In today's world, parliamentarians judging parliamentarians raises reasonable doubts about the independence, fairness, transparency and accountability of the process. Such systems are largely discredited and enjoy little or no public confidence. When the process is not open and transparent, the public may believe that parliamentarians are covering up for parliamentarians. As noted earlier, there have been no formal inquiries launched against any one senator over the last five years. However, it is likely to occur at some point.

"Members judging members raises reasonable doubts about the independence, fairness and accountability of the process."

Professor Dennis Thompson Harvard University, 1995

The respective roles and responsibilities regarding inquiries and investigations of the Senate Ethics Officer, the Committee and the Senate should be clarified and the Code amended accordingly. In my view, the Senate Ethics Officer should have the ability to investigate matters thoroughly, in a fully impartial and transparent manner, establish the facts and have his or her inquiry reports made public at the earliest opportunity.

The Committee's role should be to review the reports of the Senate Ethics Officer, recommend to the Senate any appropriate action or sanction or refer the reports back

¹ See Appendix I, The Canadian Model of Parliamentary Ethics: 1988-2010

to the Senate Ethics Officer for further consideration, with instructions if necessary. This, in my view, is an important role.

The Senate, for its part, would act on such recommendations and, in keeping with the Westminster model, exercise its constitutional right to discipline its own members by making final determinations regarding sanctions or penalties when senators have violated the provisions of the Code. In other words, what I am proposing is that the inquiry function be the primary responsibility of the Senate Ethics Officer, while the disciplinary function be the primary responsibility of the Senate acting on the recommendations of the Committee. This would be in keeping with paragraph 1(c) of the Code, which states that one of the purposes of the Code is to "establish clear standards and a transparent system by which questions relating to proper conduct may be addressed by an independent, non-partisan adviser".

In my view, the non-publication of the Senate Ethics Officer's inquiry reports does not meet the high standards of accountability, transparency and responsibility that the public expects of an independent ethics officer and that exist in other Canadian jurisdictions. Consideration should be given to amending the Code so that the reports of the Senate Ethics Officer are made public at the earliest opportunity, either by being tabled in the Senate or released in some other manner.

2. Should the public disclosure summaries of senators contain more information concerning senators' financial interests?

Currently, the Code requires the public disclosure of the source and nature of any income that a senator has received in the preceding 12 months and is likely to receive in the next 12 months "that the Senate Ethics Officer has determined could relate to the parliamentary duties and functions of the Senator or could otherwise be relevant" (paragraph 31(1)(c)). The Code also requires the public disclosure of the nature but not the value of any assets and liabilities "that the Senate Ethics Officer has determined could relate to the parliamentary duties and functions of the Senator or could otherwise be relevant" (paragraph 31(1)(g)).

In my view, the phrase "that the Senate Ethics Officer has determined could relate to the parliamentary duties and functions of the senator or could otherwise be relevant" found in both paragraphs 31(1)(c) and (g) is unnecessarily restrictive. As a result there have been only **two public disclosures** of income and assets over the last five years.

To our knowledge, no other jurisdiction, in Canada and elsewhere, restricts disclosure in this manner. For reasons of transparency and accountability, consideration should be given to deleting the above phrase with respect to the public disclosure of the source and nature (but not the value) of any income, assets and liabilities.

3. Should there be additional disclosure of information concerning family members of senators?

Currently, the only information that senators are required to disclose about their family members, both confidentially and publicly, is limited to federal contracts or other business arrangements.

In my view, consideration should be given to amending the Code to require senators to disclose both confidentially and publicly, on an annual basis, the nature (but not the value) of any sources of income over \$2,000 and any assets and liabilities over \$10,000 of their family members.

Consideration should also be given to require the disclosure, confidentially to the Senate Ethics Officer and also publicly, of any director or officer positions that a member of a senator's family has in any corporation as well as in any association or not-for-profit organization. Such information is often available on the Internet, in any event.

Where senators are required to disclose information about family members, they would only be expected to make reasonable efforts to ascertain the information. This concept exists in the Conflict of Interest Code for Members of the House of Commons (subsection 20(2)).

Where such disclosure is possible with respect to family members, this would greatly assist me in advising senators concerning real or apparent conflicts of interests and would ensure greater transparency in the disclosure process.

As a matter of comparative interest, most jurisdictions in Canada², the House of Lords, the U.S. Senate and the Australian Senate require more disclosure of the outside interests and financial assets of family members than is required by senators of their family members. The general trend is growing in this regard. In some countries, the interests of spouses are required to be disclosed by private and public sector employees, although declarations are not always made public.

4. Should the gifts and benefits provisions of the Conflict of Interest Code for Senators be amended?

Recent developments have led me to question whether the rules concerning gifts and benefits in the *Conflict of Interest Code for Senators* (Senate Code) should be revisited. In particular, I have taken note of the recent changes that were made, on the

² See Appendix I, The Canadian Model of Parliamentary Ethics: 1988-2010

recommendation of the Conflict of Interest and Ethics Commissioner, to the Conflict of Interest Code for Members of the House of Commons (MP Code) in this area.

The rules concerning gifts/benefits are found in section 17 of the Senate Code. It should be noted that sponsored travel is expressly excluded from this provision and is dealt with separately.

Subsection 17(1) prohibits any senator or member of his or her family, as defined in subsection 3(2) of the Senate Code, from accepting any gift or other benefit that could "reasonably be considered to relate to the senator's position". The only exceptions to this prohibition are: (a) gifts or benefits received as a normal expression of courtesy, protocol or that fall within the customary standards of hospitality that would normally accompany a senator's position; and (b) compensation authorized by law. Any gifts or benefits that fall under the courtesy/protocol/hospitality exception must be disclosed to the Senate Ethics Officer under subsection 17(3) if they exceed \$500 in value, or if the total value of all such gifts or benefits received from one source in a 12-month period exceeds \$500. These must then be publicly disclosed pursuant to paragraph 31(1)(i) of the Senate Code.

Prior to June 4, 2009, the MP Code contained provisions on gifts and benefits that were similar to those contained in the Senate Code. The former subsection 14(1) of the MP Code contained language that was almost identical to that found in subsection 17(1) of the Senate Code. It read as follows:

14. (1) Neither a Member or any member of a Member's family shall accept, directly or indirectly, any gift or other benefit, except compensation authorized by law, that is related to the Member's position. [Emphasis added]

The former subsections 14(2) and (3) of the MP Code were also very similar to subsections 17(2) and (3) of the Senate Code.

However, in December 2008, the Conflict of Interest and Ethics Commissioner expressed concerns with respect to the gift-related provisions in the MP Code, and primarily subsection 14(1). As a result, the Standing Committee on Procedure and House Affairs recommended to the House of Commons that, among other changes to the various provisions concerning gifts and other benefits, subsection 14(1) of the MP Code be amended. These changes were adopted by the House of Commons on June 4, 2009.

Subsection 14(1) of the MP Code currently reads as follows:

14. (1) Neither a Member nor any Member of a Member's family shall accept, directly or indirectly, any gift or other benefit, except compensation authorized by law, that might reasonably be seen to have been given to influence the Member in the exercise of a duty or function of his or her office. [Emphasis added]

In other words, the test "that is related to the Member's position" was substituted for the following test "that might reasonably be seen to have been given to influence the Member in the exercise of a duty or function of his or her office" — the latter of which is a conflict of interest test. This new test would require a consideration of factors – for example, who is offering the gift or benefit — that would otherwise be irrelevant under the original test in subsection 14(1) using a literal interpretation of the provision.

The Standing Senate Committee on Conflict of Interest for Senators may wish to consider the amendments that were made to the MP Code in this regard, particularly since, in my view, there is value in ensuring that the standards that are applicable to senators in this area are broadly similar to those applicable to members of the House of Commons.

Although only three statements were required to be filed by senators this year disclosing gifts or other benefits, I intend to study and reflect further upon the changes made to the MP Code in this area with a view to possibly making recommendations to the Committee in the coming year.

5. Should senators' public disclosure summaries be available online?

Currently, senators' public disclosure summaries are only available at the Office of the Senate Ethics Officer at 90 Sparks Street, room 526, Ottawa. Access is provided between 10:00 a.m. and 12:00 p.m. and 2:00 p.m. and 4:00 p.m. (public holidays excepted).

The reality is that Canadians are increasingly getting their information online. For reasons of transparency, cost and convenience, consideration should be given to having the information in the Public Registry available online. Canadians living in Vancouver or Charlottetown should have as easy access to this information as those living in Ottawa. Public disclosure of information is already available online concerning members of the House of Commons and members of the Legislative Assembly in Ontario.

In my respectful opinion, these are some of the issues the Senate should consider at an early date in order to, in the words of paragraph 2 (1)(b) of the Code, "maintain and

enhance public confidence and trust in the integrity of each senator and in the Senate". As noted earlier, the ultimate responsibility lies with the Senate itself because it is the final authority concerning the conduct of senators. The Senate conflict of interest regime is, in my view, a foundation on which to continue to build. I look forward to working with senators to improve on an already strong and solid foundation.

CONCLUDING REMARKS: LOOKING AHEAD

If there is one conclusion to be drawn from the preceding pages, it is that much has been accomplished since the adoption in 2005 of the *Conflict of Interest Code for Senators* and the establishment of the Office of the Senate Ethics Officer. At the time, the Senate approved a set of principles to guide the interpretation of the provisions of the Code, established a series of rules of conduct with which senators must comply as well as an annual disclosure process concerning the financial and other interests of senators. The Senate also created new institutional mechanisms to enforce the Code and to advise senators on how to avoid conflicts of interest between their public duties and any private interests they might have. As a result, senators have been regularly seeking my advice about whether a particular matter would or would not constitute a real or apparent conflict of interest and, if so, what steps they should take to avoid such a conflict. Moreover, there have been no allegations of impropriety against any one senator under section 44 of the Code. The progress that has been made is impressive on many levels.

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

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

Some may believe that once rules of conduct are written and adopted, it is time to move on to other matters. However, successful legislative ethics regimes are not static and are expected to evolve if complacency is to be avoided and ethics standards are to be taken to the next level. The ethics bar is rising not only in Canada but in democratic societies everywhere. In particular, for citizens to maintain confidence in their legislatures and its members, it is of paramount importance that legislators, as well as ethics commissioners, adhere to the highest standards of transparency, accountability and integrity.

The Senate ethics regime is still relatively new and must continue to evolve if it is to stay relevant. Although the necessary measures are in place, the impression is that of a work unfinished. For example, there are matters that were not considered during the lengthy

"...we do not simply, automatically trust people in authority. We have changed from having blind trust in authority figures... to requiring such authority to earn our trust."

Professor Margaret Sommerville, McGill University, 2006

Senate debate that preceded the adoption of the Code. There are others that were very contentious at the time and, in my respectful opinion, a review of these matters should not wait until the next formal review of the Code, which is scheduled for 2013. They should now be revisited given the passage of time, the positive experience with the Code and the parliamentary ethics trends in Canada and elsewhere. To quote Mark Twain: "Even when we are on the right track, if we're not moving, we'll get run over".

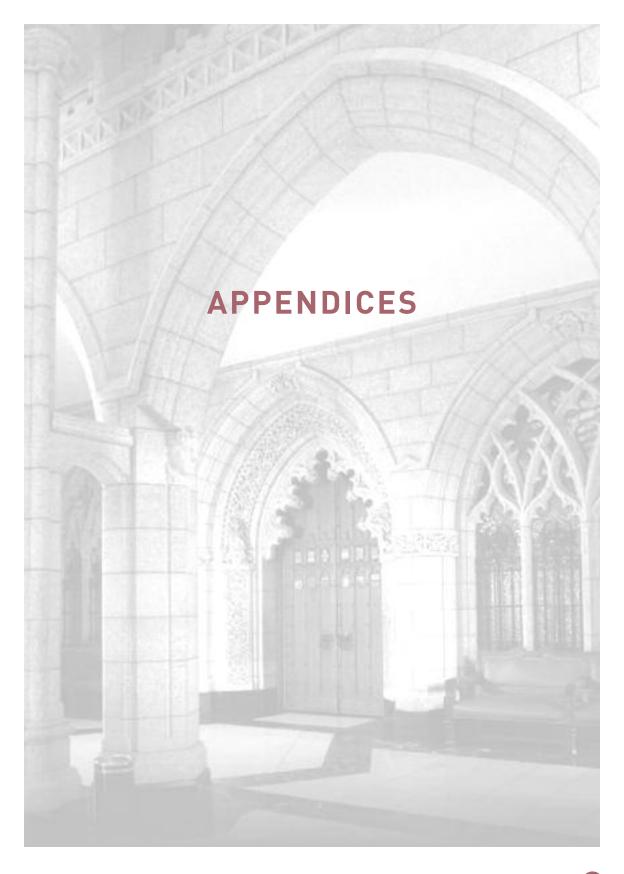
"There is little doubt that there is currently considerable public cynicism towards politics and politicians...[T]he public has also become more distrustful of politicians in general. Whether we as a group are in fact less ethical today than in the past is unclear and perhaps irrelevant. What is essential is that we respond to the existing climate by making more efforts than in the past to be, and to be seen to be, men and women of integrity".

