



Office of the
Conflict of Interest and
Ethics Commissioner

Commissariat aux
conflits d'intérêts et
à l'éthique

The 2008-2009 **ANNUAL REPORT**

In respect of the
CONFLICT OF INTEREST ACT



June 2009

**Mary Dawson
Conflict of Interest and
Ethics Commissioner**

The 2008-2009 Annual Report

in respect of the
CONFLICT OF INTEREST ACT

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Commissariat aux conflits d'intérêts et à l'éthique
Office of the Conflict of Interest and Ethics Commissioner

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June 16, 2009

The Honourable Noël A. Kinsella
Speaker of the Senate
Room 280-F, Centre Block
Parliament of Canada
Ottawa, Ontario K1A 0A6

Dear Mr. Speaker:

I am pleased to submit to you my report on the performance of my duties and functions under the *Conflict of Interest Act* in relation to public office holders for the fiscal year ending March 31, 2009.

This fulfills my obligations under paragraph 90 (1)(b) of the *Parliament of Canada Act*.

Sincerely,

Mary Dawson
Conflict of Interest and Ethics Commissioner



Commissariat aux conflits d'intérêts et à l'éthique
Office of the Conflict of Interest and Ethics Commissioner

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June 16, 2009

The Honourable Peter Milliken
Speaker of the House of Commons
House of Commons
Room 224-N, Centre Block
Ottawa, Ontario K1A 0A6

Dear Mr. Speaker:

I am pleased to submit to you my report on the performance of my duties and functions under the *Conflict of Interest Act* in relation to public office holders for the fiscal year ending March 31, 2009.

This fulfills my obligations under paragraph 90 (1)(b) of the *Parliament of Canada Act*.

Sincerely,

Mary Dawson
Conflict of Interest and Ethics Commissioner

PREFACE

This Annual Report is made in fulfillment of the requirements of paragraph 90 (1)(b) of the *Parliament of Canada Act*. It reports on activities of the Conflict of Interest and Ethics Commissioner under the *Conflict of Interest Act* in respect of public office holders for the 2008-2009 fiscal year ending on March 31, 2009.

A separate annual report is made in fulfillment of the requirements of paragraph 90(1)(a) of the *Parliament of Canada Act*. It reports on the Commissioner's activities under the *Conflict of Interest Code for Members of the House of Commons* for the same fiscal year.

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I. INTRODUCTION

The *Conflict of Interest Act* and the position of Conflict of Interest and Ethics Commissioner were both created under the *Federal Accountability Act* and came into effect on July 9, 2007. The Commissioner also has the responsibility for the administration of the *Conflict of Interest Code for Members of the House of Commons*, in relation to which a separate annual report is tabled.

The *Conflict of Interest Act* (the Act) applies to public office holders. This is a group defined to include ministers of the Crown, ministers of state, parliamentary secretaries, ministerial staff, ministerial advisors, deputy ministers and most full and part-time Governor in Council appointees. There are approximately 2,700 public office holders subject to the Act, more than half of whom are part-time.

The overall objective of the Act is to enhance confidence and trust in government by establishing clear conflict of interest and post-employment rules for public office holders. These rules hold them to standards that place the public interest above their private interests. It is also a stated objective of the Act to encourage experienced and competent individuals to seek and accept public office and to facilitate interchange between the private and public sectors.

The Conflict of Interest and Ethics Commissioner is an Officer of Parliament and reports to Parliament through the Speaker of the House of Commons. The Commissioner has the rank of a deputy head of a government department and is responsible for the control and management of the Office of the Commissioner.

The main responsibilities of the Office relating to the Act are to:

- advise public office holders on their obligations under the Act;
- receive and review confidential reports of assets, liabilities and activities of reporting public office holders in order to establish appropriate compliance measures;
- maintain confidential files of required disclosures;
- maintain a public registry for publicly declarable information; and
- conduct examinations into alleged contraventions of the Act.



II. A YEAR OF CONSOLIDATION AND STRENGTHENING THE FOUNDATION

This Annual Report will be tabled and made public close to the second anniversary of the coming into force of the *Conflict of Interest Act* and my appointment as Canada's Conflict of Interest and Ethics Commissioner.

These first two years have been very much about building and then strengthening the foundation of our new organization. In my Annual Report for 2007-08, I referred to my first months in the role of Commissioner as a period of transition and learning. I faced three immediate challenges relating to administering a new piece of legislation and implementing a new mandate as Conflict of Interest and Ethics Commissioner:

- First, there were operational challenges, including filling important staff positions, improving internal administrative systems and procedures and creating user-friendly processes to assist public office holders in meeting their compliance obligations under the Act;
- Second, I faced interpretive challenges as I sought to ensure that the new Act was applied with clarity, consistency and common sense and with due consideration for the individuals affected; and
- Third, in keeping with my focus on prevention, I identified a need to provide better information to public office holders about their obligations. Related to this was the need to take steps to help the public understand my mandate.

This Annual Report focuses on the achievements and challenges of the second year – one I would characterize as a year of consolidation and of strengthening the foundation.

I remain impressed by the uniform dedication to the public interest on the part of public officials, whether elected or appointed. Most welcome the existence of the Act and recognize its importance in supporting overall confidence in government.

Since taking office, my first priority has been to apply the Act fairly and consistently. Accordingly, I placed a great emphasis over the past year on communicating its requirements to public office holders, identifying and addressing ambiguities and reviewing internal processes and procedures to ensure that my Office is doing everything possible to facilitate compliance. This work is ongoing, but I am pleased with the progress we have made in these areas to date. I have, however, also noted a number of areas where the Act includes specific reporting requirements but does not include any mechanisms to assist me in monitoring compliance with them. This is an area that will require further attention.



I am mindful of the need to seek the appropriate balance between minimizing the risks of conflict of interest and not discouraging talented and competent people from seeking and accepting appointments to public office. In this Annual Report, I will provide some observations about areas in the Act that make it difficult to achieve this balance. I wish to highlight in particular the challenges associated with the requirement that reporting public office holders divest themselves of certain types of assets, whether or not there would be any likelihood of a related conflict of interest if they continued to hold them.

Improved Awareness

My Office has undertaken a variety of activities to ensure that public office holders understand their obligations under the Act.

We have redesigned our web site to make it more user-friendly. We have improved the existing public registry, which contains the summary statements and public declarations of reporting public office holders, to make it more comprehensible to the general public. A second online public registry for the declarations and summaries of Members of the House of Commons under their Code was launched in March.

We have developed several guidelines and information notices that have been posted on the Office's web site. Of note was the guideline produced in June 2008 on the acceptance of gifts or other advantages, including invitations, which is one of the areas on which my Office receives the most inquiries. My Office has also posted a guideline on the reimbursement of costs related to divesting controlled assets and removing a reporting public office holder's name from federal or provincial registries of corporations.

Information has also been posted on post-employment obligations and on political activities. We have also issued a notice clarifying how the new Tax Free Savings Accounts, introduced by the federal government in January 2009, relate to compliance requirements for reporting public office holders. We will continue to track emerging issues and take note of frequently asked questions, and we will develop guidelines and information notices as appropriate.

