



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 CODE
FOR MEMBERS OF THE HOUSE OF COMMONS**



June 2009

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

The 2008-2009 Annual Report

in respect of the CONFLICT OF INTEREST CODE
FOR MEMBERS OF THE HOUSE OF COMMONS

For additional copies of this publication, please contact:

Office of the Conflict of Interest and Ethics Commissioner
Parliament of Canada
66 Slater Street, 22nd Floor
Ottawa, Ontario K1A 0A6

Telephone: (613) 995-0721
Fax: (613) 995-7308
Email: ciec-ccie@parl.gc.ca

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

66, rue Slater Street
22^e étage / 22nd Floor
OTTAWA, ONTARIO
CANADA
K1A 0A6

June 18, 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 Code for Members of the House of Commons* for the fiscal year ending March 31, 2009.

This fulfills my obligations under paragraph 90(1)(a) 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)(a) of the *Parliament of Canada Act*. It reports on activities of the Conflict of Interest and Ethics Commissioner under the *Conflict of Interest Code for Members of the House of Commons* 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)(b) of the *Parliament of Canada Act*. It reports on the Commissioner's activities under the *Conflict of Interest Act* related to public office holders for the same fiscal year.

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I. INTRODUCTION

The *Conflict of Interest Code for Members of the House of Commons* (the Members' Code or the Code) was originally adopted by the House of Commons on April 29, 2004. Under Standing Order 108(3)(a)(viii), the Standing Committee on Procedure and House Affairs (the Standing Committee) is given the mandate to review and report on all matters relating to the Members' Code on behalf of the House of Commons. The Code was amended on June 11, 2007, June 5, 2008 and again on June 4, 2009.

The Conflict of Interest and Ethics Commissioner is an Officer of Parliament and reports to the House of Commons through the Speaker. 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 Members' Code includes rules on conflict of interest for Members, processes for the confidential disclosure of personal information to the Commissioner, procedures for making Members' summary information public, an advisory role for the Commissioner and a process for the conduct of inquiries for alleged contraventions of the rules by Members.

The purposes of the Code are to maintain and enhance public confidence and trust in the House of Commons and its Members and to demonstrate to the public that Members are held to standards that place the public interest above their private interests. The Code also aims to guide Members and to foster consensus by establishing common standards and an independent and non-partisan means of answering questions related to the proper conduct of Members.

The Commissioner, with the support of her Office, administers the Code with a view to helping Members to avoid conflicts of interest. The Office advises Members on their compliance obligations, maintains confidential files of required disclosures and maintains a registry, including an electronic registry, of required public disclosures. The Office assists the Commissioner in the conduct of inquiries into alleged contraventions of the Code.

The Commissioner is mandated under the *Parliament of Canada Act* (the Act) to administer the Code as well as the *Conflict of Interest Act* (the Act). The Act applies to public office holders, including ministers, parliamentary secretaries, ministerial staff and a wide variety of Governor in Council appointees. A separate annual report is tabled in relation to the administration of the Act.



II. A YEAR OF SIGNIFICANT ACTIVITY

This has been a year of significant activity in administering the *Conflict of Interest Code for Members of the House of Commons*. Following the October 14, 2008 election, 68 new Members became subject to the Code and my Office supported them through the process of becoming compliant with the Code's requirements. The Office also worked with returning Members to ensure that they remained in compliance.

On January 27, 2009, updated disclosure forms for Members were finally approved by the Standing Committee on Procedure and House Affairs and the House of Commons. These forms had originally been prepared by my Office in 2007 to reflect updated requirements under the Code, and were submitted to the Standing Committee for approval. However, as I indicated in my 2007-2008 Annual Report, there were long delays in having the forms approved. These delays related to the interruption in House business that took place in 2008 as well as the election period that followed and the subsequent prorogation of Parliament. The new forms are now available on the Office's web site.

I appeared before the Standing Committee and its subcommittee on gifts and informed them about some of the concerns I had with the provisions relating to gifts and other benefits. At the request of the subcommittee, I suggested several amendments to the Code relating to those provisions. My Office was very pleased to see most of our suggestions reflected in amendments to the Members' Code approved by the House of Commons on June 4, 2009.