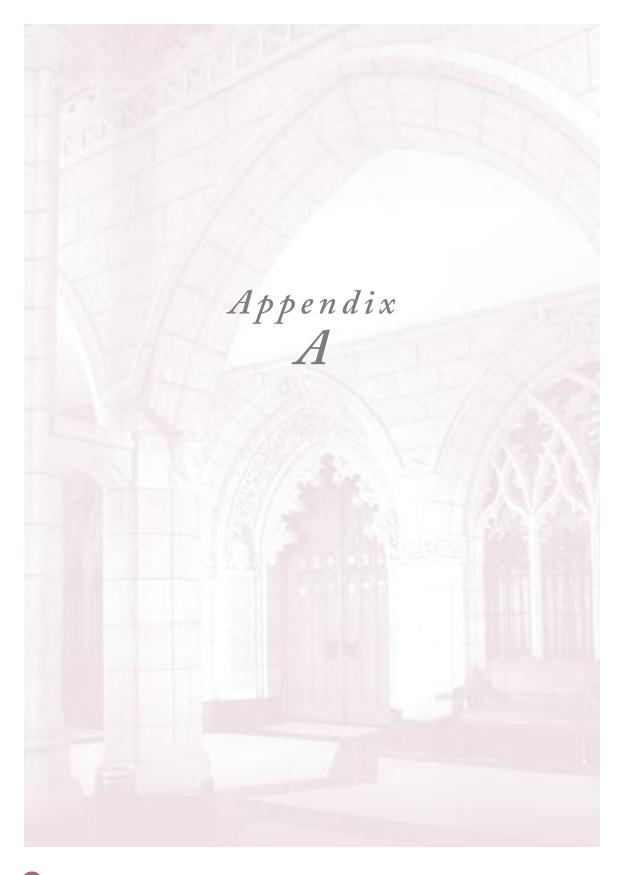
The Honourable Donald H. Oliver, Q.C., Senator, Debates of the Senate, April 17, 1997

Having an independent, non-partisan ethics officer who provides advice to members to prevent conflicts of interest before they occur and conducts independent inquiries to determine whether members are in compliance with their obligations epitomizes the genius of the distinctive model of parliamentary ethics first introduced in our country some twenty years ago. This model was subsequently adopted by the House of Commons in the United Kingdom and other jurisdictions. International organizations have taken an interest in the Canadian experience, and in some cases, have drawn inspiration from it. Although ethics commissioners in Canada cannot impose sanctions, the Canadian model brings a higher level of transparency, accountability and public confidence than can reasonably be expected from the traditional self-regulatory model of legislative ethics and, in particular, the self-monitoring of ethics committees that is common in the United

States and Australia, for example. The Canadian model of parliamentary ethics provides a sound and solid foundation on which to address the issues identified in this Report and, in particular, those relating to the need for greater transparency and accountability in the disclosure and inquiry processes in the Senate.

To achieve the goals set out in the *Parliament of Canada Act* and the Senate Code five years ago requires a renewed engagement. The Senate is an important institution to this country and sustained ethical leadership and higher standards are expected.





APPENDIX A

Relevant Excerpts from the Parliament of Canada Act, R.S.C. 1985, c. P-1, as am. by S.C. 2004, c.7; S.C. 2006, c. 9, sections 20.1 to 20.7

SENATE ETHICS OFFICER

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

Tenure

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

Interim appointment

(2) In the event of the absence or incapacity of the Senate Ethics Officer, or if that office is vacant, the Governor in Council may appoint any qualified person to hold that office in the interim for a term not exceeding six months, and that person shall, while holding office, be paid the salary or other remuneration and expenses that may be fixed by the Governor in Council.

Remuneration

20.3 (1) The Senate Ethics Officer shall be paid the remuneration set by the Governor in Council.

Expenses

(2) The Senate Ethics Officer is entitled to be paid reasonable travel and living expenses incurred in the performance of his or her duties or functions while absent from his or her ordinary place of residence, in the case of a part-time appointment, and ordinary place of work, in the case of a full-time appointment.

Functions - part-time

(3) In the case of a part-time appointment, the Senate Ethics Officer may not accept or hold any office or employment – or carry on any activity – inconsistent with his or her duties and functions under this Act.

Functions - full-time

(4) In the case of a full-time appointment, the Senate Ethics Officer shall engage exclusively in the duties and functions of the Senate Ethics Officer and may not hold any other office under Her Majesty or engage in any other employment for reward.

Deputy head

20.4 (1) The Senate Ethics Officer has the rank of a deputy head of a department of the Government of Canada and has the control and management of the office of the Senate Ethics Officer.

Powers to contract

(2) The Senate Ethics Officer may, in carrying out the work of the office of the Senate Ethics Officer, enter into contracts, memoranda of understanding or other arrangements.

Staff

(3) The Senate Ethics Officer may employ any officers and employees and may engage the services of any agents, advisers and consultants that the Senate Ethics Officer considers necessary for the proper conduct of the work of the office of the Senate Ethics Officer.

Authorization

(4) The Senate Ethics Officer may, subject to the conditions he or she sets, authorize any person to exercise any powers under subsection (2) or (3) on behalf of the Senate Ethics Officer that he or she may determine.

Salaries

(5) The salaries of the officers and employees of the office of the Senate Ethics Officer shall be fixed according to the scale provided by law.

Payment

(6) The salaries of the officers and employees of the office of the Senate Ethics Officer, and any casual expenses connected with the office, shall be paid out of moneys provided by Parliament for that purpose.

Estimates to be prepared

(7) Prior to each fiscal year, the Senate Ethics Officer shall cause to be prepared an estimate of the sums that will be required to pay the charges and expenses of the office of the Senate Ethics Officer during the fiscal year.

Inclusion in Government estimates (8) The estimate referred to in subsection (7) shall be considered by the Speaker of the Senate and then transmitted to the President of the Treasury Board, who shall lay it before the House of Commons with the estimates of the government for the fiscal year.

Duties and functions

20.5 (1) The Senate Ethics Officer shall perform the duties and functions assigned by the Senate for governing the conduct of members of the Senate when carrying out the duties and functions of their office as members of the Senate.

Privileges and immunities (2) The duties and functions of the Senate Ethics Officer are carried out within the institution of the Senate. The Senate Ethics Officer enjoys the privileges and immunities of the Senate and its members when carrying out those duties and functions.

General direction of committee

(3) The Senate Ethics Officer shall carry out those duties and functions under the general direction of any committee of the Senate that may be designated or established by the Senate for that purpose.

Conflict of Interest Act

(4) For greater certainty, the administration of the *Conflict* of *Interest Act* in respect of public office holders who are ministers of the Crown, ministers of state or parliamentary secretaries is not part of the duties and functions of the Senate Ethics Officer or the committee.

Clarification – powers, etc., of the Senate

(5) For greater certainty, this section shall not be interpreted as limiting in any way the powers, privileges, rights and immunities of the Senate or its members.

No summons

20.6 (1) The Senate Ethics Officer, or any person acting on behalf or under the direction of the Senate Ethics Officer, is not a competent or compellable witness in respect of any matter coming to his or her knowledge as a result of exercising any powers or performing any duties or functions of the Senate Ethics Officer under this Act.

Protection

(2) No criminal or civil proceedings lie against the Senate Ethics Officer, or any person acting on behalf or under the direction of the Senate Ethics Officer, for anything done, reported or said in good faith in the exercise or purported exercise of any power, or the performance or purported performance of any duty or function, of the Senate Ethics Officer under this Act.

Clarification

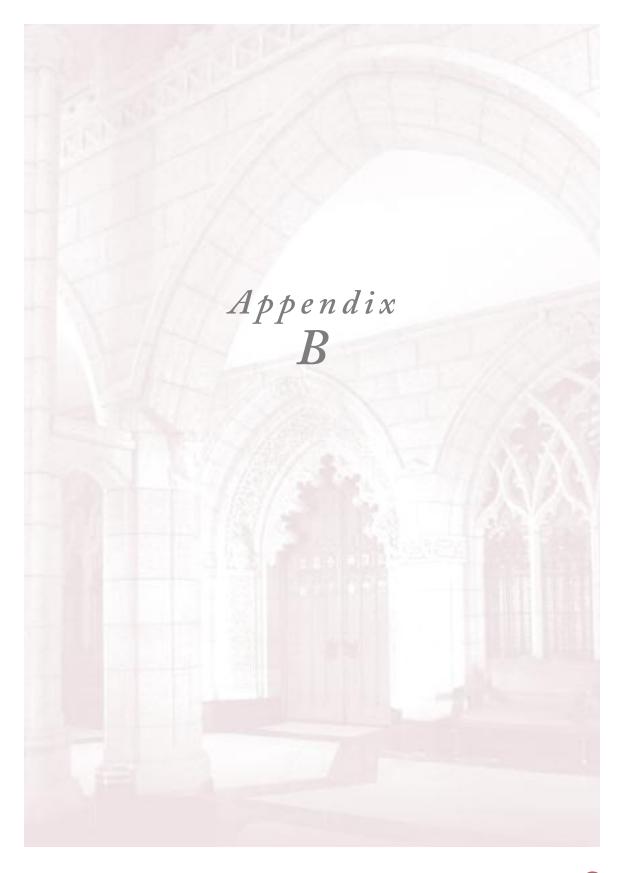
(3) The protection provided under subsections (1) and (2) does not limit any powers, privileges, rights and immunities that the Senate Ethics Officer may otherwise enjoy.

Annual report

20.7 (1) The Senate Ethics Officer shall, within three months after the end of each fiscal year, submit a report on his or her activities under section 20.5 for that year to the Speaker of the Senate, who shall table the report in the Senate.

Confidentiality

(2) The Senate Ethics Officer may not include in the annual report any information that he or she is required to keep confidential.



APPENDIX B

CONFLICT OF INTEREST CODE FOR SENATORS

PURPOSES

Purposes

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

PRINCIPLES

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.

Privacy

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

INTERPRETATION

Definitions

- 3. (1) The following definitions apply in this Code.
- "Committee"
- « Comité »
- "Committee" means the Committee designated or established under section 35.
- "common-law partner"
- « conjoint de fait »
- "common-law partner" means a person who is cohabiting with a Senator in a conjugal relationship, having so cohabited for at least one year.
- "Intersessional Authority"
- « autorité intersessionnelle »
- "Intersessional Authority on Conflict of Interest for Senators" means the committee established by section 38.
- "parliamentary duties and functions"
- « fonctions parlementaires »
- "parliamentary duties and functions" means duties and activities related to the position of Senator, wherever performed, and includes public and official business and partisan matters.
- "Senate Ethics Officer"
- « conseiller sénatorial en éthique »
- "Senate Ethics Officer" means the Senate Ethics Officer appointed under section 20.1 of the *Parliament of Canada Act*.
- "spouse"
- « époux »
- "spouse" means a person to whom a Senator is married but does not include a person from whom the Senator is separated where all support obligations and family property have been dealt with by a separation agreement or by a court order.

Family members

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

ACTIVITIES AND JURISDICTION PRESERVED

Assisting the public

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

Carrying on activities

- 5. Senators who are not ministers of the Crown may participate in any outside activities, including the following, as long as they are able to fulfil their obligations under this Code:
 - (a) engaging in employment or in the practice of a profession;
 - (b) carrying on a business;
 - (c) being a director or officer in a corporation, association, trade union or notfor-profit organization; and
 - (d) being a partner in a partnership.

Existing committee jurisdiction

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

Role of the Speaker

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

RULES OF CONDUCT

Furthering private interests

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

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.

Use of information

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

Conveying information

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

Clarification: furthering private interests

- 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.

Clarification: not furthering private interests

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

Declaration of a private interest: Senate or committee

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

Subsequent declaration

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

Declaration recorded

(3) The Clerk of the Senate or the Clerk of the committee, as the case may be, shall send the declaration to the Senate Ethics Officer who, subject to subsection (4) and paragraph 31(1)(h), shall file it with the Senator's public disclosure summary.

