



Office of the Ethics Commissioner
Bureau du commissaire à l'éthique

THE 2005-2006

ANNUAL REPORT OF THE ETHICS COMMISSIONER

on activities in relation to
PUBLIC OFFICE HOLDERS
FOR THE FISCAL YEAR ENDING MARCH 31, 2006



June 2006

Bernard J. Shapiro

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June 29, 2006

The Honourable Peter Milliken
Speaker of the House of Commons
The House of Commons
Ottawa, Ontario K1A 0A6

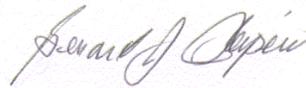
The Honourable Noël Kinsella
Speaker of the Senate
The Senate
Ottawa, Ontario K1A 0A4

Dear Sirs,

Pursuant to paragraph 72.13 (1)(b) of the *Parliament of Canada Act*, I am pleased to submit to you the report of the Ethics Commissioner on activities in relation to Public Office Holders for the fiscal year ending March 31, 2006.

In this second annual report on the activities of my Office, I have included comments on the major activities during the past year. After devoting a good part of the previous year in creating the new Office as a parliamentary entity, the 2005-2006 fiscal year can be characterized as one of consolidation and continuation. It has led to improvement in our approaches to issues and operations to ensure that we are properly accountable to Parliament and to Canadians in sustaining and enhancing the ethics regime in the federal government.

Yours sincerely,



Bernard Shapiro
Ethics Commissioner

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PREFACE

This Report fulfils the statutory requirement (paragraph 72.13 (1)(b) of the *Parliament of Canada Act*) that, within three months after the end of each fiscal year, the Ethics Commissioner shall submit a report, relating to his activities concerning public office holders. It is to be forwarded to the Speakers of both the House of Commons and the Senate, who will each table the report in the House over which they preside. It covers the period from April 1, 2005 to March 31, 2006.

* * *

INTRODUCTION

This is the second annual report of the Ethics Commissioner in relation to the administration of the *Conflict of Interest and Post-Employment Code for Public Office Holders* (referred to in this report as “the Public Office Holders’ Code”).

The ultimate objective of the Office of the Ethics Commissioner is to sustain and, where possible, enhance public confidence in our system of government at the federal level and in our parliamentary institutions. Canadians expect that our public office holders will make decisions in the public interest, without any consideration of personal gain. As such, my Office helps to ensure the accountability of public office holders.

The Government of Canada’s ethical framework has evolved over the past three decades. It continues to evolve, as indicated by the current government’s proposals contained in Bill C-2, *the Federal Accountability Act*. Thus, while my Office can only directly address those issues that are set out in the *Conflict of Interest and Post-Employment Code for Public Office Holders* and the *Conflict of Interest Code for Members of the House of Commons* for which I am responsible, I am pleased to note that the role and activities of my Office have served as a focal point for the larger public debate on how best to meet the growing public expectations for accountability and higher ethical standards in the federal government.

REVIEW OF THE PAST YEAR – MAJOR ACTIVITIES

A. Operations

Administering the Conflict of Interest and Post-Employment Code for Public Office Holders

Public Office Holders Appointed Prior to February 6, 2006

There were no unexpected changes in the workload of the Office related to administration of the Public Office Holders’ Code prior to the general election of January 23, 2006.

Following the dissolution of the 38th Parliament on November 28, 2005, the Office received many calls from, or on behalf of, Governor-in-Council appointees seeking guidance on the extent to which these appointees could participate in political activities associated with the election. While the Office had been working with the Privy Council Office to develop guidelines on the types of political activities that Governor-in-Council appointees may participate in, these guidelines were not yet final. However, our Office did prepare a set of “Questions and Answers” related to permissible and non-permissible political activities for Governor-in-Council appointees and placed them on the Office’s website, and remains available.

On February 6, 2006, Prime Minister Martin and his ministers, as well as their ministerial exempt staff, ceased to hold public office, except for Minister David Emerson. In accordance with the Public Office Holders' Code, our Office sent a letter to each departing minister of the Crown, minister of state and parliamentary secretary, as well as those ministerial exempt staff to whom the post-employment provisions of the Public Office Holders' Code applied, to inform them of their post-employment obligations. In addition, we informed Ministers of the Crown, Ministers of State, Parliamentary Secretaries and ministerial exempt staff for whom blind trusts had been established that those could now be dismantled and they could resume control of the assets.

Public Office Holders Appointed on and after February 6, 2006

On February 6, 2006, Prime Minister Harper and 26 ministers of the Crown were sworn in. On February 7, the Prime Minister appointed 26 parliamentary secretaries. A change in government always significantly increases the workload of the Office. Such a transition normally results in the appointment of 400 to 500 new public office holders.

After the appointment of these individuals, the Office sent a letter to each informing them of their obligations under the Public Office Holders' Code along with a confidential report for completion and submission to our Office. Our Office also sent a Certification Document to each new public office holder for signature and return to our Office. By signing and returning the Certification Document, each public office holder acknowledges that, as a condition of holding office, he or she will observe the Public Office Holders' Code. Once the public office holder returns the confidential report, the case is assigned to an advisor who will deal directly with the public office holder in completing their compliance arrangements under the Code.

The 120-day period within which these individuals must finalize their compliance arrangements in accordance with the Conflict of Interest and Post-Employment Code for Public Office Holders was still in effect at the end of the 2005-2006 year. Thus, the bulk of the workload for our Office associated with the transition to the new government is to take place in 2006-2007.

Amendments to the Conflict of Interest and Post-Employment Code for Public Office Holders

On February 6, 2006, Prime Minister Harper issued a new Conflict of Interest and Post-Employment Code for Public Office Holders with some new provisions.¹ Four changes are particularly worthy of note.

1. A twelfth Principle was added to the Code.

“Respect for Administration of the Code”

“(12) Public office holders shall respect the administration of this Code, and shall exercise appropriate restraint when commenting upon matters under review by the Ethics Commissioner.”