The 54th Report of the Standing Committee on Procedure and House Affairs, adopted by the House of Commons on June 11, 2007, underlined the importance of educating both Members and the general public about the Code by making educational activities a mandatory part of my job. My Office has undertaken a variety of activities to ensure that Members understand their obligations under the Code.

A presentation for new Members was organized under the Library of Parliament training program in late November, following the 2008 federal election. In cooperation with the offices of the party whips or caucus chairs, briefings were held in the spring of 2009 for the staff of all four political caucuses.

My staff and I regularly communicate with individual Members either in person or by phone to answer their questions and assist them in meeting their obligations under the Code. In order to facilitate communication between Members and my Office, two advisors have been designated as the points of contact for Members. While all advisors in my Office are able to provide advice on either the *Conflict of Interest Act* or the Code, these individuals are specialists on the Code.



My Office has redesigned our web site to make it more user-friendly. As of March 31, 2009 the web site includes the new on-line registry that provides the public with easy access to the information that Members are required to disclose publicly. The registry includes a summary of the information that is to be disclosed publicly and statements of gifts and other benefits and of sponsored travel. While the paper registry includes all the public disclosures of Members including those dating back to when the Code came into force, the electronic registry provides disclosures made since January 27, 2009, the date the disclosure forms were approved by the House of Commons. The paper registry continues to be available for public inspection at our Office. The information in the public registry, both on the web site and in the paper registry, will be kept up to date as changes are made to the information that must be disclosed publicly.

I send e-communiqués to keep Members informed of any report presented to Parliament or any major development relating to the application of the Code. For example, I advised Members when the new disclosure forms and the public registry became accessible on the Office web site.

I have also taken advantage of a number of opportunities to speak publicly about my role in an effort to increase the overall awareness of the conflict of interest regimes both of Members of the House of Commons and of public office holders. Over the next year my Office and I will continue our outreach efforts to provide ongoing education for Members as well as the public at large and other stakeholders.

In the following pages, I provide more information about these and other achievements of the past year. I have included important developments that occurred between April 1, 2009 and the time this report went to press. I also provide comments on parts of the Code that have presented interpretation challenges. In the section on inquiries, I make some observations about parliamentary privilege and whether Members have the right to engage in debate when a Member has a private interest that could be affected. I also make some observations about the relationship between political interests and private interests, an issue that arose this past year in the course of a preliminary inquiry.



III. APPLYING THE CODE

Members of my staff are involved in a variety of activities relating to applying the Code. In addition to making themselves available to answer questions from Members and their staff, they actively manage the compliance processes, conduct research and analyze the Code's provisions against actual situations. They monitor public controversies over ethical matters, provide me with advice on requests for investigations and carry out inquiries where warranted.

The following describes some of the main activities of my Office and includes a number of observations that I wish to make about the Code at the end of my second year on the job.

Disclosures

Members must disclose to my Office their assets, direct and contingent liabilities, sources of income, benefits related to government contracts and activities outside of Parliament as well as every known trust from which they could derive a benefit or income. They must also make reasonable efforts to disclose the same information for their spouses or common-law partners and their dependent children.

There are two steps in the disclosure process: first, Members complete a comprehensive and confidential document called a *Disclosure Statement*. The Code requires Members to file this document with my Office within 60 days after the notice of their election is published in the Canada Gazette. Following an analysis by advisors in this Office, Members are required to review a second document called a *Disclosure Summary* which is the portion of their disclosures that is made available to the public. At that time, Members are also provided with advice on any potential conflict of interest situations they may have. In addition, throughout the year, Members must disclose material changes that have an impact on their *Disclosure Statement*.

The *Disclosure Summary* of each Member's private interests is published in a registry accessible on our web site. The *Disclosure Summary* includes information on the Member, his or her spouse and dependent children such as investment assets consisting of publicly traded securities, trusts, revenues and liabilities over \$10,000, investments in private corporations, contracts or sub-contracts with the Government of Canada and other activities. Information on this registry also includes disclosures of certain gifts valued over \$500 that a Member or a member of his or her family accepts, of sponsored travel, of trusts, and of material changes to the *Disclosure Statement*. The registry is continuously updated as new disclosures are received. A Member's information is reviewed on an annual basis and the *Disclosure Summary* updated accordingly.