Where declaration in camera

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

Further declaration

(5) A declaration made in camera that, in compliance with subsection (4), has been neither recorded nor filed with the Senator's public disclosure summary is only valid in respect of the proceeding during which the declaration was made or the matter that the declaration concerned was discussed, and the Senator shall make a further declaration at the first possible opportunity.

Declaration of a private interest: other circumstances

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

Declaration of retraction

(7) A Senator may, by declaration made under this section, retract a previous declaration, in which case the Senator may participate in debate or other deliberations and vote on the matter in respect of which the previous declaration was made.

Debate in the Senate

13. (1) A Senator who has made a declaration under section 12 regarding a matter that is before the Senate may not participate in debate or any other deliberations in the Senate with respect to that matter.

Debate in committee where Senator is member

(2) A Senator who has made a declaration under section 12 regarding a matter that is before a committee of the Senate of which the Senator is a member may not participate in debate or any other deliberations in the committee on the matter, and must withdraw from the committee for the duration of those proceedings, but the Senator need not resign from the committee.

Debate in committee where Senator is not member

(3) A Senator who has reasonable grounds to believe that he or she, or a family member, has a private interest that might be affected by a matter that is before a committee of the Senate of which the Senator is not a member may not participate in debate or any other deliberations in the committee on the matter, and must withdraw from the committee for the duration of those proceedings.

Debate where Senator has not yet declared

(4) A Senator who is required by section 12 to make a declaration but has not yet done so may not participate in debate or any other deliberations on the matter and, in the case of committee proceedings, the Senator must withdraw from the committee for the duration of those proceedings.

Prohibition on voting

14. A Senator who has made a declaration under section 12, or a Senator who is required to make such a declaration but has not yet done so, may not vote on the matter but may abstain.

Procedure

15. If a Senator reasonably believes that another Senator has failed to make a declaration of a private interest as required by section 12 or has failed to comply with section 13 or 14, the matter may be raised with the Senate Ethics Officer.

Clarification: having a private interest

16. For the purpose of sections 12 to 14, private interest means those interests that can be furthered in subsection 11(1), but does not include the matters listed in subsection 11(2).

Prohibition: gifts and other benefits

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

Exception

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

Statement: gift or other benefit

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

Statement: sponsored travel

18. (1) Notwithstanding subsection 17(1), a Senator may accept, for the Senator and guests of the Senator, sponsored travel that arises from or relates to the Senator's position. If the travel costs of a Senator or any guest exceed \$500 and are not paid personally by the Senator or the guest, and the travel is not paid through the programs for international and interparliamentary affairs of the Parliament of Canada, by the Senate, the Government of Canada or the Senator's political party, the Senator shall, within 30 days after the end of the trip, file a statement with the Senate Ethics Officer.

Contents of statement

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

Duplication

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

Consent of Senate

19. Gifts, other benefits and sponsored travel accepted in compliance with the requirements of sections 17 and 18 are deemed to have received the consent of the Senate thereto for all purposes.

Government contracts

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

Public corporations

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

Public interest

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

Government programs

(3) For the purpose of subsection (1), a public corporation shall not be considered to contract with the Government of Canada or any federal agency or body merely because the corporation participates in a Government program that meets the criteria described in section 23.

Trust

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

Partnerships and private corporations

- 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, to a contract or other business arrangement with the Government of Canada or any federal agency or body under which the partnership or corporation receives a benefit unless the Senate Ethics Officer provides a written opinion that
 - (a) due to special circumstances the contract or other business arrangement is in the public interest; or
 - (b) the contract or other business arrangement is unlikely to affect the Senator's obligations under this Code.

Clarification: Government programs

- 23. For the purposes of sections 20 and 22, it is not prohibited to participate in a program operated or funded, in whole or in part, by the Government of Canada or any federal agency or body under which a Senator, or a partnership or private corporation in which a Senator has an interest, receives a benefit if
 - (a) the eligibility requirements of the program are met;
 - (b) the program is of general application or is available to a broad class of the public;
 - (c) there is no preferential treatment with respect to the application; and
 - (d) no special benefits are received that are not available to other participants in the program.

Trust

- 24. Section 22 does not apply if the Senator has entrusted his or her interest in a partnership or private corporation to one or more trustees on all of the following terms:
 - (a) the provisions of the trust have been approved by the Senate Ethics Officer;
 - (b) the trustees are at arm's length from the Senator and have been approved by the Senate Ethics Officer;
 - (c) except as provided in paragraph (d), the trustees may not consult with the Senator with respect to managing the trust, but they may consult with the Senate Ethics Officer;
 - (d) the trustees may consult with the Senator, with the approval of the Senate Ethics Officer and in his or her presence, if an extraordinary event is likely to materially affect the trust property;
 - (e) in the case of an interest in a corporation, the Senator resigns any position of director or officer in the corporation;
 - (f) the trustees provide the Senate Ethics Officer annually with a written report setting out the nature of the trust property, the value of that property, the trust's net income for the preceding year and the trustees' fees, if any; and
 - (g) the trustees give the Senator sufficient information to permit the Senator to submit returns as required by the *Income Tax Act* and give the same information to the appropriate taxation authorities.

Pre-existing contracts

25. The rules in sections 20, 21 and 22 do not apply to a contract or other business arrangement that existed before a Senator's appointment to the Senate, but they do apply to its renewal or extension.

Interest acquired by inheritance

26. The rules in sections 20, 21 and 22 do not apply to an interest acquired by inheritance until the first anniversary date of the transfer of legal and beneficial ownership. In special circumstances, the Senate Ethics Officer may extend this time period.

DUTY TO DISCLOSE

Confidential disclosure statement: sitting Senators

27. (1) Every Senator shall file annually, on or before the date applicable to the Senator as established by the Senate Ethics Officer under subsection (2), a confidential statement disclosing the information required by section 28.

Filing date

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

Confidential disclosure statement: new Senators

(3) Within 120 days after being summoned to the Senate, a Senator shall file a confidential statement disclosing the information required by section 28.

Submission to Committee

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

Errors or omissions

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

Response within 60 days

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

Family members

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

Confidentiality

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

Initial meeting with Senate Ethics Officer

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

Contents of confidential disclosure statement

28. (1) Subject to subsection (2) regarding excluded matters, and any Guidelines published by the Senate Ethics Officer under section 43, the confidential disclosure statement shall list:

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

Excluded matters

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

Additional excluded matters

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

Material change

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

Meeting with Senate Ethics Officer

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

Necessary meeting

(2) If, pursuant to a request made under subsection (1), the Senate Ethics Officer advises the Senator that the meeting is necessary in order for the Senate Ethics Officer to carry out his or her duties and functions under the Code, the Senator shall meet with the Senate Ethics Officer.

Public disclosure summary

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

Contents of public disclosure summary

- 31. (1) The public disclosure summary shall list
 - (a) any corporations, income trusts and trade unions in which the Senator is a director or officer and any partnerships in which the Senator is a partner, including a description of the activities of each entity;
 - (b) any associations and not-for-profit organizations in which the Senator is a director, officer or patron, including memberships on advisory boards and any honorary positions;
 - (c) the source and nature but not the amount of any income that the Senator has received in the preceding 12 months and is likely to receive in the next 12 months that the Senate Ethics Officer has determined could relate to the parliamentary duties and functions of the Senator or could otherwise be relevant:
 - (d) the source and nature but not the value of any contracts or other business arrangements with the Government of Canada or a federal agency or body that the Senator has, directly or through a subcontract, including the Senate Ethics Officer's written opinion authorizing them;
 - (e) the source and nature but not the value of any contracts, subcontracts or other business arrangements with the Government of Canada or a federal agency or body that the Senator has by virtue of a partnership or a significant interest in a private corporation that the Senator is able to ascertain by making reasonable inquiries, including the Senate Ethics Officer's written opinion authorizing them;
 - (f) the source and nature but not the value of any contracts or other business arrangements with the Government of Canada or a federal agency or body that a member of the Senator's family has, directly or through a subcontract, or by virtue of a partnership or a significant interest in a private corporation, that the Senator is able to ascertain by making reasonable inquiries;
 - (g) information regarding the nature but not the value of any assets and liabilities that the Senate Ethics Officer has determined could relate to the parliamentary duties and functions of the Senator or could otherwise be relevant;
 - (h) any declarations of a private interest under section 12, unless the Senator has since retracted the declaration;
 - (i) any statements filed under sections 17 and 18 in relation to gifts and sponsored travel; and
 - any statements of material change that pertain to the contents of this summary.

Discretion

- (2) The Senate Ethics Officer need not include in the public disclosure summary information that he or she determines should not be disclosed because
 - (a) the information is not relevant to the purposes of this Code or is inconsequential, or
 - (b) a departure from the general principle of public disclosure is justified in the circumstances.

Disagreement

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

Public inspection

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

Removal of file from registry

(2) A public disclosure file shall be removed from the public registry at the time that the Senator concerned ceases to be a Senator.

Evasion

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

COMMITTEE

Designation or establishment

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

Membership

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

No ex officio members

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

Election of members

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

Presentation and adoption of motion

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

Chair

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

Removal

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

Substitutions

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

Meetings in camera

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

Meetings in public

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

Attendance

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

Affected Senator

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

Withdrawal

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

Jurisdiction

37. (1) Subject to subsection 41(2) and to the general jurisdiction of the Senate, the Committee is responsible for all matters relating to this Code, including all forms involving Senators that are used in its administration.

General directives

(2) The Committee may, after consultation with the Senate Ethics Officer, give general directives to the Senate Ethics Officer concerning the interpretation, application and administration of the Code, but not concerning its interpretation and application as it relates to an individual Senator's particular circumstances.

INTERSESSIONAL AUTHORITY

Intersessional Authority created

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

Composition

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

General authority

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

Additional functions

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

SENATE ETHICS OFFICER

Senate Ethics Officer

41. (1) The Senate Ethics Officer is an independent officer who performs the duties and functions assigned by the Senate under this Code.

Independent status

(2) The Senate Ethics Officer shall carry out his or her duties and functions under the general direction of the Committee, but is independent in interpreting and applying this Code as it relates to an individual Senator's particular circumstances.

OPINIONS AND ADVICE

Request for opinion

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.

Opinion binding

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

Written advice binding

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

Confidentiality

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

Proof of compliance

(5) A written opinion or advice given by the Senate Ethics Officer to a Senator under this section and relied upon by that Senator is conclusive proof that the Senator has fully complied with the Senator's obligations under this Code as long as all the relevant facts that were known to the Senator were disclosed to the Senate Ethics Officer.

Publication

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

Guidelines

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

INQUIRIES AND INVESTIGATIONS

Direction by the Committee

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

Request for an inquiry

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

Form of request

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

Request to be sent

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

Preliminary review

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

If inquiry warranted

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

Receipt of information

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

Committee to approve

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

Notice

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

Respect for the inquiry process

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

Inquiry to be confidential

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

Cooperation

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

Powers of Senate Ethics Officer

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

Report to the Committee

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

Contents of report

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

Bad faith

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

Mitigation

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

General recommendations

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

Reasons

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

Consideration of report

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

Due process

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

Investigation

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

Committee report

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

No report required

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

Contents of report

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

Remedial action

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

Anonymity

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

Suspension of investigation or inquiry: Act of Parliament

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

Investigation or inquiry continued

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

Suspension of investigation or inquiry: other laws

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

Advice of Committee

(4) The Senate Ethics Officer shall seek the advice of the Committee before notifying the proper authorities.

Notice for motion to adopt

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

Motion

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

Senator may speak

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

Right to speak last

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

Senate vote

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

Referral back

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

Suspension: former Senators

49. (1) An investigation or inquiry of a Senator who ceases to be a Senator is permanently suspended unless the Committee directs that the investigation or inquiry be completed.

Direction to continue

(2) In considering whether to issue a direction under subsection (1), the Committee shall consider any request from the former Senator or from the Senator who requested the inquiry, and any representations made by the Senate Ethics Officer.

Consideration of committee report

(3) Notwithstanding subsection 48(5), where a motion to adopt a report about a former Senator is moved or deemed to be moved, the motion shall not be put to a vote until the former Senator has been offered the opportunity to speak to the report as a witness in Committee of the Whole, and has either availed himself or herself of the opportunity or has refused or otherwise failed to take advantage of the offer.

PRIVACY AND CONFIDENTIALITY

Privacy to be minimally impaired

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

Confidentiality

51. (1) All information relating to the private interests of Senators and those of their family members received pursuant to this Code or created under it is to be kept confidential, except in accordance with this Code or as otherwise ordered by the Senate.

Inclusions

(2) For greater certainty, the requirement set out in subsection (1) applies to documents and information received in the course of an inquiry that the Senate Ethics Officer has suspended in accordance with paragraph 47(1)(a) or subsection 47(3) and to documents and information retained by the Senate Ethics Officer pursuant to section 52.