¹ The new Code, including all changes referred to in this section of this report is online on the Office's website at: http://www.parl.gc.ca/oec/en/public_office_holders/conflict_of_interest/docs/code_e.pdf

This responded to a recommendation that I made in the Issues and Challenges 2005 paper that I released in October 2005.²

2. A new subsection was added to section 5 of the Code dealing with the “Duties of the Ethics Commissioner.” It now reads:

“(4) In fulfilling the functions under 72.07(a) and (b) of the Parliament of Canada Act, and subject to 72.08 of that Act, the Ethics Commissioner shall consider information from the public that is brought to his attention by a member of Parliament suggesting that a public office holder has not complied with this Code, and may take such action as the Ethics Commissioner deems appropriate in the circumstances.”

This addition to the duties of the Ethics Commissioner provides a way for individual members of the public to request, through a parliamentarian, investigations into the conduct of a public office holder. My Office sought and obtained a legal opinion regarding the interpretation of this section. That opinion provided that the section would be ultra vires to the extent that it attempts to expand upon the provisions of the Parliament of Canada Act, which only permit a Member or Senator to request an investigation in relation to the non-observance of the ethics principles, rules or obligations established by the Prime Minister.

In practice, how the provisions of the Parliament of Canada Act can be met was demonstrated in a recent case under the Conflict of Interest Code for Members of the House of Commons. In that situation, a Member of the House of Commons submitted his request for an inquiry to the Office including his claims of the reasonable grounds on which his request was being made. He included the information brought to his attention by a member of the public as part of his submission.

3. The authority of the Ethics Commissioner in relation to the approval of compliance arrangements was expanded to include the approval of all Public Office Holders.

This ends the former practice in which the Prime Minister approved the compliance arrangements for his or her ministers, ministers of state and parliamentary secretaries.

4. The post-employment provisions of the Code were amended to establish a five-year ban on lobbying activities by former Ministers, senior public servants and those ministerial exempt staff who are designated as being subject to the post-employment obligations.

Because of the significance of the introduction of this new post-employment obligation, the Office sought and obtained a legal opinion as to whom this new provision would apply. The advice to the Office was that only individuals who sign a new Certification Document associated with the February 6, 2006 version of the Public Office Holders’ Code, or who acknowledge by acceptance in their Letter of Offer that they will be bound by the provisions of the same Code are bound by the new provisions contained in the new Code.

² This report is on the Office’s website at:
http://www.parl.gc.ca/oec/en/media/annual_reports/reports/2005/Challenges2005web_EN.pdf

Because the new provisions are not retroactive, they do not apply to any former ministers, ministers of state, parliamentary secretaries or ministerial exempt staff who were subject to the post-employment provisions of the Public Office Holders' Code that existed prior to February 6, 2006. They also do not apply to the full-time Governor-in-Council appointees who were appointed prior to that same date. However, if any of these full-time Governor-in-Council appointees are re-appointed or change responsibilities subsequent to February 6, 2006, they will be provided with a new Certification Document, and upon signing it, will be subject to the new post-employment provisions.

Ongoing Operations

During 2005-2006, the Office administered arrangements under the Public Office Holders' Code for a client base of approximately 1,350 full-time public office holders and 1,940 part-time Governor-in-Council appointees at any given time.

During this fiscal year, the Office completed 1,196 cases, comprised of 228 cases of initial compliance, and 968 cases of adjustment of arrangements, including those that had arisen from the required annual review. While down from the 2004-2005 volume of 1,437 completed cases, this reflected the fact that the backlog that had arisen prior to 2004 was substantially cleared and activity was now therefore limited to current cases.

Blind Trusts and Blind Management Agreements

Sub-section 7(8) of the Public Office Holders' Code provides that, on the recommendation of the Ethics Commissioner, reimbursements for costs to comply with the Code's compliance measures may be permitted. The reimbursement guidelines for blind trusts and blind management agreements are attached as Appendix III. We revised the rates at which we reimburse the trustees of public office holders for their services based on a survey of Canadian legal and accounting firms that provide those services and this revision will now take place annually. While the Office determines and recommends legitimate, reasonable and reimbursable costs, their actual payment is made by the respective host or former organization/department of the public office holder.

During the 2005-2006 fiscal year, the Office processed approximately 150 claims and recommended a total of more than \$580,000 in reimbursement costs. The majority of these costs (82%) were for the administration and dismantlement of a blind trust, 12% were for the administration and dismantlement of a blind management agreement, 5% were for the establishment of a blind trust and 1% were for the establishment of a blind management agreement.

Examinations pursuant to the Parliament of Canada Act

During this reporting period, no formal investigations were undertaken, although requests were made of the Office, and assessed as follows:

1. A Member of Parliament requested that I investigate the alleged political activities of a Governor-in-Council appointee.

I replied that the *Parliament of Canada Act* provides for examinations of ministers, ministers of state and parliamentary secretaries, but not Governor-in-Council appointees. I also informed the Member that according to the *Act*, the ethical principles, rules and obligations of Governor-in-Council appointees are established by the Prime Minister, not the Ethics Commissioner.

2. During the election campaign after the 38th Parliament was dissolved on November 28, 2005, a Member of Parliament requested that I investigate the conduct of certain minister(s) and their staff. The request was made under both the Members' Code and the Public Office Holders' Code.

I replied that the Members' Code could not be the basis for a request in this case, as the alleged misconduct was related to ministerial duties and not to the duties of a Member of the House of Commons. On the question of whether to conduct an examination under the Code for Public Office Holders, I responded that:

- the request did not provide reasonable grounds to believe the alleged breach by the minister(s);
 - the matter was under investigation by the RCMP in any event, and
 - the Member making the request did not have the capacity to do so during the federal election campaign, i.e., between the date the writs were dropped and the dates when the elected Members' names were published in the *Canada Gazette*.
3. After the 38th Parliament was dissolved on November 28, 2005 and before the election day, another Member of Parliament requested that the Ethics Commissioner investigate the conduct of a Minister.

I responded that the Member did not have the capacity to make a request during a general election campaign and advised the Member to make the request following the election, in the event that Member was re-elected.

4. Two Members of Parliament requested that I investigate the alleged breach of the new post-employment compliance measures contained in the new Public Office Holders' Code by people whom they believed to have been former ministerial exempt staff members.

I replied that the individuals in question resigned within thirty days of their employers' appointments to Cabinet, and therefore prior to signing the document certifying their compliance to the Public Office Holders' Code. For this reason, the Code and in particular, the

new provisions related to post-employment activities, did not apply to the individuals mentioned in the request.