It is important to note that the Code does not impose a deadline for Members to complete the compliance process. This is in contrast to the *Conflict of Interest Act*, which requires reporting public office holders to be in compliance within 120 days. A status report is maintained and published on our web site indicating where each Member is in the compliance process.

As a result of the October 14, 2008 election, 68 new Members were elected and 240 Members returned. As is the case in all election years, there was a spike in workload for our compliance advisors since compliance measures had to be established or reviewed for all Members of Parliament. At the same time, our advisors assisted new ministers, their staff, and parliamentary secretaries in meeting the compliance requirements of the *Conflict of Interest Act*.

Compliance advisors monitored closely the 60-day deadline for confidential disclosures and followed up with Members when the deadlines were approaching.

As of March 31, 2009, all Members had filed their initial disclosure statements with my Office. Since Members are required to make full disclosure of their private interests as well as the private interests of their spouses and dependent children, there is often a need to go back to Members to ask for further documentation. By March 31, 2009, we had finalized the arrangements of 112 Members and by the time we went to press that number had risen to 205, of whom 45 were new Members. My staff continues to work closely with Members who still have outstanding compliance issues. And as mentioned previously, the registry provides a status report on each Member.

Sponsored Travel List

I am required to submit a list of sponsored travel for the previous calendar year to the Speaker of the House of Commons by January 31 of each year and this year's list was tabled by the Speaker on January 31, 2009.

I noted in my covering letter to the Speaker that, while I am required to prepare the list by January 31 of each year, Members have 60 days after the end of their trip to report sponsored travel. This means that each year we must include an addendum relating to the year previous to the one being reported on for travel reported after the January 31 deadline. In 2009, for example, there were nine trips reported for the last months of 2007.

I had suggested to the Standing Committee on Procedure and House Affairs that they consider as a technical amendment to the Code making March 31 the deadline for me to report all sponsored travel for the previous calendar year. I am pleased to report that this was one of the amendments to the Code approved by the House of Commons on June 4, 2009.



Advisory Role

One of the most important roles of my Office is providing confidential advice to Members on the application of the Code to their specific situations. During the year, we responded to several hundred phone calls and emails from Members. While some questions are relatively straightforward, others can be both complex and challenging. Most of the questions are raised with my Office because the application of the Code to a particular situation is not immediately apparent. It is important that the advice provided by my Office be documented and this year we have put in place more consistent and stringent processes to ensure that records are updated each time there is a communication with a Member.



IV. GIFTS AND OTHER BENEFITS

The sections of the Members' Code relating to the acceptance of gifts and other benefits continued to be of concern to me this past year. I shared my concern with the Standing Committee on Procedure and House Affairs and appeared before a subcommittee that it established to review the sections relating to gifts. Amendments to the Code were approved by the House of Commons on June 4, 2009. The following includes a brief description of the difficulties I had in applying the Code's provisions on gifts and other benefits before the very recent amendments and some preliminary observations on the amendments.

Prior to June 4, 2009, subsection 14(1) of the Members' Code read as follows:

*14.(1) Neither a Member or any member of a Member's family shall accept, directly nor indirectly, any gift or other benefit, except compensation authorized by law, **that is related to the Member's position.** [Emphasis added]*

With a few narrow exceptions, the former subsection 14(1) prohibited a Member or any member of his or her family from accepting any gift or other benefit connected with the Member's position. This was regardless of whether or not there was a real or potential conflict of interest. The only exceptions to this prohibition were gifts received as protocol or hospitality. Such gifts with a value of more than \$500 had to be publicly disclosed (subsection 14(3)).

As I applied the gift provisions of the Code to concrete situations, I became increasingly aware that a literal interpretation of subsection 14(1) led to a number of surprising limitations on what gifts or benefits were acceptable. For example, attending a charitable event or a conference in the Member's riding courtesy of the organizer, attending a political party convention courtesy of the political party, or accepting the services provided by volunteer workers would be prohibited even where there was no conflict of interest.