My staff and I met with various groups of public office holders over the past year, including heads and members of federal boards and tribunals and ministers and their staff, to discuss the requirements of the Act and their obligations under it. These sessions are of particular importance for ministers' offices, not only because of the relatively frequent changes in staff but also because of the role of these offices in informing new staff of their obligations under the Act. I also accepted a number of opportunities to speak publicly about my role in an effort to increase the overall awareness of the conflict of interest regimes for public office holders and Members of Parliament. In addition to these outreach activities, my staff and I regularly meet with individual public office holders to answer their questions and assist them in meeting the obligations of the Act.



Improved Compliance Processes

In order to facilitate compliance the *Confidential Report* form has been simplified. Forms and related administrative procedures have also been developed to assist reporting public office holders who regularly receive gifts. In particular, my Office has made formal arrangements for a regular reporting of gifts every few weeks with a number of offices, notably ministers' offices, where protocol gifts are frequently received.

Reporting public office holders must file a confidential report of their assets, liabilities and other private interests, such as outside income and activities, with my Office within 60 days after their appointment. They are informed of this obligation and others in an initial letter sent by my Office after we receive notification of their appointment either by the Privy Council Office or the respective minister's office. Compliance officers now monitor applicable deadlines relating to confidential reports on a daily basis and follow up regularly with reporting public office holders to inform them when deadlines are approaching. Reporting public office holders are reminded of their 60-day deadline 30 days after appointment. A second reminder is sent 50 days after appointment where necessary. I am pleased to report that this system of reminders has proven to be very effective in ensuring that the deadline is met.

Information included in the confidential report must be updated on a yearly basis. In my first Annual Report I reported that there was a backlog in the annual review process. This backlog has been all but eliminated and annual reviews are now being requested and conducted by my Office in a timely way.

Over the past year we have made a number of improvements to our record keeping practices. We developed more consistent and stringent tracking processes to ensure records are updated whenever there are communications with a public office holder. We are currently planning the development of a more efficient records management system as well.



III. APPLYING THE ACT

Applying the Act involves my staff in a wide variety of activities. In addition to making themselves available to answer questions from public office holders, they actively manage compliance processes, conduct research and analyze the Act's provisions against situations that are often without precedent. They monitor public controversies over ethical matters, consider requests for investigations and carry out examinations where warranted. I report on these activities below and in Parts IV and V.

As in last year's Annual Report, I will point out areas where my Office has encountered difficulties in applying the Act and the approaches we have taken in light of these. My responsibility is to administer the Act as it is written. Where I have discretion or where there is ambiguity in the Act, I try to apply common sense. The objectives of the Act provide a guide to interpretation, although the right balance between those objectives is not always obvious.

My Office is primarily concerned with situations of conflict of interest as set out in the Act and in that regard my mandate is clear. My title also includes the word "ethics", which suggests broader responsibilities beyond conflict of interest. My mandate in this latter regard is less clear, as the term "ethics" is not used anywhere in the Act. I do have the mandate under paragraph 85(b) of the *Parliament of Canada Act* to provide confidential policy advice and support to the Prime Minister in respect of conflict of interest and ethical issues. However, this is entirely separate from my role in administering the *Conflict of Interest Act*, with respect to which I do not believe I have a mandate to address all ethical issues. While my Office does take care to understand and take into account the broader ethical context in which public office holders operate, the advice that I provide to public office holders and the investigations that I make under the *Conflict of Interest Act* must always be related to specific provisions of that Act.

Disclosure Requirements of Reporting Public Office Holders

All public office holders must comply with certain basic rules such as arranging their private affairs to avoid conflicts of interest, not using influence or allowing themselves to be influenced inappropriately, recusing themselves in instances of potential conflicts, not accepting gifts that might reasonably be seen to have been given to influence them in the exercise of an official power, duty or function and some general post-employment obligations.

Approximately 1,100 of the 2,700 public office holders are defined as reporting public office holders. This group is composed primarily of those public office holders who work full-time. They are subject to all the rules that apply to public office holders, as well as a number of other requirements such as disclosure, divestment and additional post-employment obligations.



Reporting public office holders are required to make confidential disclosures and related public summary statements and to divest themselves of controlled assets through arm's length sales or blind trust agreements. They are also required to make public declarations of a variety of activities and assets. Ministers of the Crown, ministers of state and parliamentary secretaries have some additional obligations relating to liabilities and travel. The reporting obligations of reporting public office holders are summarized on the opposite page.

Within 60 days after appointment, reporting public office holders are required to provide a confidential report to my Office that includes a description and the value of all their assets, direct and contingent liabilities, recent and anticipated outside income and a description of certain of their activities in the previous two years. These reports are reviewed by advisors in my Office who, in consultation with reporting public office holders, determine specific compliance arrangements. In some cases, these arrangements are quite straightforward. In others cases, they can be quite complex. Some reporting public office holders, for example, hold significant financial or business interests, are engaged in various outside activities or have a close relative who has business dealings with the government. All of these situations require particular attention.

Within 120 days after appointment, reporting public office holders must make public declarations of certain assets and of any directorships or positions of office with outside organizations that are permitted under the Act, as set out above. They must also sign a summary statement setting out the method used to divest any controlled assets, as well as the type of public declarations they may have made. The summary statement is available for examination by the public on our web site.

Over 900 public office holders left office during the past fiscal year, roughly 430 of whom were reporting public office holders. During the same period, some 950 individuals assumed new responsibilities as public office holders, including about 500 reporting public office holders.

Of the approximately 500 reporting public office holders appointed over the past fiscal year, more than 300 had finalized their compliance arrangements under the Act as of the end of the fiscal year. The difference in these numbers is partly explained by the fact that reporting public office holders have 120 days in which to meet the compliance requirements of the Act. This means that those appointed less than 120 days before the end of the fiscal year are not required to be in compliance until the following fiscal year. As well, some reporting public office holders, such as summer students and short-term appointees, leave office before the compliance process is finalized.

Most of the ministers of the Crown, ministers of state, parliamentary secretaries and ministerial staff who switched portfolio over the past year are not included in the number above. When a reporting public office holder switches portfolio, the compliance arrangements made in relation to his or her former position are reviewed in relation to his or her new duties. While some adjustments may be necessary, in many cases the arrangements will remain the same.