5. A member of the public requested that the Ethics Commissioner investigate the conduct of two former Ministers.

I replied that the *Parliament of Canada Act* does not allow for such requests by members of the public and that the *Act* does not authorize the Commissioner to conduct examinations of public office holders on his own initiative.

Recusals

Public office holders must arrange their private interests in a manner that will prevent a conflict of interest from arising to comply with the Public Office Holders' Code. This can include situations where a public office holder must recuse himself or herself, which is to say refraining from exercising any official power or performing any official duty or function with respect to matters that have a specific and direct link to their private interests. Our Office provides advice and assistance in the development of a recusal process tailored to specific circumstances. The details of each recusal process are subject to public disclosure.

Former Prime Minister Martin

My first annual report described the recusal process for Prime Minister Martin related to any matters under consideration by Cabinet or Cabinet Committees, as well as issues that may arise in his briefings or meetings, which might have a specific and direct link to the business interests of Canada Steamship Lines. Three broad areas of recusal were identified, namely marine transportation policy, shipbuilding and fees for the St. Lawrence Seaway.

Of the 68 cases reviewed by the Office between April 1, 2005 and February 6, 2006, Prime Minister Martin was required to recuse in 15 instances, which can be summarized as follows:

Marine Transportation Policy (7):

- Discussions related to marine transportation surveillance and enforcement activities
- Discussions related to the Prince Rupert Port Authority
- Discussions related to the enhancement of regulations in marine safety
- Propositions from the Minister of Transport with respect to Canada Marine Act amendments
- Discussions related to regulations in the marine transportation area
- Discussions related to shipbuilding and national marine policy framework
- Responses to 3 letters related to marine issues

Shipbuilding (2):

- A response to a letter related to the shipbuilding industry
- Negotiations related to shipbuilding

Fees for the St. Lawrence Seaway (1):

- Proposition from the Minister of Transport with respect to a Pilotage Authority

Other issues (5):

- Discussions related to possible strike at CN
- A response to a letter related to Canada Ports Corp.
- Discussions related to the federal fleet of hopper cars
- Discussions related to the offshore coal management
- Information related to Stelco Inc.

Former Minister Stronach

As Minister of Human Resources and Skills Development, Ms. Belinda Stronach was a public office holder as defined in the Public Office Holders' Code. Upon her appointment to Cabinet, Ms. Stronach indicated that she was a potential beneficiary of the Stronach Trust, which holds an interest in Magna International Inc. (Magna), its affiliated corporations and subsidiaries. A specific recusal process was established to enable her to comply with the Code.

The recusal process related to any matters under consideration by Cabinet or Cabinet Committees and any of her departmental files requiring ministerial approval, and that potentially had a specific and direct link to Magna, its affiliates and subsidiaries. In addition, four broad areas of recusal were also identified:

- the automotive industry (including issues related to emerging technologies and research with applications of specific and direct impact on the automotive industry);
- the steel industry (only as it relates to the automotive sector, and Dofasco Steel specifically);
- international double taxation avoidance treaties; and
- international trade issues as they specifically and directly relate to the automotive industry.

Recusal was not necessary where the matters under consideration were of general application or affect the business interests of Magna and MI Developments Inc. only as members of a broad class of businesses.

During the reporting period, Minister Stronach recused herself in relation to the following issues:

Auto and Steel Industry Issues (10):

- The possibility of entering into free trade discussions with South Korea, as it related to the tariffs in the Canadian auto assembly sector
- Regional competitiveness related to the automotive and steel industries
- Canada's Climate Change Plan as it relates to the steel industry
- Government support for metals research in southern Ontario
- The tracking of steel imports by the Canadian government
- The CRTC's decision on Satellite Radio, which predominantly impacted the automotive sector

- Safety regulations directly affecting the automotive industry
- Government support to DaimlerChrysler
- Discussions and decisions on strategies for the automotive sector
- Update on the steel sector

Other Issues (1):

- The Pickering Airport site

Other Public Office-Holders requiring recusal arrangements

Recusal arrangements were put in place for five other public office holders during this reporting period. Details of these recusal arrangements are included in public declarations that are available for review on our Public Registry (www.parl.gc.ca/oec-bce/site/pages/ethics-e.htm).

- Michel Arpin (Governor-in-Council Appointee) – applications to the CRTC by Astral Media and its subsidiaries and affiliates.
- Mark Carey (Governor-in-Council Appointee) – the selection of underwriting firms with regard to the sale of the federal government’s interest in Petro-Canada.
- Hon. David Emerson – discussions and decision-making that could have a direct and significant impact upon Canfor Corporation or its subsidiaries and affiliates but not general discussions or decision-making related to entire industry sectors in which the corporation may operate.
- Anne Meekitjuk Hanson (Governor-in-Council Appointee) – discussions and decision-making involving dealings between the Governments of Canada or Nunavut and R.L. Hanson Construction Ltd.
- Frank McKenna (Governor-in-Council Appointee) – discussions and decision-making involving dealings between the Government of Canada and the Bank of Montreal or Major Drilling, including their respective subsidiaries and affiliates.

* * *

Communications

Our most important communications achievement during 2005-2006 was the launch of our website in September 2005 to coincide with the return of Parliament for its fall session. This took place in cooperation with the House of Commons Information Technology Services. The public's entry page to the Parliament of Canada website now includes a link to our site.

The website structure mirrors our Office's responsibilities as defined in the *Parliament of Canada Act*. It has separate sections on Members of Parliament and Public Office Holders. Each section has the relevant documents (e.g. the two Conflict of Interest Codes, bulletins and charts to understand the Codes) and a Frequently Asked Questions section. As well, our Media and Publications section provides immediate access to our reports on their release. We have also improved our Public Registry for Public Office Holders to make it more user-friendly, including through the introduction of easier search tools.

In addition, we devoted the necessary resources to deal with the growing amount of written and e-mail correspondence that we receive from Canadians. Although some of these messages deal with subjects related to our inquiries, most do not. Many Canadians believe my role to be that of an ombudsman who can investigate and address grievances related to the actions and decisions of all levels of government and by elected officials and public servants alike. Clearly, this represents an ongoing challenge and a reminder of the importance that Canadians place on accountability by all their governments.