During my appearance before the Procedure and House Affairs Committee, on December 4, 2008, I said that I was having challenges in interpreting section 14 because, as written, it was very broadly prohibitive of virtually any gift or benefit that was more than a modest token of hospitality or courtesy, regardless of whether there was a conflict of interest for the Member. I was concerned about how this blanket prohibition could effectively undermine their ability to perform their duties. More specifically, I had concerns about how to find the balance between the prohibition on accepting gifts and other benefits, such as free attendance at events in their ridings, and section 5 of the Code which states that: "a Member does not breach this Code if the Member's activity is one in which Members normally and properly engage on behalf of constituents".



I also saw that in section 2 of the Code, which sets out basic principles that can be considered when interpreting the Code, there was a suggestion of a much less stringent expectation as to when gifts could be accepted. Paragraph 2(e) reads as follows:

2. Given that service in Parliament is a public trust, the House of Commons recognizes and declares that Members are expected

...

*(e) not to accept any gift or benefit connected with their position **that might reasonably be seen to compromise their personal judgment or integrity** except in accordance with the provisions of this Code. [Emphasis added.]*

I wondered whether I could rely on paragraph 2(e) as a basis upon which to interpret the Code somewhat more broadly. I have had experience in applying the *Conflict of Interest Act* which prohibits gifts or other advantages only if they “might reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function”. The approach of that Act is similar to that reflected in the principle in the Code cited above. However, given the clear words of subsection 14(1) of the Code, I did not feel that this less restrictive approach was open to me.

I was particularly concerned that Members did not seem to share a common understanding of the extent of the limitation on accepting gifts and other benefits. For example, with respect to accepting tickets for charitable events, in the relatively few instances where my Office received requests for advice, the blanket prohibition in subsection 14(1) seemed to come as a surprise. On several occasions where we were consulted and had advised Members that they could not accept the gift of a ticket, we were informed that other Members were accepting tickets to the same event. These other Members did not consult us but apparently just accepted the tickets.

Most times, when Members asked for advice, it related to the requirements to disclose gifts of protocol or hospitality with a value of more than \$500. We had very few requests relating to the acceptability of gifts or other benefits from riding associations, services provided by volunteer workers, or prizes donated to specialized all-party caucuses by private sector special interest groups. Unless they could be considered protocol or hospitality, the Code prohibited all of these.

I had a growing sense that there were significant variations in how Members were adhering to the Code based on their personal understanding and interpretation of its provisions. I am sure that a number of Members were in strict compliance with the gift provisions of the Code. It appears, however, that for others, the Code’s provisions relating to gifts and benefits might not have made sense given their constituency duties. For example, Members may not have considered the services of volunteers or tickets to



charitable events in their ridings to be a gift or benefit. As well, some Members appeared to think that they could accept any gifts or benefits as long as they respected the requirement to publicly disclose protocol and hospitality gifts with a value of more than \$500. At best, the situation was confused and I felt it needed to be resolved.

I was therefore pleased when, on January 27, 2009, the Standing Committee on Procedure and House Affairs decided to establish a subcommittee to look into the provisions of the Code relating to gifts and other benefits. I was invited to appear before the subcommittee several times during their in camera deliberations to explain my concerns and, at its request, suggested some amendments to the relevant provisions of the Code.

I believe that the amendments to the Code approved by the House of Commons on June 4, 2009 will help to address the concerns noted above and will result in more disclosures. For example, section 14 has been amended to prohibit only those gifts that would place Members in a real or potential conflict of interest and now requires that all gifts that relate to a Member's position be subject to the Code's disclosure rules. I believe the amended section 14 will meet the purposes of the Code without preventing Members from accepting gifts or other benefits where there is no conflict of interest. These would include, for example, free tickets to events in their ridings and other functions that they might normally be expected to attend in the course of carrying out their duties as Members.

Subsection 14(1), amended as of June 4, 2009, now reads as follows:

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

A gift or other benefit will place a Member in a conflict of interest if it can reasonably be seen to have been given to influence him or her. Thus, the main change to the gift provisions of the Members' Code is the addition of a conflict of interest test. The general rule in subsection 14(2) excepting from the prohibition benefits received "as a normal expression of courtesy or protocol, or within the customary standards of hospitality" remains as part of section 14. As well, most gifts from family and friends will continue to be acceptable.