Confidentiality

- (3) The Senate Ethics Officer and all officers, employees, agents, advisers and consultants that may be employed or engaged by the Senate Ethics Officer shall keep confidential all matters required to be kept confidential under this Code. Failure to do so shall constitute behaviour sufficient to justify either or both of the following:
 - (a) a resolution by the Senate under subsection 20.2(1) of the *Parliament of Canada Act* requesting the Governor in Council to remove the Senate Ethics Officer from office;
 - (b) dismissal of any officers, employees, agents, advisers or consultants involved.

Retention of documents

52. (1) The Senate Ethics Officer shall retain all documents relating to a Senator for a period of 12 months after he or she ceases to be a Senator, after which, subject to subsections (2) to (4), the documents shall be destroyed.

Ongoing proceedings

(2) Where, at the time that a Senator ceases to be a Senator, there is an investigation or inquiry in progress concerning the Senator or a charge has been laid against the Senator, the destruction of documents that relate to the matter shall be postponed until 12 months after the day of the final disposition of all related proceedings.

Return of confidential documents

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

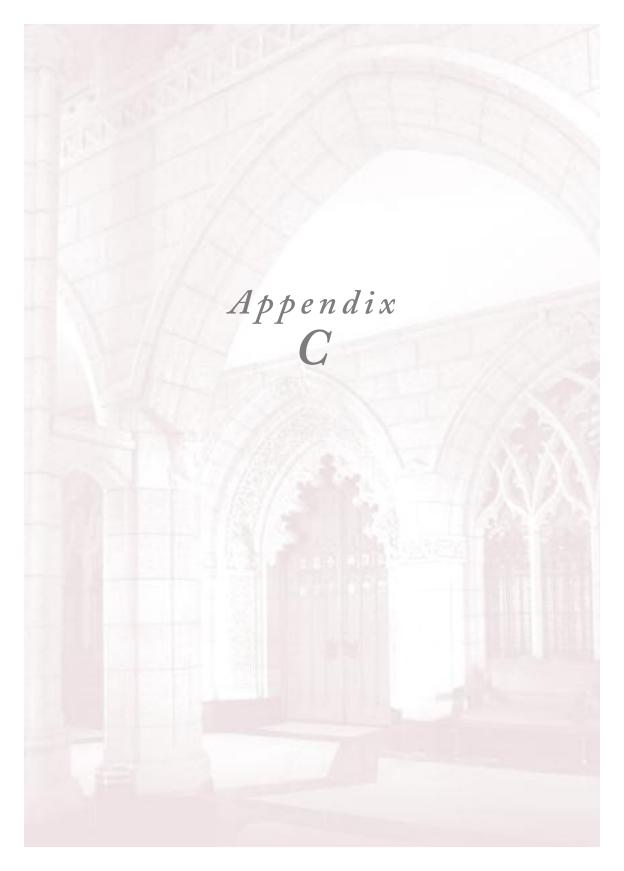
Archiving of public documents

(4) Public documents relating to a Senator shall be forwarded to the Senate archives.

PERIODIC REVIEW

Committee review

53. The Committee shall undertake a comprehensive review of this Code and its provisions and operation once every five years, and shall submit a report to the Senate thereon, including a statement of any changes the Committee recommends.



APPENDIX C



CANADA

OFFICE OF THE SENATE ETHICS OFFICER

OPINION REGARDING SENATOR HOUSAKOS

PURSUANT TO SUBSECTION 42(1)

OF THE

CONFLICT OF INTEREST CODE FOR SENATORS

JEAN T. FOURNIER SENATE ETHICS OFFICER

> OTTAWA, ONTARIO DECEMBER 16, 2009

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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 notfor-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 whollyowned 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 notfor-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.

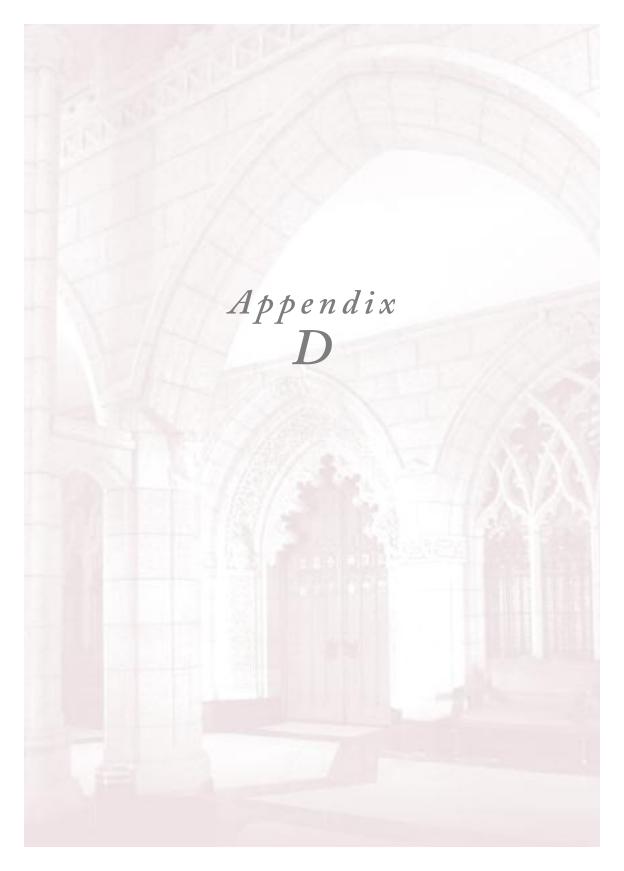
(d) Senator's Membership on the Senate Transport Committee

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.



APPENDIX D

The Senate Disclosure Process in Brief

Disclosure is at the heart of any effective and transparent conflict of interest regime for parliamentarians. This document summarizes the Senate disclosure process under the *Conflict of Interest Code for Senators* (the Code). It breaks down the process in 10 individual steps. Each step is described below.

- The annual disclosure process generally begins in the fall of each year when Parliament resumes after its summer recess. To initiate the process, the Senate Ethics Officer (the SEO) sends a Confidential Disclosure Statement to each senator, which is required to be completed under section 27 of the Code. The information that must be declared includes any sources of income over \$2,000, any assets and liabilities over \$10,000, any outside activities and any federal government contracts.
- Sitting senators are asked to complete and return their confidential disclosure statement within 3 weeks. The date on or before which the disclosure statements have to be filed is established by the SEO following approval by the Standing Committee on Conflict of Interest for Senators. Newly appointed senators have 120 days to file.
- The SEO reviews the information received in order to identify any foreseeable, real or apparent conflicts of interest. The review also provides an opportunity to identify omissions or ambiguities and to ensure that the information is complete and up-to-date.
- 4. Based on this information, the SEO sends a letter of advice to each senator regarding his or her particular obligations under the Code and recommends measures, if necessary, to ensure that they are in compliance with the Code.
- 5. The SEO is also required to prepare an annual **Public Disclosure Summary** pertaining to each senator. Section 31 of the Code sets out the information that must be included therein.

- 6. This is followed by face-to-face meetings with senators, which usually commence in November of each year and end in March. These meetings are an important opportunity to discuss each senator's disclosure statement, the SEO's letter of advice as well as the senator's public disclosure summary. The meetings are also an opportunity for senators to discuss future plans and to obtain advice in this regard.
- Once a senator signs his or her public disclosure summary, the SEO sends a letter of compliance confirming that the senator meets the requirements of the Code and provides the senator with a copy of his or her public disclosure summary.
- 8. Finally, once signed, a certified copy of each senator's public disclosure summary is placed by the SEO in the **Public Registry** and is made available for public inspection during normal business hours, pursuant to section 33 of the Code.
- 9. Senators have an ongoing obligation throughout the year to disclose changes to their circumstances, by filing the proper forms according to the procedures set out under the Code, in order to ensure that their confidential and public files contain accurate and up-to-date information at all times. Specifically, they are required to disclose the following:
 - (1) any material changes to the information provided in their confidential disclosure statements (subsection 28(4));
 - (2) any **gifts** or other benefits received as an expression of courtesy or protocol, or received within the customary standards of hospitality that usually accompany the senator's position where these exceed \$500 in value, or any such gifts or other benefits received from one source in a one-year period where their total value exceeds \$500 (section 17);
 - (3) any sponsored travel where the travel costs exceed \$500, unless they are paid by the senator, or his or her guests, or through the programs for international and interparliamentary affairs of the Parliament of Canada, by the Senate, the Government of Canada or the Senator's political party (section 18); and
 - (4) any private interest a senator or a family member may have in a matter that is before the Senate or a committee of the Senate in which the senator is a member.

10. Under section 20.7 of the Parliament of Canada Act, the Senate Ethics Officer is required to prepare an Annual Report within three months after the end of each fiscal year concerning the Office's activities for the year. This provides an opportunity to review the annual disclosure process for the year and highlight any issues in this regard that might be of interest to the Senate, but also to the public in general.

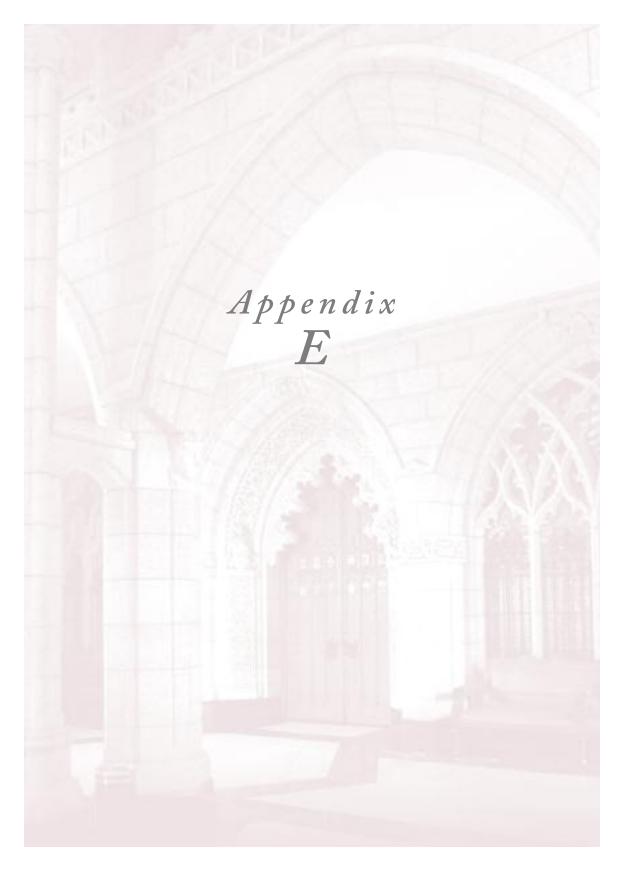
Advice and Opinions

Outside of the annual disclosure process, senators are encouraged to seek the advice of the SEO as often as possible, especially in cases of doubt, prior to taking action. The opinions or advice may be in writing under subsection 42(1) of the Code or of a more informal nature through telephone conversations, meetings and e-mail exchanges. The SEO is solely responsible for the interpretation and application of the Code as it relates to each senator's particular circumstances.

Informal advice is as important as the formal opinions in that it offers guidance and information to senators in order to help them to better understand the Code and how it applies in different circumstances. Every year the SEO provides hundreds of opinions and advice of varying degrees of complexity. The sheer volume of requests illustrates that senators are availing themselves of the advisory services that the Office offers. Prevention, here as elsewhere, is preferable to cure.

Additional Information

This document only provides a summary of the disclosure process under the Senate Code. For more detailed information, please visit the Senate Ethics Office's website at www.parl.gc.ca/seo-cse.