Parliamentary Relations

Our Office deals with the Standing Committee on Access to Information, Privacy and Ethics on issues relating to the Public Office Holders' Code. That Committee is also responsible for parliamentary scrutiny of our Office's general administrative issues such as budget and human resources.

In the spring and fall of 2005, I appeared on several occasions before the Standing Committee on Access to Information, Privacy and Ethics. The agenda items included the proposed Estimates for my Office for 2005-2006; the legislative mandate and some interpretation issues related to inquiries on public office holders pursuant to section 72.08 of the *Parliament of Canada Act*; my first annual report on the Office's activities in relation to public office holders; and my *Issues and Challenges 2005* paper.

At the Committee's initiation, staff from our Office worked with the Office of the Law Clerk and Parliamentary Counsel on possible changes to the legislative framework with respect to the authorities on the conduct of inquiries. The Office submitted a proposed process to the Committee on the conduct of inquiries in relation to public office holders pursuant to section 72.08 of the *Parliament of Canada Act* for that Committee's review and feedback.

B. Enhancing the Support Infrastructure: Internal Activities

Our Expenditures

In 2005-2006, the Office used the entire \$4.675 million in approved parliamentary appropriations (see Appendix I), of which, 64.5% funded salaries and the rest funded operational costs. This is an increase of \$1.6 million from 2004-2005, largely due to increased costs for employee salary and benefits (\$1.1 million) and for administrative arrangements with the House of Commons and the Library of Parliament (\$500,000).

Our Office's expenditures were largely allocated to operations (72%) where close to \$220,000 was for investigations and over \$1.3 million for compliance measures. Policy (at 13%) and Communications and Parliamentary Relations (at 15%) represented smaller proportions of expenditures. The Office charges all salaries, professional services, travel and other costs associated with any project or operational activity directly to the specific business activity. We treat corporate services costs as overhead and redistribute them to the appropriate business activities.

Our Office began to post financial transactions on our website last summer. This practice has the objective of ensuring transparency and accountability in the management of public funds. The information is updated monthly.

Our Staff

The Office employed 34 full-time equivalents (FTEs) in 2005-2006, just under the amount of 35 FTEs envisioned in our approved budget. This was an increase of 4 FTEs from 2004-2005. The workforce is diversified and representative of employment equity measures. The organizational chart for our Office is attached as Appendix II.

The Office continues to work toward the development and implementation of internal human resources policies and practices to improve the effectiveness and efficiency of the Office and the quality of the workplace. As part of this, a new employer-employee committee was established to make recommendations to the Ethics Commissioner on policies, practices and procedures to inform and guide employees and managers in human resources management. One of the results of this initiative was the promulgation of a new Training and Professional Development policy for the Office.

The Office also introduced a "360 degree assessment tool" that provides an opportunity for our executives to obtain confidential feedback on their individual effectiveness as a leader on a biennial basis. This initiative also supports our leadership development efforts, performance management and succession planning. Three of the six executives in the Office participated in the exercise during the past year. The remaining three executives will be subject to an assessment in the coming year.

Our Office is working with the Senate, House of Commons and Library of Parliament to provide opportunities and services to employees of the Office in the areas such as training, professional development, occupational health, safety and environment.

Our Operational Review

In 2005-2006, the Office began the development of an internal audit function with the objective of strengthening its good governance practices on accountability, risk management and resource stewardship.

The Office, with the assistance of the Centre for Public Management, initiated a three-month operational review in the fall of 2005 to assess the operating practices that we were using to support the administration of the conflict of interest codes for Members of the House of Commons and public office holders. The operational review assessed those practices in terms of their efficiency, appropriateness in relation to the Office's mandate, consistency of application, and quality management approaches. It was also intended to identify opportunities for improvement and to recommend steps that could be taken over the short- and medium-terms within current resources.

The consultants undertook several activities, including an extensive literature review, an internal documentation review, interviews with management and staff, and a comparative study of ethics regimes in the United Kingdom, Australia, British Columbia, Ontario and Alberta.

The general assessment of the review confirmed that “the OEC generally met our expectations in terms of operating practices”, but that there are “several opportunities for improvement”. In response, the management team of the Office identified six areas for action. A Transition Task Force consisting of management and employee representatives was created to provide leadership and to ensure prompt action on the consultants' recommendations.

During 2006-2007, project teams from the Office will work on five specific areas: structural/organizational issues, in particular the merger of the Executive Affairs and the Legislative Affairs Branches; information technology tools such as digitalization of records; delegation of authority to “flatten” the organizational structure; file assignment processes with an advisor dedicated to a client's file throughout that person's tenure; and procedures for constant follow-up with constituents to facilitate compliance.

Our Technologies and Information Management

Throughout 2005-2006 fiscal year, the Office made advances in managing information assets, recognizing that good record-keeping is essential to good, accountable governance. Following the transition of the Office from being part of the public service to a parliamentary entity, a number of changes occurred in the information management area, such as systems upgrade

requiring information transfers, process and document modifications, and the training and development of new staff in this area. In order to ensure that the Office's information holdings (paper and electronic) were harmonized, the Office undertook a file review process. This consisted of ensuring that the files contained all relevant and up-to-date information, while verifying that the electronic database was consistent with the paper information.

As a result of the Operational Review described above, the Office will develop and implement in the 2006-2007 fiscal year, with the assistance of the House of Commons, a new integrated case/client management and reporting system which will help provide more efficient and consistent services to our constituents.

Our Threat and Risk Assessment and Other Security Measures

An important contribution to our plans for our information technologies and information management practices took place in the fall of 2005 through a threat and risk assessment (TRA). Our Office launched this initiative in conjunction with the House of Commons Information Services to identify and assess the vulnerabilities, threats and residual risks to our data and information. The TRA evaluated the physical environment where we keep paper information as well as the House of Commons Parliamentary Precinct Network where we process and store electronic data.