A significant change as a result of the recent amendments is the broadening of the scope of subsection 14(3), which requires the disclosure of gifts or other benefits having a value of more than \$500, so that it now requires disclosure of all gifts and other benefits that relate to a Member's position, not only gifts of protocol and hospitality. This should result in an increase in the number of gifts publicly disclosed.



In addition, a new subsection 14(1.1) was added. That new provision makes it clear that gifts or other benefits that relate to charitable or political events or that are received as a result of donations to specialized all-party caucuses are, as in other cases, subject to a conflict of interest test that takes into account who is offering the gift or other benefit.

Members have also amended the definition of “benefits” in subsection 3(1) of the Code to exclude services provided by volunteers working on behalf of Members as well as benefits from a riding association or a political party. My Office has received very few requests for advice that were relevant to either of these two areas and no disclosures have been made.

In the coming months, my Office will ensure that Members receive information on the gift provisions of the Code, including the recent amendments, and in the coming year we will monitor these provisions carefully.



V. INQUIRIES

One of my most challenging and unpredictable responsibilities relates to my power to conduct inquiries into alleged contraventions of the Code by Members. In the past fiscal year I completed one inquiry and considered the possibility of launching a number of others.

Under the Code, an inquiry can be initiated in one of three ways. First, it may be requested by a Member who has reasonable grounds to believe that another Member has not complied with the Code. Second, it can be initiated by way of a resolution of the House of Commons. Third, I have the power to initiate an inquiry on my own initiative if I have reasonable grounds to believe that a Member has not complied with his or her obligations under the Code.

Although I have conducted only one inquiry under the Code since assuming my position as Commissioner, I have received and reviewed a number of requests from Members. My work relating to inquiries is rarely straightforward and often gives rise to interpretational and procedural issues.

In my discussion below, I summarize the inquiry-related work carried out by my Office. I also describe a number of issues that arose in relation to this work. Some of these issues are very large and my comments are intended to be preliminary.

Parliamentary Privilege – Freedom of Speech

In the Report issued on May 7, 2008 as a result of the Thibault Inquiry, I concluded that a libel lawsuit against a Member represented a private interest for the Member within the meaning of the Code and that the private interest should have been disclosed to the Clerk of the House of Commons. In reaching my conclusion, I was aware of concerns about the potential use of lawsuits, particularly libel suits, to muzzle Members and indicated in my Report that, should Members be sufficiently concerned about this risk, the Code could be adjusted to exclude libel suits from the ambit of “private interests”.

Members approved an amendment to the Members’ Code on June 5, 2008 that excludes a matter that “consists of being a party to a legal action relating to actions of the Member as a Member of Parliament” from the description of a private interest. It has the effect of removing such legal actions from the ambit of the general prohibition against participating in debate or voting where the Member has a private interest in the matter at hand. Members also adopted a motion requiring that I give further consideration of the Thibault Report in light of the amendment. On June 17, 2008, I issued a report in which I concluded that Mr. Thibault would not have failed to comply with the Code if that amendment had been part of the Code at the relevant time. The full inquiry report and response are available on my Office’s web site.



Debates in the House of Commons following my release of the Thibault Report focused largely on the issue of the relationship between the Code and the free speech of Members. On June 17, 2008, the House of Commons referred the following motion to the Standing Committee on Procedure and House Affairs:

That for the purpose of better assuring the privileges of this House and its members, including our ancient and undoubted privilege of free speech, and ensuring that nothing in the Conflict of Interest Code or the Standing Orders inadvertently interferes with or diminishes from the privileges of members of the House of Commons the subject matter of the Speaker's ruling today on these issues be referred to the Standing Committee on Procedure and House Affairs for its consideration, and if necessary, to study and/or consult with the Conflict of Interest and Ethics Commissioner and/or report to the House. [Emphasis added.]

The Standing Committee had not had an occasion to examine this matter at the time that a federal election was called in September 2008 and has not done so since.