Disclosure requirements related to initial compliance with the Act on appointment

Confidential disclosures to the Commissioner:

- File a confidential report within 60 days after appointment (subsection 22(1))
- Ensure the completeness and accuracy of the confidential report (subsection 22(2))
- Provide confirmation of all required divestments of controlled assets within 120 days after appointment

Public declarations:

- Declare all non-controlled, non-exempt assets within 120 days after appointment (subsection 25(2))
- Declare any outside activities as an officer or director permitted under the Act within 120 days after appointment (subsection 25(4))
- Sign a summary statement of the methods of compliance used within 120 days after appointment (subsection 26(1))
- Ensure the completeness and accuracy of the summary statement (subsection 26(2))
- Declare liabilities of \$10,000 or more (ministers of the Crown, ministers of state and parliamentary secretaries only) within 120 days after appointment (subsection 25(3))

Disclosure requirements related to ongoing compliance with Act

Confidential disclosures to the Commissioner:

- Material change to confidential report within 30 days after the change (subsection 22(5))
- Multiple gifts from one source with a cumulative value of over \$200 in a 12-month period within 30 days after the total cumulative value exceeds \$200 (section 23)
- Firm offers of outside employment within 7 days after the offer (subsection 24(1))
- Acceptance of an offer of outside employment within 7 days after acceptance (subsection 24(2))

Public declarations:

- Gifts with a value of over \$200 within 30 days after receipt (subsection 25(5))
- Recusals within 60 days after the date of recusal (subsection 25(1))
- Travel on non-commercial chartered or private aircraft (ministers of the Crown, ministers of state, parliamentary secretaries and ministerial staff only) within 30 days after acceptance (subsection 25(6))



In addition to the initial compliance process, reporting public office holders are required to make confidential disclosures and, in some cases, public declarations throughout the term of their appointments. These are required in connection with the receipt of certain gifts, recusals and some of the material changes to matters required to be reported under the Act.

The summary statement and all declarations are posted on the public registry for reporting public office holders, which can be accessed from the Office web site.

The Act requires a formal review of compliance arrangements on an annual basis. Over the past year my Office contacted over 900 reporting public office holders to review their arrangements. This is an ongoing process. By March 31, we had received responses from approximately 750 of them. These responses have been reviewed and, where necessary, compliance measures have been updated.

The annual review process raises some issues. I mention two in particular. First, we learned that a few reporting public office holders had acquired controlled assets after having been put in compliance. Because this is in contravention of the Act, we did not give these reporting public office holders the option of divesting by putting the assets in a blind trust, but required that they sell them immediately in an arm's length transaction.

Second, reporting public office holders are required to file a report with my Office within 30 days after a material change in any matter in respect of which a reporting public office holder is required to provide a confidential report. In many cases, however, material changes are only reported once a year through the annual review process. Since this appears to be a fairly widespread practice, we intend to consider what steps should be taken in this regard, including additional communication, the imposition of penalties or possibly suggestions for amendments to this requirement.

Divestment of Controlled Assets

Controlled assets are defined in the Act to include publicly traded securities and other speculative investments. Reporting public office holders must divest themselves of these holdings within 120 days after appointment by way of an arm's length sale or placement in a blind trust. There are only two exceptions to this rule, which are explained in Part IV of this Report. Helping reporting public office holders make the necessary arrangements in relation to this requirement is an important part of the work done by advisors in my Office. I discuss this work in more detail in Part IV of this Report, where I provide a more substantial discussion of my observations on the prohibition against holding any controlled assets.



Reimbursement of Costs of Divestments

Under the Act, reporting public office holders are entitled to be reimbursed reasonable costs relating to divestments. My Office does not reimburse these claims directly, but I am mandated to review these costs and order a reimbursement from the appropriate department or agency. Over the past fiscal year reimbursements relating to divestments totalled \$561,781.

Trustee Reporting

The Act stipulates that the terms of all blind trust agreements include a requirement that trustees provide a written annual report within 60 days of the anniversary of the trust. This report must verify the nature and market value of the trust, the net income of the trust in the preceding year and the fees of the trustees, if any. It must also include a reconciliation of the trust property.

In 2008 we became aware that a number of these reports were overdue. In light of this situation, we reviewed our internal practices with respect to this reporting requirement. As a result, we came to the conclusion that, notwithstanding the precise wording of the Act, it would be much more efficient, both for those filing and for this Office, to set a specific date by which all annual reports for the previous calendar year would be submitted. This date has been set at March 31. My Office wrote to all trustees in February of this year to remind them of their obligations and to inform them of this new administrative process.

Outside Activities

Section 15 prohibits reporting public office holders from engaging in a number of outside activities. They cannot, for example, practice a profession, continue as or become a corporate director or officer, or engage in outside employment. A strict reading of this section would appear to require a reporting public office holder to cease any prohibited activities immediately upon appointment to public office. In the interests of practicality, I have allowed reporting public office holders a reasonable amount of time after appointment to comply with section 15. In many cases a reporting public office holder can withdraw from these activities within two or three weeks. I have not set a specific deadline, however, as some outside activities are more difficult to discontinue than others.

Advisory Role

In addition to administering the disclosure, reporting and divestment requirements of the Act, my Office regularly receives phone calls, e-mails and letters from current, former and potential public office holders with questions on the application of the Act to specific situations. Responding to these requests for advice is among the most complex aspects of advisors' work. I have learned since taking on my responsibilities that few questions are straightforward. Most of the questions are raised with my Office because the application of the Act to a particular situation is not immediately apparent.



In my last Annual Report I identified some areas of the Act that had presented me with significant interpretational or practical challenges. These areas related to the definition of private interest, the restrictions on outside activities, the acceptance of gifts and other advantages and the post-employment provisions of the Act. I provided some clarification on my approach in these cases.

I have continued over the past year to identify and address areas of the Act that need special attention. In this connection, this year I am highlighting the issue of gifts and, in particular, gifts of tickets to events.

Gifts of Tickets to Events

Section 11 of the Act provides that a public office holder or his or her family members cannot accept gifts that might reasonably be seen to have been given to influence the public office holder in relation to his or her position. As I noted in last year's Annual Report and in the *Guideline on Gifts* (including Invitations, Fundraisers and Business Lunches) posted on my Office's web site, it is not possible to articulate a general rule as to what kinds of gifts are and are not acceptable. The circumstances surrounding the gift must always be considered. I also addressed the topic of invitations to special events, but I have continued to receive numerous inquiries related to invitations over the past year.

For the purposes of the Act, an invitation to attend an event at the expense of an individual or organization other than one's own department or agency constitutes a gift. Whether this kind of gift is acceptable under the Act depends on the relationship that the person offering the gift has to the public office holder. Unless there is an express exception in the Act, gifts should not be accepted when they are offered, either directly or indirectly, by individuals or organizations whose interests could be affected by a decision that the public office holder may be called upon to make.

Public office holders and members of their families should therefore always be cautious about accepting tickets to events from individuals or organizations that have or may have direct dealings with them or their public sector entity. These would include, for example, those who are registered to lobby the public office holder's government entity, those who may be affected by programs or policies for which that entity is responsible and those with whom the entity has contractual relations.

It may also be inappropriate for public office holders and members of their families to accept tickets to events even when donors do not have direct dealings with their public sector entity. For example, it would be inappropriate for a minister to accept a gift if it could reasonably be seen to have been given to influence participation in cabinet discussions that are not strictly limited to his or her particular portfolio. Parliamentary secretaries should also exercise caution, given their government role.



While I encourage prudence in accepting tickets to events, I do not take the view that they are always unacceptable. In the case of invitations received from organizers of charitable events, in particular, I realize that the attendance of senior public office holders can bring important benefits to the charity concerned. For ministers of the Crown, ministers of state and parliamentary secretaries, attendance at events can also be seen as a way to support constituents. If there is no actual or potential conflict of interest involved, I see no reason why a public office holder who is called upon to support the event could not accept a ticket from the organizer.