The assessment found that *“the Office of the Ethics Commissioner’s (OEC) physical environment is sufficiently structured to adequately protect the OEC’s paper holdings.”* Moreover, from an information technology perspective, the assessment found that *“the House of Commons has implemented some strong security practices ... these practices should protect the OEC electronic assets from the most significant threat.”*

The final report identified recommendations in six areas which our Office and the House of Commons are addressing or intend to address. They were:

- safeguarding of highly sensitive information
- electronic vulnerability assessment on the protocols and external access points used to gain access to our network
- data separation (access to OEC's shared drive)
- personnel required to adequately administer OEC's systems
- backup of paper files electronically
- OEC desktop management and remote access by the House of Commons IT administrators.

These will complement actions we have already taken such as secure entry and restricted access into our facilities, a mandatory practice that visitors must be greeted and escorted and full-time camera surveillance of our premises.

CHALLENGES AHEAD

During 2005-2006, the Office of the Ethics Commissioner made the transition from its former status within the Government of Canada to that of a new Parliamentary entity. Our Office continued to administer the *Conflict of Interest and Post-Employment Code for Public Office Holders*, including implementing the changes to the Code that Prime Minister Harper introduced on his first day in office. At the same time, we undertook several initiatives aimed at improving our internal operations and achieving better results from our financial, physical and human resources.

Our experiences during 2005-2006 and new developments have led me to identify two major challenges for 2006-2007 that merit attention.

A. Impact of Bill C-2

On April 11, 2006, the President of the Treasury Board tabled Bill C-2, the *Federal Accountability Act*. It proposes a major structural change, the replacement of the currently distinct roles of the Ethics Commissioner and Senate Ethics Officer with a new Conflict of Interest and Ethics Commissioner. It also would legislate a *Conflict of Interest Act*, covering much of what is now included in the *Conflict of Interest and Post-Employment Code for Public Office Holders*.

Under that *Act*, many new or expanded functions are proposed. While in no sense exhaustive, that list includes:

- an expanded number of people potentially subject to inquiries, including any current or former Public Office Holders, not just Ministers and Parliamentary Secretaries
- prohibit the use of blind management agreements
- a new power for the Conflict of Interest and Ethics Commissioner to initiate his or her own inquiries on any current or former Public Office Holder
- expansion of coverage of the new regime to a new category of “ministerial advisors” who would be any person providing advice to a Minister, either full- or part-time, paid or unpaid
- the use of administrative penalties valued at up to \$500
- expanded reporting and monitoring requirements including a new requirement for a former Public Office Holder to report to the Commissioner when: a) receiving or accepting an offer of employment during his or her cooling-off periods; and b) lobbying former colleagues
- an expanded public registry to include recusal information that would not otherwise breach Cabinet confidences or harm national security.

The expanded requirements of Bill C-2 means that the Office will need to acquire additional human resources, particularly in areas such as legal services for interpretation and compliance with a legislated regime, and for the conduct of inquiries. A regime will also have to be developed and administered to implement and apply the new administrative penalties process.

There will be many implications for the Office's information technology and information management systems to support the reporting and monitoring requirements of the new systems as well as to track the penalties. There will be a need for additional resources, accommodation and physical security to deal with an expanded clientele.

B. Continued Operational Improvements

Regardless of whether and when Bill C-2 becomes law, the Office has identified some areas for operational improvement that will respond to issues and needs in current operations.

For example, experience with the current use of both paper and electronic records points to the value of developing an integrated and efficient information management system – probably including a streamlined correspondence filing and tracking system. The experience of identifying and acting on human resources issues through the collaboration of managers and staff points to the need to create a human resource strategy that will enable the Office to recruit, retain and develop staff and foster a continuous learning environment.

* * *

As mentioned above, I released a paper, *Issues and Challenges 2005*, in October 2005 to address a number of conceptual and procedural challenges that had arisen during the first year of operations of our Office. I mentioned in that paper about my intention to issue such documents on an annual basis. However, in light of the comprehensive changes proposed for the federal ethics regime contained in Bill C-2, the *Federal Accountability Act*, and the ongoing debate on these proposals as part of the legislative process, I do not believe another paper from our Office would be beneficial at this time.

The Office continued to make good progress during the last fiscal year toward achieving our objective of sustaining and enhancing the ethics regime in the federal government. Much remains to be done, both in terms and policy and operational issues. The implementation of the proposed Bill C-2, the *Federal Accountability Act*, will no doubt pose additional challenges to the Office. I am confident that the dedicated and experienced staff of the Office will be ready for the task.

* * *

APPENDIX I

OFFICE OF THE ETHICS COMMISSIONER

Statement of Operations (Unaudited)**For the year ended March 31**

(in dollars)

	2006	2005 <i>(10.5 months)</i> <i>Restated (Note 8)</i>
Salaries and employee benefits	3,314,690	2,148,361
Professional and special services	1,310,093	747,332
Accommodation	318,965	186,063
Amortization	234,767	18,443
Communications, travel and relocation	100,457	105,914
Material and supplies	35,929	29,432
Equipment rentals	31,798	17,461
Repairs and maintenance	22,270	15,202
Information	20,915	85,476
Total Expenses	5,389,884	3,353,684
Net cost of operations	(5,389,884)	(3,353,684)

The accompanying notes form an integral part of these financial statements.

APPENDIX I

OFFICE OF THE ETHICS COMMISSIONER

Statement of Financial Position (Unaudited)

as at March 31

(in dollars)

	2006	2005 <i>Restated (Note 8)</i>
Assets		
Financial assets		
Accounts receivable and advances (Note 4)	173,069	4,069
Total financial assets	173,069	4,069
Non-financial assets		
Tangible capital assets (Note 5)	776,600	901,888
Total	949,669	905,957
Liabilities		
Accounts payable and accrued liabilities	168,747	1,038,832
Vacation pay and compensatory leave	100,634	66,984
Employee severance benefits (Note 6)	547,335	324,518
Total	816,716	1,430,334
Equity of Canada	132,953	(524,377)
TOTAL	949,669	905,957

The accompanying notes form an integral part of these financial statements.

APPENDIX I

OFFICE OF THE ETHICS COMMISSIONER

Statement of Equity of Canada (Unaudited)

as at March 31

(in dollars)

	2006	2005 <i>(10.5 months)</i> <i>Restated (Note 8)</i>
Equity of Canada, beginning of year	(524,377)	-
Net cost of operations	(5,389,884)	(3,353,684)
Employee severance benefit liability assumed on start up (Note 6)	-	(328,918)
Current year appropriations used (Note 3)	4,539,873	3,875,175
Change in net position in the Consolidated Revenue Fund (Note 3)	1,016,308	(1,030,061)
Services received without charge from other government departments (Note 7)	491,033	313,111
Equity of Canada, end of year	132,953	(524,377)

The accompanying notes form an integral part of these financial statements.