The concern expressed in the quote above is that the privilege of free speech in the House of Commons not be interfered with. This is a broader issue than that dealt with in the Thibault Inquiry. I understand the concern and I share it. I am careful not to interpret the provisions of the Code that restrict debate or require recusal overly broadly. It is important that the rights of Members to engage in debate within the House of Commons be protected.

At the same time, however, it is important to be aware that, in adopting the Code, Members have accepted as appropriate certain restrictions that will, from time to time, limit their freedom of speech. I also accept that this is appropriate. Section 13 of the Code is clear. It reads as follows:

13. A Member shall not participate in debate on or vote on a question in which he or she has a private interest.

That provision stands in its original form. The amendment relating to legal actions referred to above, that was adopted by the House on June 5, 2008, did not remove the general requirement to withdraw from debate in relation to matters in which a Member has any other private interest. It was simply an exception to the general rule. I think the remaining provision is entirely appropriate in that it is aimed at preventing conflicts of interest.



Political versus Private Interest

In the course of a preliminary inquiry that I conducted this past year in response to a request from a Member, I had to consider the issue of political versus private interest. In that case, following the completion of the preliminary inquiry, I determined that an inquiry was not warranted. The Code does not permit me to report publicly on the findings of a preliminary inquiry. I note, however, that my joint response to the Member who made the request in that case and the Member against whom the allegations were made was published on the web site of the latter and is now in the public domain. I therefore feel I can offer some general observations on the matter that was at issue.

Section 8 of the Code contains a general prohibition against furthering private interests. It reads:

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

The qualifier “improperly” in this section applies to situations where Members are furthering private interests other than their own or those of members of their family. The addition of the word “improperly” in these cases reflects the fact that Members routinely further the private interests of particular groups or individuals and that doing so is not always improper. Often private interests are furthered incidentally as Members seek to advance their political agendas or contribute to the formulation or implementation of public policy.

In deciding whether an interest has been “improperly” furthered in some cases, it is necessary to determine whether the focus of the action in question was on the private interest at issue or whether that private interest was incidental to some broader policy or political agenda. After examining the facts available to me during the preliminary inquiry process in the case referred to above, I felt that the private interest in question was incidental to a long standing policy position held by the Member against whom the complaint was made. It was on that basis that I determined that no inquiry was warranted. Politicians should be able to voice their support for particular policy agendas without undue limitation, both inside and outside the House of Commons.

This conclusion reflects my general view that I should not involve myself in policy disputes or other political matters unless they also involve a deliberate and focused attempt by a Member to further a private interest. Exactly where to draw the line between a private interest and what might be called a “political” interest will sometimes be difficult to determine and will always depend on the circumstances of the case.



Reporting of Preliminary Inquiries

Subsection 27.(5.1) of the Code prevents me from making any public comment relating to a preliminary review or inquiry. It reads:

27.(5.1) Other than to confirm that a request for an inquiry has been received, or that a preliminary review or inquiry has commenced, or been completed, the Commissioner shall make no public comments relating to any preliminary review or inquiry.

As I understand it, the purpose of this prohibition is to prevent attention being drawn to allegations of wrongdoing unless and until the Commissioner has conducted an inquiry and issued a report on the matter. This reflects an important principle of procedural fairness and my Office takes care to ensure that investigative work is conducted in confidence. However, there are certain occasions where I believe it would be in the interest of Members for me to be able to communicate the results of a preliminary review. This is often the case where the Member requesting that I carry out an inquiry of a matter relating to another Member makes the request public.

In a related vein, there have been three instances where a Member has raised concerns with me about a possible contravention of the Code by another Member. In none of these cases did the Member follow up by making a formal request for an inquiry once I provided clarification on the specific requirements of the Code in relation to requests for inquiries. In some of these cases, however, the Member informed the media that the concerns had been brought to the attention of my Office but to my knowledge did not let it be known publicly that I was not proceeding with the request.

I am concerned because these situations can be damaging to the reputation of the Members whose compliance is being questioned. There can be a significant period of time when the public can be led to believe that there is an investigation taking place even if it turns out that there are no grounds upon which to undertake an inquiry.