When reporting public office holders or members of their families accept free tickets valued at \$200 or more, a disclosure must always be made to my Office within 30 days after acceptance. The gift declaration becomes a part of their public disclosure record. I believe that the resulting transparency of these kinds of interactions is critical to our conflict of interest regime since it provides a public view into these activities.

Administrative Monetary Penalties

The Act allows me to impose penalties of up to \$500 for failures to meet a number of reporting requirements. I did not implement the administrative monetary penalty scheme until November 2008 because my Office needed time to develop the appropriate processes and to review penalty schemes used by other bodies to ensure we adopted a fair process. In addition, I did not feel that administrative monetary penalties could be applied fairly until our tracking system had been sufficiently improved.

Our main focus to date has been in relation to the requirement that all reporting public office holders submit a confidential report within 60 days after taking office. My Office is able to accurately track compliance with this requirement because we are generally informed of new appointments in a timely manner. Improvements in our record keeping have allowed us to implement a system of reminder notices to ensure that reporting public office holders are kept aware of this deadline as it approaches.

In the five months following the implementation of the penalty scheme, about 25 reporting public office holders missed the 60-day deadline. In most instances, this was because we were not informed of their appointment by their employer, and therefore could not send them the usual reminders. In a small number of cases, a reporting public office holder missed the deadline for other reasons. In some of these cases a penalty was considered. However, I found that notice of an imminent penalty was enough to achieve compliance very quickly and I did not impose any penalties during this reporting period.

There is also a requirement that reporting public office holders make a public declaration within 120 days after appointment of certain assets and outside activities that have been disclosed to the Commissioner. While my Office has made every possible effort to ensure that reporting public office holders meet this deadline, it is not always possible to do so for a variety of reasons beyond the control of the reporting public office



holder. Often the complexity of the required arrangements in a particular case creates delays. I have therefore allowed some individuals to exceed the 120-day deadline without considering a penalty for late compliance. In a few cases, where the failure to meet this deadline was due to a lack of cooperation on the part of a reporting public office holder, I informed the individuals that I was considering a penalty. As in the case of the 60-day deadline, this was enough to ensure compliance and I did not, therefore, impose any penalties during this reporting period.

My approach to the administrative monetary penalties regime since its implementation in November is in keeping with the observation that the regime is not meant to punish, but rather to ensure that the reporting requirements of the Act are met in a timely manner and that full compliance continues to be the norm. I believe that the implementation of the penalty scheme, even in the absence of any penalties being imposed, has contributed to greater awareness of the Act and to an appreciation of the seriousness of the obligations it places on public office holders.

That being said, I have found in a few cases that reporting public office holders did not make adequate efforts to meet these deadlines. I was reluctant to impose penalties in the first few months after our new systems were in place. It is important that I use my discretion in a consistent manner and I felt I needed some time to understand the magnitude of any problem and how our new measures were working. I expect that there will be occasions when penalties are imposed in the coming year.

Apart from the 60- and 120-day deadlines, there are a number of other obligations in relation to which I have the discretion to impose penalties on reporting public office holders. These include meeting certain deadlines for the public declaration of gifts and recusals, the disclosure to my Office of material changes to an initial confidential report and of offers of outside employment and acceptance of such offers. Monitoring compliance with some of these requirements is difficult because we are largely reliant on the reporting public office holders themselves to bring the relevant information to our attention. We will continue to seek ways to address this issue.

Post-Employment

The Act contains a number of provisions regulating post-employment activities. Former public office holders are prohibited from taking improper advantage of their former positions, from switching sides in relation to a specific proceeding, transaction, negotiation or case with respect to which they had acted for or advised the Crown and from improperly using information obtained from their previous office.

Former reporting public office holders are subject to additional rules. There is a “cooling-off” period that lasts two years for ministers of the Crown and ministers of state and one year for other reporting public office holders, including parliamentary secretaries. During this period, they are prohibited from working for or contracting with



an entity outside government with which they had direct and significant official dealings during their last year in office, as well as from making representations to any entity within government with which they had direct and significant official dealings during their last year in office. I have discretion to waive or shorten the cooling-off period under certain conditions set out in the Act, and have done so on rare occasions.

The Act's post-employment provisions are an important part of the federal conflict of interest regime and I have, over the past year, made a concerted effort to improve the information given to public office holders about their post-employment obligations. My Office provides public office holders with detailed information on their post-employment responsibilities, both at the time they assume office and as soon as we are informed of their departure. We have also published related information on our web site.

In the past year, a number of reporting public office holders have approached my Office prior to leaving office to seek advice on how the cooling-off period might restrict their post-employment activities. Such discussions have proven to be very useful, and I actively encourage ministers and senior ministerial staff to stay in touch with my Office, particularly regarding any positions they might seek or accept during their cooling-off period.

In most cases, however, reporting public office holders do not maintain contact with my Office during the post-employment period. It is therefore difficult to assess whether they are meeting their post-employment obligations and, more generally, how effective those provisions are. There is only one post-employment reporting requirement during the cooling-off period and that relates to limited activities referred to in the *Lobbying Act*. This requirement creates a somewhat confusing overlap with the responsibilities of the Commissioner of Lobbying. It is a requirement that is not well understood, as evidenced by the fact that we have received no such reports.

I have, in a number of cases, followed up with former reporting public office holders on media reports or information received from third parties regarding their post-employment activities. My Office has received full cooperation from the former reporting public office holders that I have contacted and I have found in these instances nothing to indicate that a breach of the Act had indeed occurred. Many of the instances identified in the media reports, however, have related to rules under the *Lobbying Act*, over which I have no jurisdiction.

If I find that a former reporting public office holder has not complied with the post-employment provisions of the Act, I can order current public office holders not to have official dealings with that individual. I can also report any failure to comply under my examination powers.



IV. DIVESTMENT OF CONTROLLED ASSETS

Since taking office I have been concerned about the apparent over-breadth of the provisions in the Act that prohibit reporting public office holders from holding controlled assets. These assets are defined in the Act to include publicly traded securities and a number of other speculative investments. Reporting public office holders may not hold such assets, unless one of two exemptions applies. This prohibition applies to all controlled assets held by a reporting public office holder whether personally, in a joint account with a family member, as a trustee for a beneficiary or as an executor of an estate.

My main concern with this prohibition is that it applies regardless of whether or not the controlled assets in question could place the reporting public office holder in a conflict of interest. It would appear that it goes beyond what would be needed to meet the Act's stated purpose of minimizing the risk of conflict of interest. It also appears to run counter to two of the five stated purposes of the Act; namely, encouraging experienced and competent people to seek and accept public office and facilitating interchange between the private and public sector.

A review of the practices of other jurisdictions carried out by my Office this year supports my concern. The divestment provisions in the Act are more stringent and more categorical than those of other jurisdictions.

While public office holders rarely express concerns about other requirements of the Act, many of those affected by the divestment rules have expressed frustration at having to divest assets even where there is little or no chance that holding them would put them in a conflict of interest. Furthermore, the rules are difficult to apply in a variety of special situations, such as family trusts and joint accounts, which arise on a regular basis. As well, some reporting public office holders are taken by surprise by the application of the divestment rules when, during their term in office, they become executors of an estate that contains the controlled assets of a deceased family member. The downturn in the economy this year has added to the concerns about the divestment requirements.