APPENDIX I

OFFICE OF THE ETHICS COMMISSIONER

Statement of Cash Flow (Unaudited)**For the year ended March 31**

(in dollars)

	2006	2005 <i>(10.5 months)</i> <i>Restated (Note 8)</i>
Operating activities		
<i>Net cost of operations</i>	5,389,884	3,353,684
Non-cash items:		
Amortization of tangible capital assets	(234,767)	(18,443)
Services provided without charge from other government departments (Note 7)	(491,033)	(313,111)
	4,664,084	3,022,130
Increase in accounts receivable and advances	169,000	4,069
Decrease (increase) in liabilities	613,618	(1,430,334)
Employee severance benefit liability assumed on start up (Note 6)	-	328,918
Cash used by operating activities	5,446,702	1,924,783

Capital investment activities

Acquisitions of tangible capital assets	109,479	920,331
Cash used by capital investment activities	109,479	920,331

Financing Activities

Net cash provided by Government of Canada	5,556,181	2,845,114
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The accompanying notes form an integral part of these financial statements.

APPENDIX I

Notes to the Financial Statements (Unaudited)

1. Authority and Objectives

These statements provide the financial information related to all the operations controlled by the Office of the Ethics Commissioner.

The Office of the Ethics Commissioner was created by an *Act to amend the Parliament of Canada Act and other Acts in consequence*. The Office began its operations on May 17, 2004. The objective of the Office is to enhance public confidence and trust in the integrity of Members of the House of Commons and Public Office Holders as well as the respect and confidence that society places in the House of Commons as an institution.

The Office of the Ethics Commissioner's business is defined through three activities: communications, operations and policy development.

For purposes of financial statements, all activities mentioned above are included in the activities of the Office of the Ethics Commissioner.

2. Summary of Significant Accounting Policies

The financial statements have been prepared in accordance with Treasury Board accounting policies which are consistent with Canadian generally accepted accounting principles for the public sector.

Significant accounting policies are as follows:

(a) Parliamentary appropriations – The Office of the Ethics Commissioner is financed by the Government of Canada through Parliamentary appropriations. Appropriations provided to the Office do not parallel financial reporting according to generally accepted accounting principles since appropriations are primarily based on cash flow requirements. Consequently, items recognized in the statement of operations and the statement of financial position are not necessarily the same as those provided through appropriations from Parliament. Note 3 provides a high-level reconciliation between the bases of reporting.

(b) Net Cash Provided by Government – The Office of the Ethics Commissioner operates within the Consolidated Revenue Fund (CRF) which is administered by the Receiver General for Canada. All cash received by the Office is deposited to the CRF and all cash disbursements made by the Office are paid from the CRF. Net cash provided by Government is the difference between all cash receipts and all cash disbursements including transactions between departments of the federal government.

(c) Change in net position in the Consolidated Revenue Fund is the difference between the net cash provided by Government and appropriations used in a year, excluding the amount of non-responsible revenue recorded by the Office. It results from timing differences between when a transaction affects appropriations and when it is processed through the CRF.

(d) Expenses – Expenses are recorded on the accrual basis:

- i. Vacation pay and compensatory leave are expensed as the benefits accrue to employees under their respective terms of employment.

APPENDIX I

2. Summary of Significant Accounting Policies (continued)

ii. Services provided without charge by other government departments for accommodation and the employer's contribution to the health and dental insurance plans are recorded as operating expenses at their estimated cost.

(e) Employee future benefits

i. Pension benefits: Eligible employees participate in the Public Service Pension Plan, a multiemployer plan administered by the Government of Canada. The Office's contributions to the Plan are charged to expenses in the year incurred and represent the total obligation of the Office to the Plan. Current legislation does not require the Office to make contributions for any actuarial deficiencies of the Plan.

ii. Severance benefits: Employees are entitled to severance benefits under labour contracts or conditions of employment. These benefits are accrued as employees render the services necessary to earn them. The obligation relating to the benefits earned by employees is calculated using information derived from the results of the actuarially determined liability for employee severance benefits for the Government as a whole.

(f) Accounts receivable and advances are stated at amounts expected to be ultimately realized; a provision is made for receivables where recovery is considered uncertain.

(g) Foreign currency transactions – Transactions involving foreign currencies are translated into Canadian dollar equivalents using rates of exchange in effect at the time of those transactions. Monetary assets and liabilities denominated in a foreign currency are translated into Canadian dollars using the rate of exchange in effect on March 31.

(h) Tangible capital assets – All tangible capital assets and leasehold improvements having an initial cost of \$500 or more are recorded at their acquisition cost.

Amortization of tangible capital assets is done on a straight-line basis over the estimated useful life of the asset as follows:

Asset Class	Amortization Period
Machinery and equipment	10 years
Computer equipment	3 years
Computer software	3 years
Leasehold improvements	life of lease

(i) Measurement uncertainty – The preparation of these financial statements in accordance with Treasury Board accounting policies which are consistent with Canadian generally accepted accounting principles for the public sector requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses reported in the financial statements. At the time of preparation of these statements, management believes the estimates and assumptions to be reasonable. The most significant items where estimates are used are the liability for employee severance benefits and the useful life of tangible capital assets. Actual results could differ from those estimated. Management's estimates are reviewed periodically and, as adjustments become necessary, they are recorded in the financial statements in the year they become known.