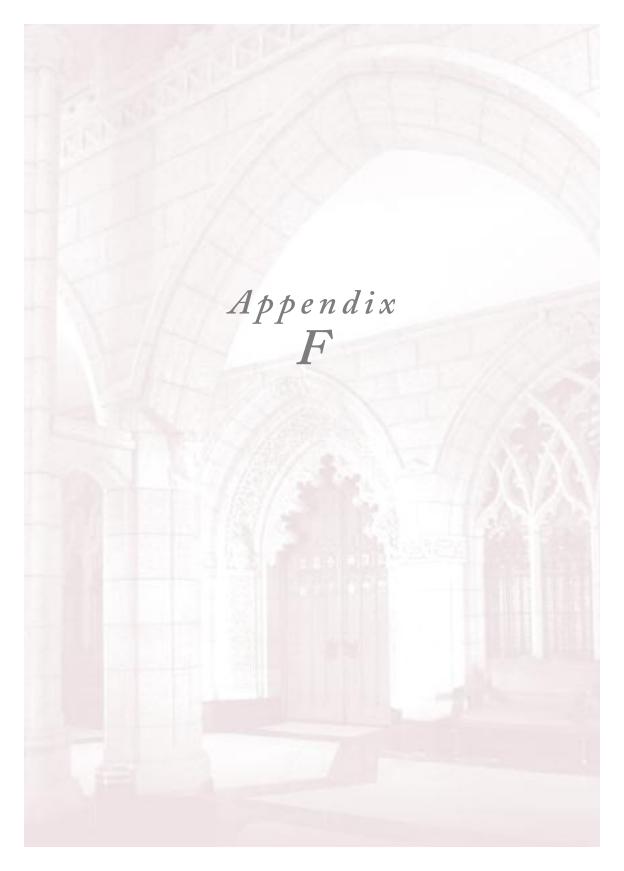


APPENDIX E

INVESTIGATIONS/INQUIRIES BY PARLIAMENTARY ETHICS COMMISSIONERS (2004-2009)

Es	Date of stablishment of Offices	Number of Parliamentarians	2004	2005	2006	2007	2008	2009
Ontario	1988	107	3	0	2	0	2	0
British Columbia	1990	85	1	0	1	1	1	2
Nova Scotia	1991	52	0	0	0	0	0	0
Alberta	1992	83	1	1	0	3	0	0
Newfoundland and Labrador	1993	48	0	0	0	0	0	0
Saskatchewan	1994	58	2	1	0	0	2	0
Quebec	1996	125	n/a	n/a	n/a	n/a	n/a	n/a
N.W.T.	1998	19	1	0	0	0	0	3
P.E.I.	1999	27	0	0	0	1	2	1
New Brunswick	2000	55	0	0	1	0	0	0
Nunavut	2000	19	1	0	0	0	2	1
Manitoba	2002	57	0	0	0	0	0	0
Yukon	2002	18	0	0	0	0	2	0
House of Commor • POH • MPs	ns 2004	308	0 0 0	3 1 2	4 1 3	1 0 1	5 3 2	1 1 0
Senate	2005	105	n/a	0	0	0	0	0
Total			9	5	8	6	16	8

Source: Canadian Conflict of Interest Network (CCOIN)



APPENDIX F

CHRONOLOGY OF KEY EVENTS

February 24, 2005	Motion to approve the appointment of Mr. Jean T. Fournier as Senate Ethics Officer (SEO) was debated in the Senate. Mr. Fournier appeared before the Senate sitting in Committee of the Whole. Motion to approve the appointment was adopted that day.
February 25, 2005	Governor in Council appointment of Mr. Jean T. Fournier as the first Senate Ethics Officer effective April 1, 2005.
April 1, 2005	Mr. Fournier assumed his duties along with Louise Dalphy, Executive Assistant.
May 11, 2005	The Standing Senate Committee on Rules, Procedures and the Rights of Parliament tabled its Third Report recommending the adoption of a <i>Conflict of Interest Code for Senators</i> .
May 18, 2005	The Conflict of Interest Code for Senators was adopted by the Senate.
July 6, 2005	The Standing Committee on Conflict of Interest for Senators was established in accordance with subsection 20.5(3) of the <i>Parliament of Canada Act</i> .
September 15, 2005	Deadline for senators to submit their annual Confidential Disclosure Statements for the first annual review (2005-06) to the SEO.
October 2005 to April 2006	The SEO reviewed the Confidential Disclosure Statements submitted by senators to identify potential conflicts of interest and to determine the compliance measures required in each

case. The SEO also prepared public disclosure summaries.

May 9, 2006	Public Disclosure Summaries were placed in the Public
	Registry located at the Office of the Senate Ethics Officer and

made available for public inspection.

June 20, 2006 Tabling of the first Annual Report of the Senate Ethics Officer.

September 6, 2006 Remarks by the SEO before the Standing Senate Committee on Legal and Constitutional Affairs on Bill C-2, the Federal

Accountability Act, as it affected the Office of the Senate Ethics

Officer.

October 20, 2006 Deadline for senators to submit their annual Confidential

Disclosure Statements for the second annual review (2006-

07) to the SEO.

December 12, 2006 Bill C-2, the Federal Accountability Act, received Royal Assent.

November 2006 The SEO reviewed the Confidential Disclosure Statements to April 2007 submitted by senators to identify potential conflicts of interest

and to determine the compliance measures in each case. The

SEO also prepared public disclosure summaries.

June 7, 2007 Tabling of the second Annual Report of the Senate

Ethics Officer.

November 2, 2007 Deadline for senators to submit their annual Confidential

Disclosure Statements (2007-2008) to the SEO.

November 2007 The SEO reviewed the Confidential Disclosure Statements to April 2008 submitted by senators to identify potential conflicts of interest

submitted by senators to identify potential conflicts of interest and to determine the compliance measures in each case. The

SEO also prepared public disclosure summaries.

January 29, 2008 Submission by the Senate Ethics Officer to the Standing

Committee on Conflict of Interest for Senators regarding the

review of the Code.

June 11, 2008 Tabling of the third Annual Report of the Senate Ethics Officer.

December 5, 2008	Deadline	tor	senators	to	submit	their	annual	Confidential
		_						

Disclosure Statements (2008-2009) to the SEO.

December 22, 2008 Announcement by the Prime Minister of the appointment of

18 new Senators.

December 2008 The SEO reviewed the Confidential Disclosure Statements to April 2009 submitted by senators to identify potential conflicts of interest

and to determine the compliance measures in each case. The

SEO also prepared public disclosure summaries.

June 9, 2009 Tabling of the fourth Annual Report of the Senate

Ethics Officer.

August 27, 2009 Announcement by the Prime Minister of the appointment of

9 new Senators.

October 2, 2009 Deadline for senators to submit their annual Confidential

Disclosure Statements (2009-2010) to the SEO.

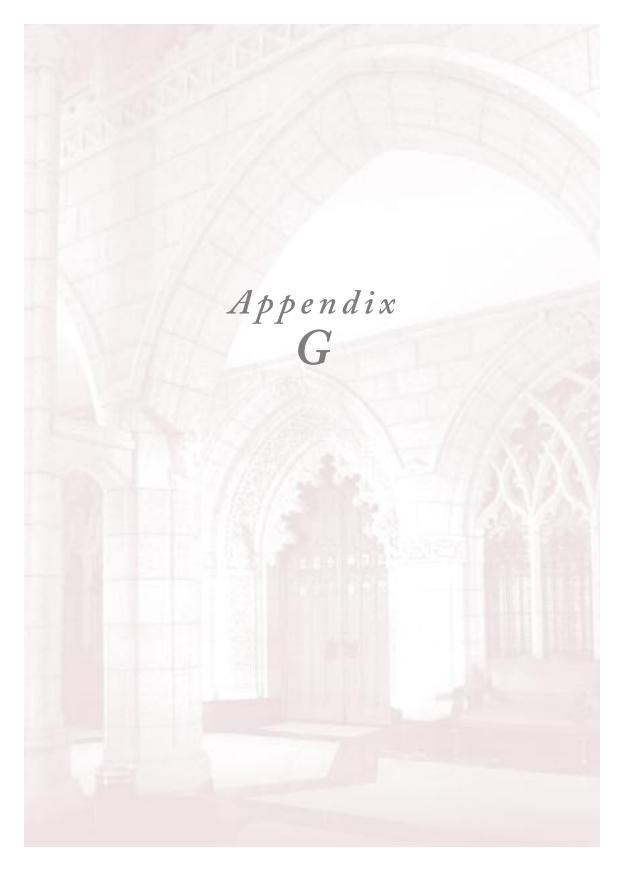
November 2009 The SEO reviewed the Confidential Disclosure Statements to April 2010 submitted by senators to identify potential conflicts of interest

submitted by senators to identify potential conflicts of interest and to determine the compliance measures in each case. The

SEO also prepared public disclosure summaries.

January 29, 2010 Announcement by the Prime Minister of the appointment of

5 new Senators.



APPENDIX G

Strengthening Parliamentary Ethics: A Canadian Perspective

Remarks by Jean T. Fournier
Senate Ethics Officer, Senate of Canada
to the Australian Public Sector Anti-Corruption Conference
Brisbane, July 29, 2009

I am honoured to have been invited to take part in this conference and to speak about the importance of ethical leadership in preventing misconduct and corruption, and in raising standards of integrity in the public sector.

This is my first time back in Australia since I left in 2004, having spent four wonderful years as Canada's High Commissioner to Australia with accreditation to seven Pacific Island countries. I had the good fortune to be here during the Sydney Olympics and the celebrations of your Centenary of Federation. I traveled extensively through Australia and made many friends. I am delighted to be back, even if only for a short period.

As well, there is an old family connection, and a personal history that I share with many Australians. I am the descendant of one of the 58 French-Canadian convicts from what is now the province of Quebec who fought against the British for parliamentary democracy. They were condemned and sentenced to be hanged, and eventually, "transported for life" to Australia in 1840. The "patriotes", as they were known, spent five years in what is now the Sydney suburb of Concord, before being pardoned and returning home. Their presence in Sydney is commemorated in the names of Canada Bay, French Bay and Exile Bay.

A monument at Cabarita Park in Concord, unveiled in 1970 by Prime Minister Trudeau, attests to their presence in Australia. Four years after my ancestor's return, in 1849, Canada was granted responsible government and men of all convictions, as it were, began to build a parliamentary democracy as we know it today. Perhaps it is this family connection that lies behind my interest and involvement in the field of parliamentary ethics.

The conference theme of "Taking responsibility, fighting complacency" is well-chosen and timely. I have no doubt that this gathering will be a significant opportunity for

Australian and international delegates to network and learn about current anticorruption measures, trends and strategies. These are issues that increasingly preoccupy us, wherever we live.

Ethical leadership is a very broad topic. I have chosen to focus my remarks on the importance of ethical leadership by parliamentarians and legislators, and, in particular, on the importance of strengthening this leadership. In our democratic societies, ethical leadership is everyone's business. But the tone must be set at the top, especially by parliamentarians who occupy such an essential place in our system of government.

Parliamentary Ethics

Questions of ethics and the conduct of public officials are as old as the origin of democracy. Political philosophers have been addressing for a very long time the questions of honesty, integrity and accountability as part of the constant striving for further perfecting democracy, not only as a form of government, but also as a way of life. But if the importance of ethical leadership is so universally recognized, why is it that ethics is in such a terrible state today? Most people are dismayed with the state of affairs. They are sick of the deception, cheating and corruption. People don't know who, or what, to trust. Few institutions or professions have escaped scandal in recent years.

There's clear evidence that parliamentarians and legislators everywhere are held in low esteem and are being criticized for failing to meet appropriate standards of conduct. The abuse of public position for private benefit is a global phenomenon. The British MP expenses scandal is the most recent example, involving legislators of all major political parties charging – and being routinely reimbursed – for items such as hedge-trimming, moat clearing and tennis court repairs.

A recent study undertaken for Elections Canada found the largest reason for voter decline was negative public attitudes towards politicians. The study said: "There is a widespread perception that politicians are untrustworthy, selfish, unaccountable, lack credibility, and are not true to their word."

In the United States, one survey in recent years heard from respondents that only 30% of them trusted their government to do what was right. Another found the approval rate of Congress down to 18%.

A 2008 poll which ranked Australian politicians against other occupations for trustworthiness, placed politicians 39th out of 40, ahead only of telemarketers. A similar poll in Canada produced the same result. Our politicians also finished in 39th place, just

ahead of car salespeople and telemarketers. Perhaps our two countries are more alike than we think!

Of course, corrupt behaviour today is not limited just to the political world. For example, lawyers, health care professionals, law enforcement officials and accountants are just some of the professions under increasing criticism for ethical failings of various varieties. Barely a day passes without stories on corporate malfeasance, abuses of power, or executive sleight of hand or corruption. Many occupations are considering new approaches to professional discipline by either formulating or strengthening their standards of conduct.

Thus, parliamentarians and legislators are not alone in this swamp. But the climate of distrust which has affected much of society has made their difficult job of governing, of dealing with pressure-filled situations, that much harder. Defiance has replaced deference among the general public. This has created a huge "confidence gap", with many asking where is it likely to end?

Widespread distrust has given rise to a growing demand for improved transparency, an insistence that parliamentarians who exercise authority over us, or in our name, must answer to our expectations for higher standards. Citizens want to know what decisions are being made, how they are being made, who holds power and how they are exercising it. Traditional forms of accountability are being questioned and a new spirit of integrity and openness is being demanded. Citizens want to know that when parliamentarians make important decisions, they are acting in the interest of those whom they are supposed to serve, and that parliamentarians should aspire to something higher as their standard for decision-making, something more than just what is legal.