For these reasons, I have taken the opportunity provided by this Annual Report to discuss the divestment rules. In what follows, I summarize the relevant sections of the Act, discuss their application and make some international comparisons. I then offer a few suggestions that I believe would continue to achieve the goal of minimizing the risk of conflict of interest without creating unnecessary obstacles to attracting experienced and competent individuals to public office.

The Rules on Controlled Assets

The main provisions in the Act relating to controlled assets are found in sections 17 and 27 of the Act. Section 17 stipulates that a reporting public office holder may not



hold controlled assets. These assets are defined in section 20 to include such things as publicly traded securities (stocks and bonds) of corporations or foreign governments, stock market indices, trust units, closed-end mutual funds, stock options and commodities, futures and foreign currencies held or traded for speculative purposes. Also included in this definition are self-administered registered retirement savings plans that hold at least one asset that would be considered controlled if held outside the plan.

Reporting public office holders must divest themselves of all their controlled assets within 120 days after appointment by either selling them in an arm's length transaction or placing them in a blind trust. Controlled assets cannot be transferred or sold to family members or friends. The trustee of a blind trust must be a public trustee or a qualified public company or individual. In all cases the trustee must have an arm's length relationship with the reporting public office holder.

There are only two exceptions to the requirement to divest, both of which are subject to my approval. The first exception allows a reporting public office holder who is not a minister of the Crown, minister of state or parliamentary secretary to retain and personally manage controlled assets – subject to a condition that they do not purchase additional controlled assets and that the assets are reviewed annually – if the value of those assets is minimal and they pose no risk of conflict of interest. This is the only place in the divestment regime where conflict of interest is considered. I granted such exceptions in 34 cases over the past year after ensuring that no risk of conflict of interest existed. The second exception applies where publicly traded securities have been given as security to a lending institution. I have had no requests for such an exception since taking office in July 2007.

Conflict of Interest and Controlled Assets

A conflict of interest arises when a reporting public office holder has the opportunity to further his or her private interests while exercising an official power, duty or function. This could occur in connection with controlled assets that a reporting public officer owns or plans to purchase when he or she has insider knowledge related to them or has an opportunity to take some official action that could affect their value.

The prohibition against holding controlled assets applies to all reporting public office holders, regardless of how likely it is that they could take advantage of their position. It does not take into account the role the public office holder plays in the policy making process, or whether there is any connection between an individual's official duties and his or her controlled assets.

Only 14 divestments took place over the past fiscal year, half by sale and half by trust. However, a significant proportion of current reporting public office holders who took office in previous years had also been required to divest controlled assets at the beginning of their terms. My Office has examined all of the divestments made by current



reporting public office holders, whether appointed this year or in a prior year, other than ministers of the Crown, ministers of state, parliamentary secretaries or deputy ministers, to determine whether or not they prevented a real or potential conflict of interest. The divestments of ministers of the Crown, ministers of state, parliamentary secretaries and deputy ministers were not reviewed because of their participation in collective decision making and horizontal policy initiatives, which would make it difficult to assess potential conflicts of interest arising from the ownership of controlled assets.

As of March 31, 2009 there were roughly 1,100 reporting public office holders. Of these, 119 had divested themselves of controlled assets through a sale at arm's length. A review of these sales indicated that 24 of them were made by ministers of the Crown, ministers of state, parliamentary secretaries or deputy ministers. Of the remaining 95 divestments by sale, 75 were made by Governor in Council appointees and 20 were made by ministerial staff. Of the 95 sales only five involved assets that could have posed a risk of conflict of interest.

As of March 31, 2009, 72 reporting public office holders had divested by setting up one or more blind trusts. Some had more than one blind trust because investments held inside registered retirement savings plans must be held in a trust that is separate from other investments. That resulted in a total of 117 blind trusts as of March 31. On reviewing the cases where a reporting public office holder established one or more blind trusts we found that 11 of these 72 divestments were made by ministers of the Crown, ministers of state, parliamentary secretaries or deputy ministers. Of the remaining 61 divestments by trusts, 50 were made by Governor in Council appointees and 11 were made by ministerial staff. Of the 61 divestments by trust only four involved assets that could have posed a risk of conflict of interest.

In total, only nine of the divestments made by all reporting public office holders, other than ministers of the Crown, ministers of state, parliamentary secretaries or deputy ministers, involved a possible conflict of interest. In the overwhelming majority of cases, the assets divested would not have posed a conflict of interest for the reporting public office holders in question. I note in this regard that the costs for the ongoing administration of blind trusts do represent an expense to the Crown. Out of the total amount of reimbursement claims approved over the last fiscal year, \$521,217 was for the administration of existing blind trusts.

Difficult Cases

The application of sections 17 and 27 is straightforward in most cases. However, as noted above, a variety of special situations arise on a regular basis where these provisions are difficult to apply. Sometimes a reporting public office holder will own controlled assets jointly with a spouse or another family member. The Act does not make any allowance for this type of situation. Spouses and family members are not prohibited from holding controlled assets or required to divest them but the reporting public office holder



must divest. My Office has on occasion had some difficulty in arriving at practical compliance arrangements for reporting public office holders that both meet the requirements of the Act and respect the fact that family members are not subject to the divestment requirements of the Act.

We have also worked with a number of reporting public office holders who are trustees or executors of a trust or estate that contains controlled assets. Reporting public office holders who are trustees or executors are caught by the prohibition against holding controlled assets because technically it is they who hold the assets. In these situations the requirement to divest may conflict with fiduciary duties owed to beneficiaries or the estate. In these cases we typically suggest the option of the reporting public office holder withdrawing as trustee or executor. Sometimes this is not satisfactory on a personal level because the choice of trustee or executor was based on the close relationship of trust and affection that had existed with a deceased friend or family member or with the beneficiary of a trust. Interestingly, it is permissible for a reporting public office holder to exercise a power of attorney over the controlled assets of another person because, in that case, he or she would not technically hold the assets.

Other Jurisdictions

My Office has looked at the way in which other jurisdictions, including Canadian provinces and territories, the United Kingdom and the United States deal with the issue of public office holders holding publicly traded securities or other speculative instruments.

While ministers are expected to divest certain types of assets in some jurisdictions, a blanket requirement to divest does not appear to apply to other public officials. The rules in these jurisdictions vary according to the class of public office holder, whether minister, senior public official, ministerial staff or other political appointee. Canada appears to stand alone in the broad and uniform scope of its prohibition.

In many jurisdictions, measures are only required where the retention of certain assets could place officials in a conflict of interest. I note as well that divestment is only one means of addressing the possibility of conflict of interest. Alternative measures such as recusals or public declarations are used as well in some other jurisdictions.

Possible Elements of a Different Approach

Based on the considerations above, I believe a more flexible approach to regulating conflict of interest related to publicly traded securities and other speculative instruments should be considered. While a blanket prohibition against holding these investments certainly prevents any conflict of interest from arising in relation to them, it goes beyond what is required to meet this objective. It could be met equally well using a different approach built on one or more of the considerations set out below.