APPENDIX I

3. Parliamentary Appropriations

The Office of the Ethics Commissioner receives most of its funding through annual Parliamentary appropriations. Items recognized in the statement of operations and the statement of financial position in one year may be funded through Parliamentary appropriations in prior, current or future years. Accordingly, the Office has different net results of operations for the year on a government funding basis than on an accrual accounting basis. The differences are reconciled in the following tables:

(a) Reconciliation of net cost of operations to current year appropriations used:	2006	2005
	(in dollars)	
Net cost of operations	5,389,884	3,353,684
Adjustments for items affecting net cost of operations but not affecting appropriations:		
Add (Less):		
Amortization of tangible capital assets	(234,767)	(18,443)
Services provided without charge	(491,033)	(313,111)
Vacation pay and compensatory leave	(33,650)	(66,984)
Employee severance benefits	(222,817)	4,400
Justice Canada fees	-	(4,702)
Adjustment to prior year payables	22,777	-
Adjustments for items not affecting net cost of operations but affecting appropriations		
Add (Less): Acquisitions of tangible capital assets	109,479	920,331
Current year appropriations used	4,539,873	3,875,175
(b) Appropriations provided and used		
	Appropriations Provided	
	2006	2005
	(in dollars)	
Vote 15 – Operating expenditures	4,089,000	3,718,700
Statutory amounts	453,048	289,722
Less:		
Lapsed appropriations: Operating	(2,175)	(133,247)
Total appropriations used	4,539,873	3,875,175

APPENDIX I

3. Parliamentary Appropriations (continued)

(c) Reconciliation of net cash provided by Government to current year appropriations used

	<u>2006</u>	<u>2005</u>
	(in dollars)	
Net cash provided by Government	5,556,181	2,845,114
Change in net position in the Consolidated Revenue Fund		
Variation in accounts receivable and advances	(169,000)	(4,069)
Variation in accounts payable and accrued liabilities	(613,618)	1,430,334
Employee severance benefit liability assumed on start up (Note 6)	-	(328,918)
Other adjustments	(233,690)	(67,286)
	<u>(1,016,308)</u>	<u>1,030,061</u>
Current year appropriations used	<u><u>4,539,873</u></u>	<u><u>3,875,175</u></u>

4. Accounts Receivable and Advances

The following table presents details of receivables and advances:

	<u>2006</u>	<u>2005</u>
	(in dollars)	
Receivables from other Federal Government departments and agencies	172,569	4,069
Employee advances	500	-
Total	<u><u>173,069</u></u>	<u><u>4,069</u></u>

5. Tangible Capital Assets

(in dollars)

Capital asset class	Cost			Accumulated amortization			2006 Net book value	2005 Net book value
	Opening balance	Acquisitions	Closing Balance	Opening balance	Amortization	Closing Balance		
Machinery and equipment	4,800	8,919	13,719	40	1,109	1,149	12,570	4,760
Other equipment	280,868	32,466	313,334	2,341	29,671	32,012	281,322	278,527
Computer equipment	132,369	12,237	144,606	3,677	45,734	49,411	95,195	128,692
Computer software	107,203	3,825	111,028	2,978	36,188	39,166	71,862	104,225
Leasehold Improvements	395,091	52,032	447,123	9,407	122,065	131,472	315,651	385,684
Total	920,331	109,479	1,029,810	18,443	234,767	253,210	776,600	901,888

Amortization expense for the year ended March 31, 2006 is \$234,767 (2005 - \$18,443).

APPENDIX I

6. Employee Benefits

(a) Pension benefits: The Office of the Ethics Commissioner's employees participate in the Public Service Pension Plan, which is sponsored and administered by the Government of Canada. Pension benefits accrue up to a maximum period of 35 years at a rate of 2 percent per year of pensionable service, times the average of the best five consecutive years of earnings. The benefits are integrated with Canada/Québec Pension Plan benefits and they are indexed to inflation.

Both the employees and the Office contribute to the cost of the Plan. The 2005-2006 expense amounts to \$335,255 (\$214,394 in 2004-2005), which represents approximately 2.6 time the contributions by employees.

The Office's responsibility with regard to the Plan is limited to its contributions. Actuarial surpluses or deficiencies are recognized in the financial statements of the Government of Canada, as the Plan's sponsor.

(b) Severance benefits: The Office of the Ethics Commissioner provides severance benefits to its employees based on eligibility, years of service and final salary. These severance benefits are not pre-funded. Benefits will be paid from future appropriations. Information about the severance benefits, measured as at March 31, is as follows:

	<u>2006</u>	<u>2005</u>
	(in dollars)	
Accrued benefit obligation, beginning of year	324,518	-
Employee severance benefit liability assumed on start up	-	328,918
Expense for the year	222,817	(4,400)
Benefits paid during the year	-	-
Accrued benefit obligation, end of year	<u>547,335</u>	<u>324,518</u>

7. Related Party Transactions

The Office of the Ethics Commissioner is related as a result of common ownership to all Government of Canada departments, agencies, and Crown corporations. The Office enters into transactions with these entities in the normal course of business and on normal trade terms. Also, during the year, the Office received services which were obtained without charge from other Government departments as presented in part (a).

(a) Services provided without charge

During the year the Office received without charge from other departments, accommodation and the employer's contribution to the health and dental insurance plans. These services without charge have been recognized in the Office's Statement of Operations as follows:

	<u>2006</u>	<u>2005</u>
	(in dollars)	
Accommodation	318,965	186,063
Employer's contribution to health and dental insurance plans	172,068	127,048
Total	<u>491,033</u>	<u>313,111</u>

The Government has structured some of its administrative activities for efficiency and cost-effectiveness purposes so that one department performs these on behalf of all without charge. The costs of these services, which include translation services, payroll processing and cheque issuance services provided by Public Works and Government Services Canada, are not included as an expense in the Office's Statement of Operations.

APPENDIX I

7. Related Party Transactions (continued)

(b) Payables and receivables outstanding at year-end with related parties:

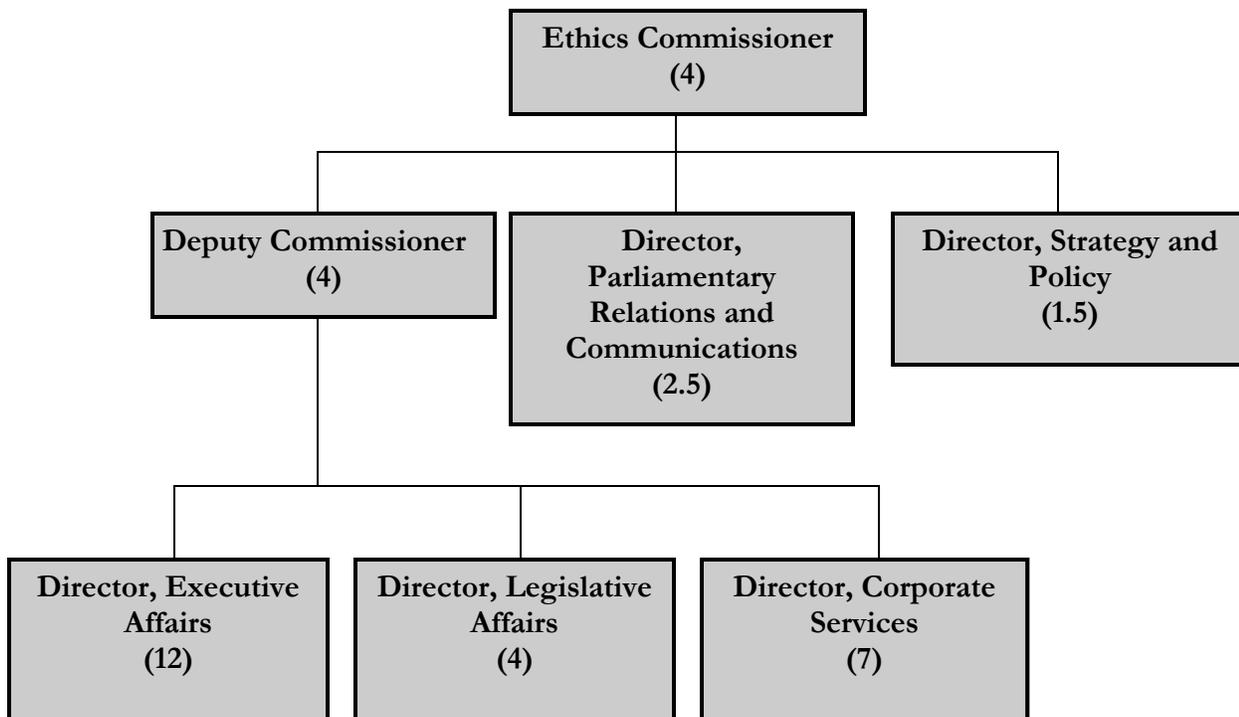
	<u>2006</u>	<u>2005</u>
	(in dollars)	
Accounts receivable with other government departments and agencies	172,569	4,069
Accounts payable to other government departments and agencies	70,027	912,087

8. Comparative Information

Comparative figures have been reclassified to conform to the current year's presentation. In addition, the adoption of new Treasury Board policies requiring that departments reflect employee severance liabilities, employee severance expense and that departments reflect services provided by other departments without charge (Note 6) have impacted the Statement of Operations, the Statement of Financial Situation, the Statement of Equity of Canada and the Statement of Cash Flow as follows:

	Statement of Operations	Statement of Financial Situation	Statement of Equity of Canada	Statement of Cash Flow
As previously stated	3,044,973	-	199,859	
Employee severance liability - Expense	(4,400)	(4,400)	(4,400)	
- Assumed on start-up		328,918	328,918	
Health and dental benefits	127,048			127,048
Accommodation	186,063			186,063
	<u>308,711</u>	<u>324,518</u>	<u>324,518</u>	<u>313,111</u>
Restated	<u>3,353,684</u>		<u>524,377</u>	
Increase in liabilities		<u>324,518</u>		
Services provided without charge				<u>313,111</u>

APPENDIX II



The number in brackets represents the number of direct reporting subordinate positions.
Total: 34 positions have been staffed

March 2006

APPENDIX III

Reimbursement Guidelines for Blind Trusts and Blind Management Agreements

Reimbursable fees

- **Consultation:** Maximum of 3 hours (lawyer, accountant, notary, other service-providers or a combination of any or all of them) at an hourly rate not exceeding \$300¹ for seeking professional advice in order to comply with the Conflict of Interest Code (e.g. divestment by sale or establishment of trust).
- **Withdrawal from activities:** Maximum of 3 hours (lawyer, accountant, barrister, notary, other service-providers or a combination of any or all of them) at an hourly rate not exceeding \$300¹.
- **Establishment/Dismantlement (Blind Trust & Blind Management Agreement):** Maximum of 10 hours (lawyer, accountant, notary, other service-providers or a combination of any or all of them) at an hourly rate not exceeding \$300¹. In exceptional circumstances where more than 10 hours may be necessary for any or all service providers because of the complexity of the arrangement, **prior approval** is required from the Ethics Commissioner.
- **Amendments/Changes to Agreement:** Maximum of 3 hours (lawyer, accountant, notary, other service-providers or a combination of any or all of them) at an hourly rate not exceeding \$300¹. Amendments as a result of changes to the Code will be initiated by the OEC. **Prior approval** is required for any other changes.
- **Administration:** Will be calculated as per Schedule 1. Administration costs also include any fees incurred for the preparation of financial reports.

The eligible administration fees for the month where the agreement is established or dismantled will be pro-rated based on the establishment or dismantlement date.

If the **trustee or manager** can demonstrate that administration costs were incurred before the official date of the establishment, these costs may be eligible.

In order to permit a transition period, administration fees are reimbursed for a **maximum of 2 months** following the date of the post-employment letter which specifically refers to the dismantlement, or the date of termination of employment, whichever comes last.

Non reimbursable fees

- Costs incurred in order to fill out the confidential report.

Schedule 1

- **Administration Costs for a Blind Management Agreement:** Costs are reimbursed in accordance with the number of administration hours at a maximum hourly rate of \$300¹. A detailed breakdown of the charges levied must be submitted to demonstrate that all costs are directly related to the management of the assets as provided for in the agreement.

Travel cost incurred for an activity related to the management of a Blind Management Agreement may be eligible and will be determined following the Treasury Board travel policy and guidelines.

- **Administration Costs for Blind Trust Agreement:** Costs are reimbursed based on the fair market value of the trust and on the following annual maximum rates of reimbursement for the annual administration costs of blind trusts with marketable securities.

Under \$35,000: \$500 annually

Over \$35,000:

- 1.50% on first \$500,000
- 1.25% on next \$500,000
- 1.00% on next \$1,000,000
- 0.75% on next \$1,000,000
- 0.50% on next \$2,000,000
- 0.25% on balance over \$5,000,000

¹Subject to periodical review
Update = june 2006