There's no question that public officials deal with many conflicting demands at the national, state, provincial and municipal levels. Theirs may be the most challenging job in our democratic society, not only politically, but ethically. For example, in our Westminster system of government, parliamentarians review and approve government legislation and spending, propose private bills, and bring their constituent's concerns and problems to the government's attention. Parliamentarians also fulfill a "watchdog" role by calling the government to account for its actions. They also take an active part in the work of legislative committees, hold hearings, and produce reports on a wide-range of issues of importance.

Given that service in Parliament is a public trust, parliamentarians are expected to act in the public interest at all times, with openness and impartiality. They cannot use their official position for personal gain, or to obtain any benefit for their family or another

person or entity. Parliamentarians are expected to uphold the highest standards, so as to avoid real or apparent conflicts of interest. Moreover, they are expected to arrange their private affairs to prevent any conflicts from arising, and if a conflict of interest does arise, to resolve it in a way that promotes public confidence.

Parliamentarians are expected to conduct themselves with integrity and transparency in all areas, so the public can make informed judgments and hold them accountable for their behaviour while holding office. The ethical tone of a country is shaped by the behaviour of its parliamentarians. Ethical leadership starts with them, as the manner in which they conduct themselves influences the ethical mood in the broader society.

The Last Fifty Years

Over the last fifty years, we have witnessed significant developments around the world in the field of parliamentary ethics. For example, the U.S. Congress adopted ethics rules in the 1960's. The Office of Government Ethics, which *inter alia* certifies the financial disclosure reports of Presidential nominees, followed in 1978. The Office of Congressional Ethics was established last year which has brought greater accountability and transparency to the ethics enforcement process of the House of Representatives. It now mandates that an independent review of alleged ethics violations be conducted by individuals who are not member of Congress.

In 1988, the French government established under legislation a "Commission pour la Transparence financière de la vie publique", headed by an independent Commissioner. Its responsibilities were expanded in 1995 to include the declarations of personal assets by members of both Houses. In the United Kingdom, the House of Commons adopted a code of conduct for Members of Parliament in 1995 and appointed that year an independent Parliamentary Commissioner for Standards of the House of Commons. The House of Lords followed in 2001 with the introduction of a code of conduct for the Lords. In the Australian federal Parliament, each House has its own Register of Interests, a Registrar to administer it and a parliamentary committee to oversee and monitor it. These arrangements were established by the House of Representatives in 1984 and by the Senate in 1994.

In Canada, the country's provinces and territories led the way beginning in 1988, establishing ethics rules and procedures for legislators in Ontario, British Columbia and Alberta, thus pioneering a Canadian model of parliamentary ethics. Parliamentarians in these provinces have been largely free of the discredit brought on by major conflict of interest revelations.

Both federal Houses in Canada lagged well behind as numerous initiatives died on the Order Paper. Discussions about introducing codes of conduct for Senators and MPs continued for three decades. In 2000, Canada's Auditor General called on federal parliamentarians to show "ethical leadership" and adopt formal rules of conduct as other jurisdictions had done. Belatedly, the House of Commons and the Senate appointed independent ethics commissioners and adopted their own codes of conduct in 2004 and 2005 respectively.

All 15 federal, provincial and territorial legislative bodies now have independent parliamentary ethics commissioners in place to administer, interpret and apply rules regarding the proper behaviour of parliamentarians.

Much work deserving of credit has been done by parliamentarians around the world in establishing ethics regimes in recent years. Much more is required, however, to raise standards of behaviour to acceptable levels. We run the risk of self-satisfaction and complacency. Strong and timely ethical leadership is required from parliamentarians in all countries.

The responsibility to act is not with the executive, the judiciary or some other body. It clearly lies with parliamentarians. As parliamentarians "own" their ethics rules, so to speak, it is for them to demonstrate leadership and to strengthen existing legislative ethics regimes.

In the Westminster model, the practice of Parliament determining what ethics rules will apply to its members, and how they will be administered, derives from long-standing parliamentary tradition and law, going all the way back to the English Bill of Rights of 1689. In the United States, the authority of each chamber to determine its own rules and discipline its members is especially referred to in Article 1 of the United States Constitution.

There have been more and more calls to action. For example, Canadian Senator Donald H. Oliver challenged parliamentarians to make "more efforts". He observed: "There is little doubt that there is currently considerable public cynicism towards politics and politicians... The public has also become more distrustful of politicians in general. Whether we as a group are in fact less ethical today than in the past is unclear, and perhaps irrelevant. What is essential is that we respond to the existing climate by making more efforts than in the past to be, and to be seen to be, men and women of integrity".

The Building Blocks

Based on my experience as Senate Ethics Officer, and my knowledge of the ethics international scene, I have identified eight distinct and interrelated elements or building blocks that together constitute a robust parliamentary ethics infrastructure.

Management guru Peter Drucker described leadership this way: "management is doing things right, leadership is doing the right things." Let me share with you what I view to be the right things — the key building blocks — of a healthy and effective parliamentary ethics system.

The plan I am proposing calls for:

- 1. A code of conduct for parliamentarians;
- 2. An independent but accountable parliamentary ethics commissioner;
- 3. A legislative ethics committee;
- 4. A strong emphasis on advice and prevention;
- 5. A robust disclosure and registration process;
- 6. An investigative function with appropriate powers;
- 7. An external review process, and
- 8. Regular exchanges of best practices.

1. A clear and succinct code of conduct for parliamentarians

At the heart of any successful parliamentary ethics regime is a code of conduct which provides parliamentarians clear and consistent guidance on the standards of conduct expected of them in discharging their public duties. Although there are differences between countries and within countries, codes often include a set of broad principles combined with specific rules of conduct. The principles are the foundation of the system, the rules are the superstructure. Rules lead into procedures, the machinery required to administer these regulations. Principles, rules and procedures are essential. It is the task of the parliamentary ethics commissioners to interpret and apply the principles and rules to individual cases. Each parliamentarian's situation must be evaluated on its own particular facts, and different circumstances will lead to different conclusions. This is one of the key challenges ethics commissioners face in discharging their responsibilities.

I want to underline the value of simplicity and conciseness in the drafting of legislative codes of conduct. Parliamentarians are very busy people with many competing demands on their time and energies. They do not have the time to delve into complicated and lengthy codes, thus the importance of succinctness. Avoid the trap of trying to stick everything in, as one can never cover all possible situations that may arise, no matter

how meticulous the wordsmith. One should also avoid codes that are too wordy, too opaque and crafted in legalese not easily understood by those who have to live by them. Sunlight does not easily pass through murky waters.

In my experience, few parliamentarians take the time to become familiar with the rules where existing codes, guides and manuals are seen as overly complex. By way of illustration, the Senate Code in Canada is based on three broad principles that emphasize the importance of integrity, impartiality and transparency to a democracy. The Code then builds on these overarching principles through an explicit set of seven rules of conduct. These rules deal with such maters as gifts and other benefits, sponsored travel, outside activities, declarations of private interests, use of influence, insider information and government contracts.

The Canadian Senate Code has 53 sections and is 30 pages long, and that's in our two official languages! By contrast, the U.S. Senate Code and Manual is over 500 pages long, consisting of detailed rules piled upon rules! It is a tome that few senators will ever attempt to navigate. Concise and clear rules are an important aspect of a sound parliamentary ethics regime.

Codes are living documents or works in progress. They are not static and must evolve. This can occasionally create tension, as some parliamentarians believe that once a code is written, it's done, and it is time to move on. A successful ethics regime will have a built-in mechanism in place from the very beginning to review the code on a regular and timely schedule. Codes mature and develop through their application; expectations evolve and adjustments are required as times and public expectations change. Citizens expect a rising level of conduct from public officials, thus there will always be more to do. Canada's former federal Ethics Counsellor, Howard R. Wilson put it this way: "What was good enough yesterday may no longer be good enough today. Today's `business as usual' may be tomorrow's `unacceptable'. The (ethics bar) will continue to rise and we should celebrate this."

2. An independent but accountable parliamentary ethics commissioner

The second building block of an effective parliamentary ethics regime relates to who administers the rules. That task may be assigned to an individual (or a commission) who may have a variety of titles: ethics commissioner, integrity commissioner, commissioner for standards, conflict of interest commissioner or ethics officer. The designation is not important. What is important is that the individual who is responsible for the administration, interpretation and application of the code be someone who enjoys broad support, whose judgment is respected, who has years of experience in public administration at a very high level, and is independent from executive and judiciary branches.

Taking the Canadian Senate as an example, the main responsibilities of the Senate Ethics Officer are to:

- Advise individual senators on a confidential and ongoing basis concerning their obligations under the Code and to assist them in remaining in compliance with the requirements of the Code;
- Oversee the ongoing annual disclosure process in which senators are required to disclose their financial and other interests:
- Conduct inquiries in order to determine whether a senator has complied with his or her obligations under the Code;
- Maintain a Public Registry containing information concerning the financial and other interests of senators that are required to be publicly disclosed under the Code; and
- Submit an annual report of the office's activities to the Speaker of the Senate for tabling in the Senate.

Independence

Ethics commissioners must operate independently if they are to have credibility and retain the confidence of both the public and legislators when fulfilling his duties. This independence is essential in order to ensure that ethics commissioners are free to undertake investigations and provide considered advice to parliamentarians as he sees fit, in a fully impartial and transparent manner without fear or favour, and perhaps more importantly, without the appearance of any outside influence or coercion. The independence of ethics commissioners derives from such fundamentals as the legislation creating their office, the appointment process, the security of tenure, financial autonomy and reporting relationships.

In Canada, the Senate Ethics Officer serves as an independent, non-partisan Officer of the Senate. His authority derives both from the *Parliament of Canada Act* and the Senate Code. The interpretation and application of the Code as it relates to individual senators is his sole responsibility. He is appointed by the Governor in Council after consultation with the leader of every recognized party in the Senate, and following approval of the appointment by resolution of the Senate. This method of appointment ensures that the nominee has the broadest support in the Senate, irrespective of party affiliation. The ethics officer is appointed for a renewable term of seven years and may be removed from office only for cause, by the Governor in Council, on address of the Senate.

The Parliament of Canada Act ensures that the Senate Ethics Officer has the control and management of the office independent of the Senate. For example, he is responsible for preparing estimates of the budget required to operate the office which is separate and

distinct from the estimates of the Senate as a whole. The estimates are submitted to the Speaker of the Senate who, after considering them, transmits them to the President of the Treasury Board. They are then laid before the House of Commons with the estimates of the government for the fiscal year. The Senate Ethics Officer is also protected by a statutory immunity.

Accountability

Turning to accountability, I report to the Senate. In practice, my office has multiple lines of accountability, including to the Senate as a whole, the Speaker of the Senate, a standing committee of the Senate, and the general public.

I answer to the Senate for the overall performance of the office.

I am accountable to the Standing Committee on Conflict of Interest for Senators for the efficiency and effectiveness of the activities of my office. This Committee meets annually with me to discuss my report on the activities of the office.

I am accountable to the Senate for the financial operations of the office. The Senate may review my budget as part of the annual review of the estimates of the government. The office's financial statements are also audited every year by an external auditor and the results are tabled in the Senate as part of my annual report. Specific information regarding my hospitality and travel expenses, as well as office contracts over \$10,000, are posted on our website.

I consider myself accountable to the public as well. To this end, I submit an annual report on the office's activities to the Speaker of the Senate for tabling in the Senate. That report, as well as other relevant documents and links, are on a comprehensive and accessible website which received some 17, 000 visits last year.

Independence and accountability are important and complex relationships. They are two faces of the same coin. If one of the two faces is damaged, the whole coin is worthless. In my experience, to be effective and credible an ethics commissioner must be independent; his or her independence, in turn, requires meaningful accountability. A commissioner that has no accountability may run rogue, while a commissioner without independence will lead to a lack of legitimacy. In both cases, this will result in a lack of confidence from both citizens and parliamentarians.

3. A standing legislative ethics committee of distinguished members

Another essential element in the regulation of standards of conduct of parliamentarians is the existence of a permanent committee of the legislature which oversees the work of the commissioner and acts as the link between the legislature and the commissioner.

Taking the Canadian Senate as an example, the Standing Committee on Conflict of Interest for Senators is comprised of five members. Two are elected by secret ballot from each of the Government and Opposition caucuses, and these four elect the fifth by secret ballot.

The Committee has an important role to play with respect to any inquiries and investigations that may be undertaken under the Code. The Committee receives and reviews the investigation reports of the commissioner and recommends to the legislature any appropriate action or sanction. The legislature is then able to act on such recommendations, and exercise its constitutional right to discipline its own members by making final determinations regarding sanctions or penalties when parliamentarians have violated the provisions of the code.