First and most importantly, while I believe a blanket prohibition on holding publicly traded securities may be appropriate for some public office holders, such as ministers of the Crown, ministers of state, parliamentary secretaries, deputy ministers and, possibly, ministers' chiefs of staff, I believe, at least as a general rule, that most reporting public office holders should not be required to divest publicly traded securities and other speculative instruments unless those assets create a real or potential conflict of interest. Many reporting public office holders have little or no insider knowledge relevant to publicly traded securities or other speculative instruments and no opportunity to impact their value in the course of carrying out their official duties and functions. As described above, a review of the divestments of current reporting public office holders shows that the vast majority of divestments were made in the absence of any risk of conflict of interest.

Sometimes where a reporting public office holder works determines whether he or she may have some insider knowledge or be able to affect the value of the controlled assets. For example, while a policy advisor to the Minister of Health may have insider knowledge relating to pharmaceutical companies and possibly some influence on government actions that may affect the price of their stocks, he or she would be less likely to have any such an advantage in relation to the automotive sector. While he or she should be prohibited from holding the former, the latter would not pose a potential conflict of interest.

The members of most federal boards and tribunals do not participate in the policy processes of government at all and have little connection with the government's plans, priorities or strategies. In addition, board and tribunal members are often already subject to rules contained in their organization's own governing statute that restrict their ability to hold certain types of securities because of conflict of interest concerns. Members of the Canadian Radio-television and Telecommunications Commission, for example, cannot hold shares in telecommunications companies.

I believe some consideration could be given to providing the Commissioner with some discretion in setting compliance measures in appropriate cases. For example, in those cases where it is difficult to apply the general rules, public disclosure might be a sufficient alternative to divestment. Disclosure itself would discourage inappropriate action. Recusal may also be more appropriate than divestment in the case of temporary appointments or where a reporting public office holder acts as executor for an estate that owns assets that could, but would be unlikely to, give rise to a conflict of interest. Recusals would also ensure transparency in the process, as they must be publicly declared under the Act.



V. EXAMINATIONS

One of my most challenging and unpredictable responsibilities arises under the power to conduct examinations into alleged contraventions of the Act by any current or former public office holder. In some circumstances, alleged contraventions of previous conflict of interest codes may also be examined. There is a limitation period - an examination must be conducted within five years after the Commissioner becomes aware of the alleged contravention, and no more than ten years after the alleged contravention occurred.

Under the Act, examinations can be initiated in two ways. First, an examination may be requested under section 44 by a Senator or Member of the House of Commons who has reasonable grounds to believe that there has been a contravention of the Act. Second, the Commissioner has the power to initiate an examination herself under section 45 where she has reason to believe that there has been a contravention of the Act.

In addition to my powers under the Act, I can also conduct inquiries under the *Conflict of Interest Code for Members of the House of Commons*. This is covered in the separate report made in respect of that Code.

Examinations Requested by Members of the House of Commons

Between April 1, 2008, and March 31, 2009, I reported findings on three examinations relating to reporting public office holders. The reports are publicly available. The first was with respect to Mr. Dimitri Soudas, an official in the Prime Minister's Office. This examination was initiated following requests from two Members of the House of Commons, received on January 31 and February 1, 2008. I released my report to the Prime Minister and made it public in June 2008. I concluded that Mr. Soudas did not contravene the *Conflict of Interest and Post-Employment Code for Public Office Holders, 2006* (2006 Code).

Two other examination reports related to the Honourable James Flaherty, Minister of Finance, but covered separate allegations. One was initiated following a request by a Member of the House of Commons received on February 7, 2008. I released my report to the Prime Minister and made it public on December 18, 2008. The other was initiated following a request by a Member of the House of Commons received on April 30, 2008. I released my report to the Prime Minister and made it public on July 16, 2008. In both cases I found Mr. Flaherty had not contravened the 2006 Code.

There were four other instances where Members of the House of Commons raised concerns with me about possible contraventions of the Act by a public office holder. In each of these cases, however, they did not make a formal request for an examination. I clarified for the Members the specific requirements of the Act in this regard and they did not proceed with a formal request.



Self-Initiated Examinations

Over the past fiscal year I received some 30 phone calls, emails and letters from individuals other than Senators or Members of the House of Commons providing me with information related to a range of ethical concerns. Almost all of these dealt with matters falling outside my jurisdiction. In two cases the concerns raised appeared to fall within my mandate and I therefore sought additional information. In one of these cases I determined that I did not have reason to believe that the Act had been contravened. In the other case I commenced an examination on my own initiative. My report will be released in the near future if it has not been released by the time this Annual Report is made public.

There have been a number of instances where a media report has included information that suggested to me that a public office holder may have failed to live up to his or her obligations under the Act. In three instances, where the concerns raised were of a serious nature and clearly related to a specific provision of the Act, I made additional inquiries. In each case, based on these inquiries, I determined that I did not have reason to believe the Act had been contravened.

Information received from members of the public raise an important consideration: whether I can or should protect the identity of the person who provided me with the information that led me to initiate an examination. The person against whom allegations are raised should be in a position to answer them. At the same time, the individual providing the information may have concerns about reprisal. The Act does not anticipate such a case and makes no provision for reprisal protection. It may be possible to keep confidential the identity of the individual providing the information for a period of time, particularly when that person has no direct connection to the matter he or she has raised and has provided information only, but it might not be possible to keep the identity confidential indefinitely.

Beyond these concerns, there is also a question of whether a member of the public who provides me with information has the right to be informed throughout the investigation process. I do not think so. While I may inform the individual generally of my reasons for not undertaking an investigation, should that be the case, the confidentiality provisions of the Act in relation to the conduct of examinations would apply if an examination is launched.

Investigative work is conducted in strict confidence by my Office. Only when I complete an examination are my findings made public. Where I do not proceed beyond an initial assessment of a complaint or concern, I cannot make known my reasons for not proceeding. This serves to protect the privacy of public office holders, but in cases involving well-publicized and controversial allegations I find it unfortunate that I am limited in my ability to make public my reasons for not pursuing a matter. The only way they can become public is if one of the individuals concerned releases my correspondence with him or her.



Federal Court of Appeal Decision

Late in the fall of 2007, Mr. Duff Conacher, Coordinator for Democracy Watch, sent me a letter asking that I conduct an investigation of alleged violations of the Act by the Prime Minister, the Attorney General of Canada and various other cabinet ministers.

In particular, Mr. Conacher requested that I investigate whether any of those public office holders contravened the Act by furthering their private interests or those of former Prime Minister Brian Mulroney in making decisions with respect to the Mulroney-Schreiber matter and that I issue compliance orders requiring that they recuse themselves from any future decision-making in respect of that matter.

By letter to Mr. Conacher dated January 7, 2008, I indicated that I would not undertake an examination on my own initiative on the grounds that I did not have sufficient credible evidence to believe that any of these public office holders contravened the Act by using their office or position to further their private interests or those of Mr. Mulroney. In light of this determination, I did not consider it necessary to issue any compliance orders requiring recusals.

