



August 17, 2011

Mr. Charlie Angus  
Member of Parliament for Timmins James Bay  
Official Opposition Critic - Access to information, Privacy and Ethics  
151 Sparks Street, Room 900  
House of Commons  
Ottawa, ON K1A 0A6

Dear Mr. Angus:

Thank you for your letter of July 4, 2011. I am always pleased to receive inquiries about the Senate Ethics Office, as it allows me to elaborate on the existing rules of conduct and practices that apply to Senators.

I also find that it provides opportunities to explain our procedures and to correct misinformation and mistakes of fact that may be contained in the correspondence, which is unfortunately the case with your letter of July 4<sup>th</sup>. There are number of factual errors in your document, each of which I will correct in turn.

Your letter claims that Senators who declare a private interest under the *Conflict of Interest Code for Senators* (the Code) are allowed "to review legislation or participate in debates where their financial interests may be involved".

You are misinformed. It is very clear in the Code that Senators are not allowed to participate in debate, nor permitted to vote on a matter in which they have a private interest that might be affected by that matter.

This prohibition is dealt with in subsections 13(1), (2) and (3) of the Senate Code, which reads as follows:

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.** (*Emphasis added*)

(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... (*Emphasis added*)

(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. (*Emphasis added*)

Section 14 of the Senate Code provides:

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. (*Emphasis added*)

Of considerable concern is your statement "*the latest charges against Senator Harb are particularly troubling...*" Again you are misinformed. While a police investigation is currently underway, to the best of our knowledge at the Senate Ethics Office at the time of this writing, there have not been any actual charges laid against the Senator by any law enforcement agency. As any first year law student will tell you, there is a significant difference in Canadian law between *being investigated* by the police and *being charged* with a criminal offense. Erroneous statements of the nature published in your letter can be hurtful to families and friends, especially when they are given widespread distribution as was your letter to me.

The reference in your letter to "*the secrecy surrounding Senate declarations...*" is also troubling and sadly incorrect. It is a fact that the information concerning the financial and other interests of Senators it is available in the Public Registry located in our office. For interested Canadians living outside the National Capital Region, we readily fax such information upon request. Moreover, the NDP Research Office in Ottawa recently requested and was supplied with copies of Senators' public disclosure statements, thus rendering your suggestions of secrecy *outré* to say the least.

It is true this information is not accessible online, a deficiency highlighted in my 2010-2011 Annual Report. In this submission, I put forward a number of major recommendations to further improve the administration of the Code. I draw your attention, in particular, to recommendation 4 on page 5 which reads as follows:



4. Canadians attach a high degree of importance to matters of governance, ethics and transparency involving their parliamentary representatives and believe such information should be readily accessible. In order to bring Senate practices into the 21<sup>st</sup> century, the information in the Public Registry should be available online as in the case of other jurisdictions. Canadians living in Vancouver, Inuvik or Charlottetown should have easy access to this information as those living in the National Capital Region.

I am confident that the public declarations of Senators will in time be available online. Precisely when is a matter for the Senate to decide. As you know, declarations from members of the House of Commons only became available online in March 2009.

Your final claim that *"...since I first wrote to you in December 2007... no steps have been taken by the Senate to fix its ethics rules"* again reflects a disappointing lack of knowledge of the facts on your part. Your statement ignores the fact that important amendments were made to the Senate Code in 2008.

For your edification on these amendments, I refer you to pages 1 and 2, and to Appendix 1, of my 2007-2008 Annual Report. You also ignore the substantial amendments proposed in my last Annual Report of 2010-2011. I am confident that these amendments will be acted on when the Standing Committee on Conflict of Interest for Senators returns in the fall.

The Senate Code, just as the House Code, is a work in progress. The House Code was amended in 2007, 2008, and 2009 with improvements added on each occasion. As you are well aware, Mary Dawson, the Conflict of Interest and Ethics Commissioner for the House of Commons, submitted a package of amendments in 2010 which have yet to be considered by the Standing Committee on Procedures and House Affairs.

It is evident that each Code needs to be reviewed, improved and amended on a regular basis. Codes mature and develop through their application; environments evolve and adjustments are required as times and public expectations change. As I noted in a speech to the Australian Public Sector Anti-Corruption (APSAC) Conference in Brisbane in July of 2009: *"As holders of the public's purse and trust, parliamentarians and legislators must take up this challenge. They must individually ensure that their behaviour is beyond reproach, and collectively ensure that their ethical regimes meet increasing expectations of higher standards of conduct from public officials."* Citizens expect a rising level of conduct from public officials, thus there will always be more to do.

Based on my six years of experience interacting with those involved in ethics regimes outside of Canada, it is clear our country plays a leadership role in the field of parliamentary ethics and the Canadian model of parliamentary ethics serves as an example to other countries. All legislatures in our country now have independent ethics

commissioners and rules of conduct that are broadly similar. Canadian parliamentarians should work together, share best practices and demonstrate initiative in taking their codes and rules of conduct to the next level.

In closing, allow me to quote from my most recent annual report:

“While the Senate should be very proud of what the Ethics Office has accomplished over the first phase of its development, it would be regrettable to maintain the status quo. It is not advisable to assume that everything that needed to be done in terms of constructing an ethical framework for senators has been accomplished. Perhaps the strongest lesson I have learned in my interactions with colleagues, both at home and internationally, is that parliamentary codes or rules of conduct cannot remain static in a dynamic environment. They are living documents, works in progress. Over time, changes become necessary as the public demands higher standards of ethics, transparency and accountability and operational experience reveals where improvements can be implemented. Choices have to be made, and striking the right balance between the public’s right to know and a parliamentarian’s privacy is a delicate matter and never easy. To that end, it is vital that work continue on revisions and improvements to the *Conflict of Interest Code for Senators*, which exists for the daily guidance of senators.”

I trust you will find the facts contained in this letter informative. There is an inherent danger in passing judgment when one does not have all the facts and pertinent information. Ill-informed opinions and public misstatements of fact dealing with complex ethical issues are not helpful in advancing understanding of the elements of our parliamentary ethics systems. Furthermore, there is no benefit to be gained, by either parliamentarians or the public, when there is overt politicization of parliamentary ethics issues, which regrettably seems to be occurring all too often these days in Canada and elsewhere. If we are to rebuild confidence in the political establishment and restore trust in government, we will need higher standards and exemplary behaviour from parliamentarians, such as yourself, who are expected to set the tone and “walk the talk”.

For your interest and files, I am enclosing herewith: a copy of the revised *Conflict of Interest Code for Senators*, adopted by the Senate on May 29, 2008; a copy of my letter to you of June 26, 2008, on the conflict of interest rules applicable to Senators and to your colleagues in the House of Commons; and a copy of my sixth and last Annual Report covering the period from April 1, 2010 to March 31, 2011.

In reviewing the cover fax page of your correspondence, it seemed to indicate the communication with my office was to be confidential in nature. However, given that the main substance of your document has been posted on your website and that of your



party leader, I will be posting this reply on the website of the Office of the Senate Ethics Officer, as well as providing it, along with your letter to the Honourable Terry Stratton and the Honourable Serge Joyal, respectively, Chair and Deputy Chair of the Standing Committee on Conflict of Interest for Senators, for their information.

As I will be retiring this September after 45 years of public service with the Government of Canada, including six and a half years as Senate Ethics Officer, I will also bring it to the attention of my successor when that individual assumes office.

Sincerely,



Jean F. Fournier

Encl.