Another function of the Committee is to undertake periodic comprehensive reviews of the Code and recommending changes to the Senate. In large measure then, this Committee is the conscience of the Code.

4. A strong emphasis on advice, prevention and meetings with parliamentarians

The fourth building block of an effective parliamentary ethics regime involves a strong emphasis on advice, prevention and meetings with parliamentarians. One of my primary responsibilities as Senate Ethics Officer is to advise all 105 senators, on a confidential and ongoing basis, concerning their obligations under the Code, and to assist them in remaining in compliance with its requirements.

This advice includes identifying any foreseeable real or apparent conflicts of interest and providing recommendations respecting particular courses of action that may be required to resolve any such conflicts. Some of the areas in which the Senate Ethics Officer provides advice to senators include: activities outside their official parliamentary duties, gifts or other benefits, sponsored travel, declarations of private interests, contracts or business arrangements with the federal government and disclosure requirements.

When ethics commissioners were first created in Canada, the focus, especially in the media, was on inquiries and investigations. The expectation was that this would be an ethics "Lone Ranger", someone who would root out corruption and track down the culprits. But through experience in Canada at least, we have learned that it is, in fact, the advisory function which is essential to the success of an effective parliamentary ethics regime. It is more productive to work without a mask and silver bullets.

My counterparts in other Canadian jurisdictions all attach great importance to encouraging members to seek their advice as often as possible, especially in cases of doubt prior to taking action. There are numerous precedents of which the legislators may be unaware; there can be nuances in code interpretation. Helping parliamentarians understand all this by means of the advisory function is vital.

To quote Robert Clark, a distinguished former ethics commissioner from the province of Alberta, the role of a commissioner is "90% priest and 10% policeman". I wholeheartedly agree and have followed a similar approach in the Senate over the last four years.

The advisory function goes hand in hand with the focus on proactive prevention, as it is far better to recognize a problem before it becomes an emergency. This investment up front, sometimes referred to as "preventative political medicine", can prevent possible corruption and subsequent scandals, and is far preferable than having to clean up any mess afterwards.

In my experience, the most important tool in the prevention kit is the face-to-face annual meeting. There is a real need for ethics commissioners to inform and guide legislators, especially those who are new to public office. Annual personal meetings with each senator are a vital cog in the machinery for regulating standards of conduct in the Senate. Sometimes it takes more than one meeting. I found that with newly appointed senators, it sometimes can take two or three meetings to satisfactorily resolve potentially troublesome issues. Meetings are like early warning systems: they allow you to stay ahead of trends and happenings. The signals they send can be invaluable.

Some may think that completing a disclosure statement once a year is all that is required, but I suggest that this is not good enough. There is a need to establish a rapport and develop a personal relationship so that parliamentarians are comfortable dealing with the ethics commissioner, and will think about consulting with him first before acting. Once that rapport is established, some issues can be worked out through other means. I receive many requests for advice that are of a more informal nature, through telephone calls and e-mail exchanges. But no matter what the channel, assisting them in better understanding their code and how it applies in different circumstances before they act is the end goal.

Each year, my office provides on average between 200 and 300 confidential opinions and advice on matters of varying degrees of complexity, reflective of the level of trust and confidence that has developed between senators and the office. This aspect of my work occupies the largest part of my time and of many of my counterparts in other Canadian

jurisdictions, more so than the investigative function which inevitably draws the greatest media attention.

This year, as in past years, there have been no allegations of impropriety against any one senator. I see a clear correlation between the number of requests for opinions and advice, and the number of inquiries that are undertaken. The more requests there are for opinions and advice, and the more that emphasis is placed on prevention and education, the less there is need for investigations and fewer allegations that senators have breached the provisions of the Code. This may explain why, in most Canadian jurisdictions, inquiries are a rare occurrence. The Canadian system is not perfect, but it has worked well for the last twenty years.

5. A robust disclosure and registration process

The rules regarding the disclosure and registration of private interests are another important building block. Their purpose is transparency. They give other parliamentarians and the public an opportunity to know about financial or other interests that could possibly influence a member's actions in his or her parliamentary duties, including interests held by family members, where appropriate. Of course, parliamentarians and their families should be afforded a reasonable expectation of privacy, and all matters that the code requires be kept confidential should be kept confidential.

The disclosure process for the Canadian Senate is a rigorous one, involving detailed forms to be filled out, the exchange of documents between my office and individual senators, and face-to-face meetings as mentioned earlier. The end result is a Public Disclosure Summary which entitles citizens to know what private interests are held by their legislators, and be assured they are taking the necessary steps to ensure that their personal interests are never placed ahead of the public interest.

Increasingly this information is available online and this should be encouraged. Canadians and Australians know what it is to live in big countries. Citizens in Perth or Vancouver should have as much easy access to this information as people in Canberra or Ottawa where the public registries are available for public inspection.

6. An investigative function with appropriate powers

The inquiry function is the sixth critical component of any effective ethics regime for parliamentarians. The focus is typically on individual breaches or allegations of breaches of the code by members.

In a perfect world, there would be no need for an investigative function. In my view, investigations should be the course of last resort. But when they are required, the manner in which they are conducted is vitally important.

Investigations need to be timely and diligent and cannot be seen as a process in which parliamentarians are investigating one another, a situation referred to as "an institutional conflict of interest" by Professor Dennis Thompson of Harvard in his classic book entitled "Ethics in Congress". Traditional systems of self-regulation are largely discredited and no longer command public confidence. As Professor Thompson observes: "Members judging members raise reasonable doubts about the independence, fairness and accountability of the process".

For example, in order to be effective and to ensure credibility, an ethics commissioner should be free to undertake investigations as he sees fit. He should have the ability to initiate investigations, to have his reports made public, to compel testimony or the production of documents, and to have the authority to notify the law enforcement authorities if there are reasonable grounds to believe that the member, who is the subject of the investigation, has committed an offence under an Act of Parliament such as the Criminal Code.

7. An external review process

The next building block is having an external review process to assist legislators in undertaking periodic reviews of their ethics rules and procedures.

As noted earlier, parliamentarians "own" their codes of conduct. That may be generally acceptable, but not sufficient if ethics standards are to be taken to the next level. If the negative perception of legislators by the general public is to be turned around, there needs to be a regular external review and evaluation process.

A very solid example of this third party involvement is the Committee on Standards in Public Life, also known as the Nolan Committee. It was created in 1995 in the United Kingdom, with the mandate to "examine current concerns about standards of conduct of all holders of public office...and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life".

This is a committee comprised of what one might call "wise people" who could be privy councillors, former jurists, persons of public stature and esteemed academics, all with no agenda other than improvement. These are distinguished citizens with public policy experience who have practical views on what will work and what will not. The committee

looks at the ethical standards and practices of select public bodies. There are formal hearings, open to the public, which hear views from practitioners and experts in the field being examined.

By way of illustration, the system for regulating standards of conduct in the British House of Commons has been scrutinized twice by the Committee. On the last occasion in 2002, the Committee found the fundamental structure of the system to be sound, but made a number of recommendations for strengthening the arrangements further. The House of Commons, on the recommendation of the Committee on Standards and Privileges, accepted virtually all of these recommendations which have since been implemented. The Committee has produced eleven major studies since it was first set up. The public report that flows from each review is very valuable and becomes a touchstone which the Parliamentary Ethics Commissioner or the Committee can use for the advancement and improvement of the ethics regime in place.

In Canada, we do not have an external review process. The only review I am aware of was undertaken by Professor Ian Greene of York University. In a 2005 report, he concluded that there had been a "dramatic drop" in the number of reported conflict of interest cases in provincial and territorial jurisdictions after the introduction of independent ethics commissioners and rules of conduct for parliamentarians which, as noted earlier, originated in Ontario in 1988. These findings reflect well on the performance to date of the various ethics regimes currently in place in Canada, but leave open the question of what changes might be introduced to further strengthen the arrangements in place.

8. Regular exchanges of best practices

The final building block is the exchange of best practices between parliamentarians and ethics administrators around the world. Legislative ethics is a relatively new field. There is research already available through organizations such as the OECD, the World Bank, the UN, the Council of Europe, Transparency International and Global Integrity. An increasing number of academics are involved as well. Let us bring the best of that thinking to the forefront so that those of us involved in the administration of parliamentary ethics regimes can actively engage in the sharing of best practices. This conference, for example, is an excellent forum for that genre of knowledge transfer.

Many countries have now adopted or are in the process of adopting ethics or conflict of interest regimes for parliamentarians or legislators. Although there is no "one-size-fits-all" model, what has emerged are parliamentary ethics laws or codes that combine various elements, including codes, commissioners, committees, commissions and cops and share some or all of the following characteristics:

- Fundamental principles and values whether explicit or implicit that must guide the life of parliamentarians, including integrity, transparency and accountability;
- Rules of conduct regarding such matters as the furthering of private interests, the
 use influence, insider information, gifts and other benefits, sponsored travel, the
 declaration of private interests and the participation in private outside activities;
 and
- A disclosure process which makes available to the public information on the financial and other interests of members, spouses and partners that might reasonably be seen to compromise their personal judgement or integrity.

These developments have occurred over a remarkably short period of time. They have often been in response to political scandals, public pressure and, in developing countries, they have also involved the active encouragement of international organizations. While there are similarities between these ethics regimes and international benchmarking is a common practice, there are differences between countries, reflecting each jurisdiction's political history, culture and values. There are even differences within countries, for example between the two houses of Congress, the House of Lords and the House of Commons, the Australian Senate and the House of Representatives and the Senate and the House of Commons in Canada, all of whom administer their own rules or codes of conduct.

The most important difference between ethics regimes are the institutional mechanisms for administering and enforcing the rules of conduct. There are two core institutional models: the self-regulatory model and the ethics commissioner model.

The self-regulatory core model, or committee model, is found in countries such as the United States and Australia. For example, both Houses of Congress have ethics committees which administer and interpret very detailed ethics rules with a strong emphasis on compliance. Traditionally the norm for legislatures, self-regulation now raises suspicion as it involves legislators advising and investigating legislators, a process that lacks impartiality and public confidence, and is largely discredited, as noted earlier.

The other core model is the ethics commissioner model, referred to previously as the Canadian model of parliamentary ethics, where the commissioner is an independent officer of the legislature. First introduced in Canada, this model has been adopted by the House of Commons in the United Kingdom and other jurisdictions. Other countries and international organizations have also shown interest in the Canadian mode. Having an independent, non-partisan ethics officer who provides advice to members to prevent conflicts of interest before they occur and conducts independent inquiries to determine whether members are in compliance with their obligations, is arguably better than any

other model I know. In my view, the ethics commissioner model brings a higher level of transparency, accountability and public trust than can reasonably be expected from any self-regulatory model or self-monitoring ethics committee. Having said that, there is much to learn and share regarding "best practices" elsewhere that allows us to take fresh knowledge and practical experience back home.

The more opportunities for exchange the better, where those of us who are called upon daily to provide guidance and counsel to legislators can discuss emerging issues and make a valuable contribution to strengthening their particular ethics regimes. This can only enhance the public's trust in those who represent us in legislative chambers.

Closing thoughts

I believe the eight-point plan outlined in my presentation can provide parliamentarians with the right tools to meet the challenge put forward in the title of this conference: "Taking responsibility, fighting complacency".

As creators of their own codes, parliamentarians must "take responsibility" to keep their standards current, and have in place an effective and efficient ethics administrative system. As the owners of these codes, they have to demonstrate leadership by "fighting complacency", by pushing back against those who say everything is working just fine and no more needs to be done. They now have to 'lift their game' as they say on the rugby pitch. As holders of the public's purse and trust, parliamentarians and legislators must take up this challenge. They must individually ensure that that their behaviour is beyond reproach, and collectively ensure that their ethical regimes meet increasing expectations of higher standards of conduct from public officials.

You may have seen the recent film Frost-Nixon, which re-created the interviews done by David Frost with a disgraced President Richard Nixon, three years after he resigned over the Watergate scandal. In the most dynamic exchange, Nixon blurts out: "When the President does it... that means that it is not illegal" Unfortunately, many citizens have come to think that is how elected officials behave, believing that the rules don't apply to them, or that most politicians are crooks.

Deep inside we want our political leaders to succeed, and most of those who seek public office do so for all the right reasons. But once in the system there are temptations, and Lord Acton's truism that "power tends to corrupt, and absolute power corrupts absolutely" comes into play. A robust and dynamic ethics regime within the parliamentary or legislative precinct is a powerful vaccine for that malady.