Democracy Watch initiated an application for judicial review of my letter of January 7, 2008, alleging that I made a reviewable error in refusing to undertake an examination on my own initiative. This application was heard by the Federal Court of Appeal on January 21, 2009 and dismissed with costs.

In its Reasons for Judgment, the Federal Court of Appeal unanimously dismissed Democracy Watch's judicial review application for lack of jurisdiction on the basis that I did not owe Mr. Conacher a legal duty to act upon his request for an examination and that my letter of response did not constitute a decision reviewable by the Court. An application for leave to appeal to the Supreme Court of Canada was subsequently filed by Democracy Watch. On June 11, 2009 the Supreme Court dismissed the application with costs.



VI. ADMINISTRATION

Human Resources

The Office is a parliamentary entity, separate from the core public administration. This status brings certain flexibilities to the management of human resources. The Office has its own terms and conditions of employment and has adopted a classification structure reflective of the specific role of the organization and the competencies required to deliver its mandate. Although not subject to the *Public Service Employment Act*, the Office has made it a standard practice to apply the principles of that Act when appointing employees to the organization.

From a human resources perspective I have continued to make a number of organizational changes to better reflect the needs of the organization.

The Advisory & Compliance group has been reorganized to more effectively respond to the needs of public office holders and to ensure greater consistency and completeness of advice. We continue to work on developing better tools within the Office to improve awareness of significant interpretations and precedents.

I created a new learning and communications group responsible for research, development and management of learning tools for staff, as well as outreach and communications activities. The staffing has not yet been completed but this group has begun to develop a research agenda to identify and analyze topics of relevance to the work of my Office and to address emerging issues.

The structure established last year for our Legal Services and Corporate Services groups remains sound.

The Office has 47 positions, 8 of which were vacant on March 31, 2009. Employee retention is a challenge faced by most organizations, particularly small ones, and this Office is no exception. Although we were successful in bringing in 12 new employees in the past year through various means, including competitive processes and Interchange Canada assignments, we also saw 10 employees leave the organization during that period, 6 of whom joined the core public service. The Office continues to look at ways to be competitive with larger employers. Over the last fiscal year, we proceeded with a full update and assessment of all job descriptions and a review of our compensation package.

The Office plans to implement a development program early in the current fiscal year under which employees with pre-identified competencies will be provided with the opportunity to develop the knowledge and skills required to become advisors. This strategy should help address the difficulty we have in finding qualified individuals for advisor positions.



This year the Office has continued to develop its corporate policies and instruments, including a delegation authority instrument for human resources management, guidelines on performance evaluation and a formal policy on the prevention and resolution of harassment issues.

Finance

The Office had an operating budget of \$7.1 million for 2008-09, including \$4.5 million for salaries. An important portion of its non-salary budget is dedicated to the cost of arrangements with the House of Commons, the Library of Parliament and Public Works and Government Services Canada for the provision of administrative services to the Office. These arrangements are necessary due to the relatively small size of the Office.

Financial statements for the Office are provided in this report. As indicated in the statements, the allocated budget for 2008-09 was not fully expended largely due to staffing issues referred to above. It is also important to maintain a reserve to cover potential situations such as an abnormally high demand for investigations or other important projects.



VII. LOOKING AHEAD

As I approach my second anniversary as Conflict of Interest and Ethics Commissioner, I am pleased with the progress we have made in mastering the details of the *Conflict of Interest Act* and in putting in place measures to ensure that it is applied fairly and consistently. We are now in a position to increase our efforts to look outward.

The first priority that I set in my early months on the job remains fundamental to the work we do: to provide clear, consistent and common sense advice on the Act.

It remains a priority to provide information to public office holders about their obligations under the Act and to address any gaps in knowledge and understanding that we observe.

I have noted throughout this report a number of areas where either monitoring compliance presents a significant challenge or where additional steps may be necessary to encourage or enforce compliance. I will continue to address these issues in the coming year.

In the first two years, we put considerable emphasis on identifying areas of the Act that presented interpretational or administrative challenges. Both my first Annual Report on the Act and this one have highlighted many of these challenges. While issues remain that will require further analysis, our focus will now expand to considering further the practices and policies in other jurisdictions, both within Canada and internationally in order to develop a deeper understanding of the regimes we administer.

We will also put more emphasis on communications with the public in order to create better awareness of the mandate of the Office.

On the administrative side, we still have a few important staffing actions to complete, including a senior position responsible for learning and communications. In order to provide better support for our advisors in their communications with public office holders and members of the House of Commons, we will continue to improve our internal working tools.

In essence, I anticipate that the focus of my third year as Conflict of Interest and Ethics Commissioner will be on continuing to carry out our core compliance and advisory work with professionalism, while deepening our knowledge base and enhancing our communications and outreach efforts.

The strength of our organization will continue to reside in our staff. I would like to thank the staff of the Office for their dedication and commitment to supporting me in the past year and for making the achievements of this year possible.



VIII. APPENDIX - FINANCIAL STATEMENTS

Statement of Operations (Unaudited)

For the period ended March 31

(in dollars)

	2009			2008
	Operations	Inquiries	Total	Total
Salaries and employee benefits	3,191,624	1,183,966	4,375,590	3,900,230
Professional and special services	742,861	303,220	1,046,081	964,810
Accommodation	488,741	181,318	670,059	485,358
Amortization	93,466	34,675	128,141	283,356
Communications, travel and relocation	65,830	14,665	80,495	58,976
Material and supplies	38,288	9,060	47,348	53,020
Repairs and maintenance	34,089	9,144	43,233	48,416
Equipment rentals	19,424	7,119	26,543	25,745
Information	13,046	4,158	17,204	17,453
Loss on write-down of tangible capital assets	10,253	3,803	14,056	
Total Expenses	4,697,622	1,751,128	6,448,750	5,837,364
Net Cost of Operations	(4,697,622)	(1,751,128)	(6,448,750)	(5,837,364)

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

Statement of Financial Position (Unaudited)

As at March 31
(in dollars)

	<u>2009</u>	<u>2008</u>
Assets		
Financial Assets		
Accounts receivable and advances (Note 4)	<u>313,932</u>	<u>57,107</u>
Total financial assets	313,932	57,107
Non-financial Assets		
Tangible capital assets (Note 5)	<u>403,334</u>	<u>379,685</u>
TOTAL	<u>717,266</u>	<u>436,792</u>
Liabilities		
Accounts payable and accrued liabilities	437,301	266,596
Vacation pay and compensatory leave	143,400	131,237
Employee severance benefits (Note 6)	<u>825,830</u>	<u>726,720</u>
Total Liabilities	1,406,531	1,124,553
Equity of Canada	<u>(689,265)</u>	<u>(687,761)</u>
TOTAL	<u>717,266</u>	<u>436,792</u>

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

Statement of Equity of Canada (Unaudited)

As at March 31
(in dollars)

	<u>2009</u>	<u>2008</u>
Equity of Canada, beginning of year	(687,761)	(1,027,339)
Net cost of operations	(6,448,750)	(5,837,364)
Current year appropriations used (Note 3)	5,451,068	4,852,651
Change in net position in the Consolidated Revenue Fund (Note 3)	79,238	635,287
Services provided without charge by other government departments (Note 7)	916,940	689,004
Equity of Canada, end of year	<u>(689,265)</u>	<u>(687,761)</u>