When trust is lost at the political level, it has a ripple effect through society, a cascading disillusionment in public institutions. There is urgency to this issue. There is no shortage of current examples of misconduct by parliamentarians around the world which have undermined public confidence and which underlines the need for strong ethics regimes.

I referred earlier to the MP expense scandal in Britain where the Speaker of the Commons, who opposed transparency on lawmakers' expenses, paid a heavy price becoming the first Speaker to be forced from his post since 1695.

In Canada, a public inquiry has been hearing about envelopes filled with cash being given to a former prime minister by a foreign arms dealer. The so-called sponsorship scandal is another recent example which involved corrupt public officials awarding contracts to party-friendly ad firms, in return for little or no work, and monies were kicked back to party fundraisers in yet more envelopes stuffed with cash.

Parliamentarians everywhere need to intensify their focus on this issue. They need to enhance upon what has been accomplished over the past fifty years. There is no single easy answer, no universal remedy. But improvements in legislative ethics systems would go a long way towards repairing the trust in public officials, a trust that some would say is bruised and others would say is fractured.

Just tinkering with codes and standards will not be enough to rebuild confidence in the political establishment. It will take real and sustained leadership and exemplary behaviour from those in charge, those who are expected to set the tone, those who we count on to "walk the talk" in terms of establishing and adhering to high standards conduct.

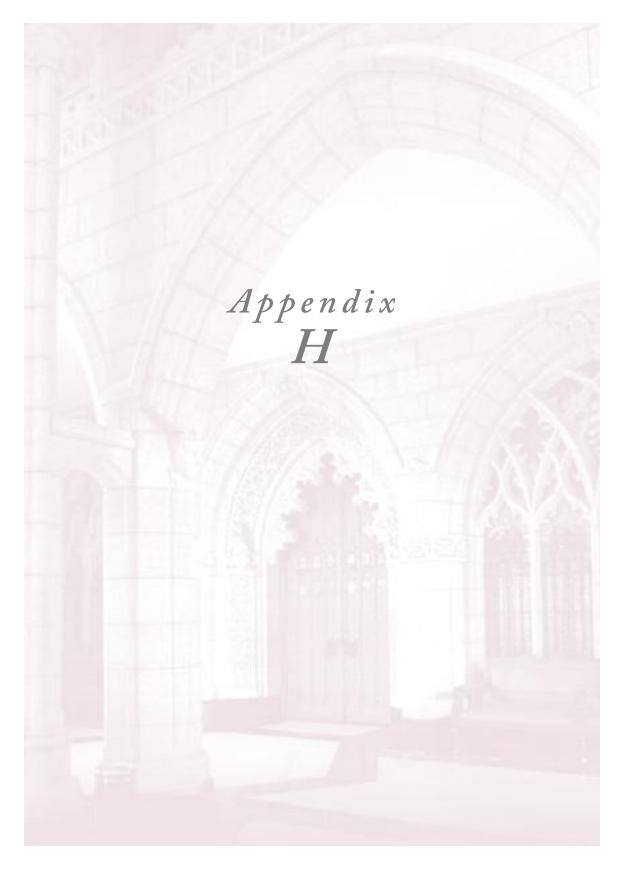
As leaders in our field, it behooves us to indicate that high standards of behaviour are to be the norm and not the exception in our workplace. The same should hold for those with whom we may do business, and in charitable organizations we financially support or in which we volunteer. Most of all, we must demand it from those who serve in public office. Public trust and ethics in government is non-negotiable, it is a pre-requisite of decent democratic government.

A strong ethics code and its diligent enforcement can be a contributing factor to the rebuilding of public trust in our parliamentary institutions. Having said that, Parliamentarians will need to do much more if they are to address the profound concerns that are being expressed all over the world about the decline of discipline, decorum and dignity within legislative bodies at a time when confidence and respect are sorely needed, especially as governments struggle to facilitate a global economic recovery. Nothing

short of radical change in the political culture may be needed to arrest the decline of public trust in government.

These are serious times which call for serious conduct. Ethics lies at the core of a successful society, and ethical leadership is one of our greatest continuing needs.

It was a fight for these parliamentary principles and honorable values which resulted in the exile of my kinsman to these shores nearly two centuries ago. Surely, my convict ancestor would expect no less of us today. Thank you for the opportunity to share these thoughts with you.



APPENDIX H

Financial Information

van Berkom & Ritz

CHARTERED ACCOUNTANTS

100-1750 COURTWOOD CRESCENT OTTAWA, ON K2C 265 T. 613.626.6262 F. 613.721.6504

AUDITORS' REPORT ON SUMMARIZED FINANCIAL STATEMENTS

To Mr. Jean T. Fournier, Senate Ethics Officer:

The accompanying summarized statements of operations, financial position and equity of Canada are derived from the complete financial statements of the Office of the Senate Ethics Officer as at March 31, 2010 and for the year then ended on which we expressed an opinion without reservation in our report dated April 22, 2010. The fair summarization of the complete financial statements is the responsibility of the Office's management. Our responsibility, in accordance with the applicable Assurance Guideline of The Canadian Institute of Chartered Accountants, is to report on the summarized financial statements.

In our opinion, the accompanying financial statements fairly summarize, in all material respects, the related complete financial statements in accordance with the criteria described in the Guideline referred to above.

These summarized financial statements do not contain all the disclosures required by Canadian generally accepted accounting principles. Readers are cautioned that these statements may not be appropriate for their purposes. For more information on the Office's financial position, results of operations and cash flows, reference should be made to the related complete financial statements.

VAN BERKOM & RITZ

Ottawa, Ontario April 22, 2010 Chartered Accountants
Licensed Public Accountants

Office of the Senate Ethics Officer Summarized Financial Statements

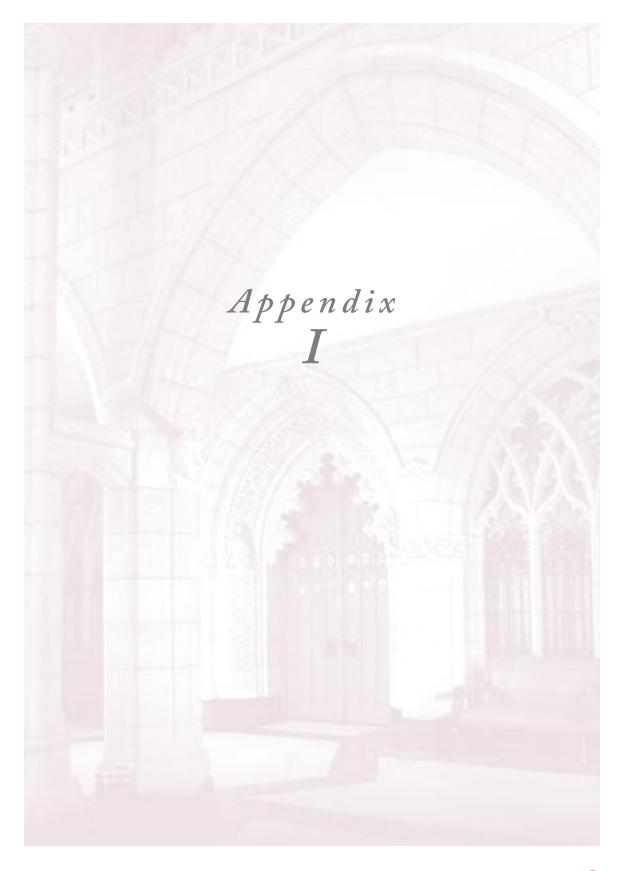
As at March 31 and for the year then ended (in dollars)

SUMMARIZED STATEMENT OF OPERATIONS

	2010	2009
OPERATING EXPENSES		
Salaries and employee benefits	737,277	744,348
Accommodation	73,800	73,046
Professional and special services	37,040	45,931
Amortization	21,261	27,067
Printing and communication	21,496	36,754
Utilities, materials and supplies	6,477	6,718
Travel	15,667	9,253
TOTAL COST OF OPERATIONS	913,018	943,117

SUMMARIZED STATEMENT OF FINANCIAL POSITION

	2010	2009
ASSETS		
Financial assets		
Accounts receivable and advances	2,763	17,761
Total financial assets	2,763	17,761
Non-financial assets		ŕ
Tangible capital assets	12,680	33,941
Total non-financial assets	12,680	33,941
TOTAL	15,443	51,702
LIABILITIES		
Accounts payable and accrued liabilities	73,504	91,715
Vacation pay and compensatory leave	25,721	29,544
Employee severance benefits	155,509	147,357
	254,734	268,616
EQUITY OF CANADA	(239,291)	(216,914)
TOTAL	15,443	51,702
SUMMARIZED STATEMENT OF EQUITY OF CANADA		
	2010	2009
EQUITY OF CANADA, BEGINNING OF YEAR	(216,914)	(143,054)
Total cost of operations	(913,018)	(943,117)
Services provided without charge from other		
government departments	113,271	109,775
Current year appropriations used	777,370	759,482
EQUITY OF CANADA, END OF YEAR	(239,291)	(216,914)



APPENDIX I

THE CANADIAN MODEL OF PARLIAMENTARY ETHICS: 1988 – 2010

The Canadian model of parliamentary and legislative ethics consists of laws, codes, principles, rules and procedures which govern the conduct of parliamentarians and legislators in the Senate, in the House of Commons and in provincial and territorial legislatures. These are administered, interpreted and applied by independent ethics commissioners and legislators. Additional information regarding the Canadian model is available on the website of the Office of the Senate Ethics Officer in the section on Publications.

Origins of the Canadian Model

"Canada's first independent ethics commissioner was appointed in Ontario twenty years ago. Following a series of political scandals in 1988, the government of the day asked the Honourable John Black Aird, a former Lieutenant Governor, to recommend new rules of conduct for members of the Legislature and new mechanisms for implementing and enforcing these rules. His report led to the establishment under statute of an independent commissioner with responsibility for both ministers and members of the Ontario legislature, and to the adoption of rules of conduct.

The most important element of the new system was the independence of the commissioner. As the report made clear, "... the keystone to a new system is the appointment of one person as a Commissioner of Compliance to perform these and other functions... Obviously, the individual filling the role must be seen by the public as independent and authoritative. I therefore believe that he or she should be chosen by the Legislature..." The Aird recommendations may be rightly described as the source of the Canadian parliamentary ethics model and the independence of ethics commissioners.

While the title of the position varies in the different jurisdictions, an integrity commissioner, a conflict of interest commissioner, an ethics officer, or a jurisconsult is to be found today in every province and territory, as well as federally in both Houses of Parliament. Their status, duties and powers are broadly similar."

¹ Jean T. Fournier, "Emergence of a Distinct Canadian Model of Parliamentary Ethics", Journal of Parliamentary and Political Law, Vol. 2, No 3, May 2009.

DISTINCTIVE FEATURES OF THE CANADIAN MODEL OF PARLIAMENTARY ETHICS

	Date of Establishment of Office	Independent Commissioner	Advisory Role by Commissioner	Public disclosure of interests of spouse/partner	Annual meeting with Commissioner	Commissioner's Inquiry Reports are made public	Annual Report is tabled by Speaker	Public Registry
Ontario	1998	Yes	Yes	Yes	Statutorily required	Yes	Yes	Yes
British Columbia	1990	Yes	Yes	Yes	Statutorily required	Yes	Yes	Yes
Nova Scotia	1991	Yes	Yes	Yes	Not required	N/A	Yes	Yes
Alberta	1992	Yes	Yes	Yes	Statutorily required	Yes	Yes	Yes
Newfoundland and Labrador	1993	Yes	Yes	Yes	At the discretion of the Commissioner	Yes	Yes	Yes
Saskatchewan	1994	Yes	Yes	Yes	Consultation required	Yes	Yes	Yes
Quebec	1996	Yes	Yes	N/A	Not required	N/A	N/A	N/A
N.W.T.	1998	Yes	Yes	Yes	Statutorily required	Yes	Yes	Yes
P.E.I.	1999	Yes	Yes	Yes	Statutorily required	Yes	Yes	Yes
New Brunswick	2000	Yes	Yes	Yes	Statutorily required	Yes	Yes	Yes
Nunavut	2000	Yes	Yes	Yes	Statutorily required	Yes	Yes	Yes
Manitoba	2002	Yes	Yes	Yes	Statutorily required	N/A	Yes	Yes
Yukon	2002	Yes	Yes	Yes	Not required	Yes	Yes	Yes
House of Commons	2004	Yes	Yes	Yes	At the discretion of the Commissioner	Yes	Yes	Yes
Senate	2005	Yes	Yes	No	At the discretion of the Senate Ethics Officer	°N	Yes	Yes

Source: Canadian Conflict of Interest Network (CC0IN) 2010-04-27