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

Statement of Cash Flow (Unaudited)

For the period ended March 31
(in dollars)

	<u>2009</u>	<u>2008</u>
Operating activities		
<i>Net cost of operations</i>	6,448,750	5,837,364
Non-cash items:		
Amortization of tangible capital assets	(128,141)	(283,356)
Services provided without charge from other government departments (Note 7)	(916,940)	(689,004)
Loss on write-downs of tangible capital assets	(14,056)	
	5,389,613	4,865,004
Increase (decrease) in accounts receivable and advances	256,825	(107,257)
Decrease (increase) in liabilities	(281,978)	688,806
Cash used by operating activities	<u>5,364,460</u>	<u>5,446,553</u>
 Capital investment activities		
Acquisitions of tangible capital assets	165,846	41,385
Cash used by capital investment activities	<u>165,846</u>	<u>41,385</u>
 Financing Activities		
Net cash provided by Government of Canada	<u><u>5,530,306</u></u>	<u><u>5,487,938</u></u>

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

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 Conflict of Interest and Ethics Commissioner.

The Office of the Conflict of Interest and Ethics Commissioner (the Office) began its operations on July 9, 2007, with the coming into force of the *Conflict of Interest Act*. It replaced the Office of the Ethics Commissioner and was given an expanded mandate.

The objective of the Office is to enhance confidence and trust in government and parliamentary institutions, and to assure Canadians that members of the government are held to standards that place the public interest above their private interests. The role of the Office is to administer the *Conflict of Interest Act* and the *Conflict of Interest Code for Members of the House of Commons*. The Office provides advice to public office holders and MPs on their obligations under the Act and the Code; it receives and maintains on file confidential reports of assets, liabilities and activities; it maintains public registries for publicly declarable information; and, it conducts examinations or inquiries into alleged contraventions of the Act or Code respectively.

The Office of the Conflict of Interest and Ethics Commissioner's business is defined through two activities:

Operations - This activity encompasses all the actions taken by Office employees to ensure MPs and public office holders comply with the planned measures. The operations of the Office are supported by Legal, Policy & Communications and Corporate Services. The Commissioner is required to report to Parliament annually on the Office's activities.

Inquiries - Inquiries can be undertaken on the basis of allegations made by MPs or Senators. The Commissioner may also initiate an investigation on her own authority if she deems it necessary based on the information available to her.

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 Conflict of Interest and 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 Conflict of Interest and 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.

2. Summary of Significant Accounting Policies (continued)

(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. 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.
- 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: Change in Accounting Policy - Effective April 1, 2008, all capital assets and leasehold improvements having an initial cost of \$2,500 or more are recorded at their acquisition cost.

This reflects a change in the threshold for capitalization of capital assets from \$500 to \$2,500. The unamortized balance of capital assets with an original cost of less than \$2,500 has been written off in the current year. This is reflected by a charge to current year expenses in the amount of \$14,056, a reduction in the net book value of capital assets for the same amount and a corresponding reduction in equity of Canada.

2. Summary of Significant Accounting Policies (continued)

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
Other 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.

3. Parliamentary Appropriations

The Office of the Conflict of Interest and 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 of the Conflict of Interest and Ethics Commissioner 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

	<u>2009</u>	<u>2008</u>
Net cost of operations	6,448,750	5,837,364
Adjustments for items affecting net cost of operations but not affecting appropriations:		
Add (Less):		
Amortization of tangible capital assets	(128,141)	(283,356)
Services provided without charge by other government departments	(916,940)	(689,004)
(Increase) in vacation pay and compensatory leave	(12,163)	(33,691)
(Increase) in employee severance benefits	(99,110)	(73,180)
Adjustments to prior year payables	6,882	53,133
Loss on write-down of tangible capital assets	(14,056)	
Adjustments for items not affecting net cost of operations but affecting appropriations:		
Add (Less): Acquisitions of tangible capital assets	165,846	41,385
Current year appropriations used	<u>5,451,068</u>	<u>4,852,651</u>

3. Parliamentary Appropriations (continued)

(b) Appropriations provided and used

	<u>2009</u>	<u>2008</u>
Vote 20 - Operating expenditures	6,566,850	5,249,000
Statutory amounts	548,121	518,166
Less:		
Lapsed appropriations: Operating	(1,663,903)	(914,515)
Total appropriations used	<u>5,451,068</u>	<u>4,852,651</u>

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

	<u>2009</u>	<u>2008</u>
Net cash provided by Government	5,530,306	5,487,938
Change in net position in the Consolidated Revenue Fund		
Variation in accounts receivable and advances	(256,825)	107,257
Variation in accounts payable and accrued liabilities	170,705	(795,677)
Other adjustments	6,882	53,133
	<u>(79,238)</u>	<u>(635,287)</u>
Current year appropriation used	<u>5,451,068</u>	<u>4,852,651</u>

4. Accounts Receivable and Advances

The following table presents details of receivables and advances

	<u>2009</u>	<u>2008</u>
Receivables from other Government departments and agencies	313,432	56,607
Employee advances	500	500
Total	<u>313,932</u>	<u>57,107</u>

5. Tangible Capital Assets

Cost					Accumulated amortization					
Capital Asset Class	Opening balance	Acquisitions	Disposals and Write offs	Closing Balance	Opening Balance	Amortization	Disposals and Write offs	Closing Balance	2009 Net Book Value	2008 Net Book Value
Machinery and equipment	16,881		3,380	13,501	3,919	1,172	850	4,241	9,260	12,962
Other equipment	317,417	45,323	8,728	354,012	95,073	31,312	1,641	124,744	229,268	222,344
Computer equipment	238,550		140,639	97,911	173,830	28,121	136,915	65,036	32,875	64,720
Computer software	150,177		111,028	39,149	123,673	11,033	110,313	24,393	14,756	26,504
Leasehold Improvements	447,123	120,523		567,646	393,968	56,503		450,471	117,175	53,155
Total	1,170,148	165,846	263,775	1,072,219	790,463	128,141	249,719	668,885	403,334	379,685

Amortization expense for the period ending March 31, 2009 is \$128,141 (total for 2008 - \$283,356)

6. Employee Benefits

(a) Pension benefits: The Office of the Conflict of Interest and 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 2008-2009 expense amounts to \$395,743 (\$377,743 in 2007-2008), which represents approximately 2.0 times 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 Conflict of Interest and 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>2009</u>	<u>2008</u>
Accrued benefit obligation, beginning of year	726,720	653,540
Expense for the year	99,110	73,180
Benefits paid during the year		
	<u>825,830</u>	<u>726,720</u>
Accrued benefit obligation, end of year		

7. Related Party Transactions

The Office of the Conflict of Interest and 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 provided without charge by 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>2009</u>	<u>2008</u>
Accommodation	670,058	485,358
Employer's contribution to health and dental insurance plan	<u>246,882</u>	<u>203,646</u>
Total	<u>916,940</u>	<u>689,004</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.

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

	<u>2009</u>	<u>2008</u>
Accounts payable to other government departments and agencies	116,075	69,519