During a preliminary review I go through some of the same processes as those followed in a formal inquiry. It is often necessary to speak once or more with the individuals involved in the matter and it may be necessary to work through some important interpretations of the Code. Even if I decide not to proceed to an inquiry once I have clarified some of the facts underlying the situation referred to me, it would often be instructive and serve the interests of transparency to make public some of my considerations in not taking the matter further. However, because I am not permitted under the Code to disclose any information about an inquiry except in a final report, nothing can become public unless the Member requesting the inquiry or the Member in question decides to release my final communications to them.



In the coming year, I hope to have the opportunity to pursue these issues with the Standing Committee on Procedure and House Affairs.

Self-initiated Inquiries

I have the power to self-initiate inquiries where I have reasonable grounds to believe that a contravention has occurred. Although I have not yet exercised this power under the Code, the steps I would take in such a case would be similar to those that I would take if a Member makes a request. The Member in respect of whom a request is made would be entitled to 30 days to respond to the concerns raised, after which I would reassess the case to determine if I should proceed.

A decision to undertake an inquiry on my own initiative would likely result from information I receive from a member of the public. A media report might also prompt me to undertake an inquiry if it contained enough information for me to have reason to believe that there has been a contravention of the Code. To date this has not occurred.

I regularly receive correspondence from the public raising possible contraventions of the Code or the *Conflict of Interest Act* or ethical concerns more generally. Over the last year, I received about 30 of these communications. In a few instances, a member of the public or a media report has raised what appeared, on the surface, to be something I should investigate. My staff and I have spent some time considering these few cases.

The vast majority of concerns raised by the public are general in nature and relate more to a disagreement on policy or sometimes involve a personal grievance unrelated to the Code or the Act. Very rarely is there a reference to specific provisions of the Code or Act that might have been contravened. Where it might be helpful, I attempt to redirect the member of the public to the appropriate body and provide him or her with some clarification on the limits of my own mandate.

In order for me to consider initiating an inquiry under the Code on my own initiative, the possible contravention must relate clearly to a specific provision of the Code. During this past reporting period, there were no cases where I determined that a self-initiated inquiry was warranted, either because the matter raised fell outside of my jurisdiction, because there was not enough detail to give me reason to take further action, or because the matter was trivial.

Timeframes for Preliminary Reviews

In the inquiry process set out in the Code, a Member making a request must identify the alleged non-compliance and provide reasonable grounds in writing to support his or her belief that a breach has occurred. If the request meets these requirements, the



Member who is the subject of the allegation is informed without delay of the details of the allegation, including who made it, and is given 30 days to respond. I then carry out a preliminary inquiry in order to assess the original request and the response to determine whether an inquiry is, in fact, warranted.

Until June of this year I had only 10 days in which to conduct the preliminary review. In my experience I found this deadline difficult to meet, especially where the request raised interpretational issues. This 10-day period was raised to 15 days in the June 4, 2009 amendments to the Code. I welcome this change.



VI. ADMINISTRATION

Human Resources

The Office of the Conflict of Interest and Ethics Commissioner 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 its standard practice to apply the sound principles of that Act when appointing employees to the organization.

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

The Advisory and Compliance group has been reorganized to more effectively respond to the needs of Members and public office holders and to ensure greater consistency and completeness of advice. We continue to work on developing better tools within the Office to provide 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 the Office is no exception. Although it was 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, it proceeded with a full update and assessment of all job descriptions and a review of its compensation package.

The Office plans to implement a development program early in the new 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 and retaining qualified individuals for advisors positions.



This year the Office has continued to develop its corporate policies and instruments including a delegation of authority instrument for human resources management, guidelines on performance evaluation and a 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 shared service arrangements with the House of Commons, the Library of Parliament and Public Works and Government Services Canada for the provision of internal services to the Office. These arrangements are necessary due to the relatively small size of the Office.

I met the Standing Committee on Access to Information, Privacy and Ethics in March 2009 to provide an overview of my mandate with respect to public office holders and in April to discuss the spending estimates of my 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 understanding and applying the Code. More particularly, I am pleased that the deliberations of the Standing Committee on Procedure and House Affairs and its subcommittee on the provisions of the Code relating to gifts and other benefits have resulted in amendments to the Code – a significant achievement and one that we expect will enhance compliance and disclosures in the coming year.

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 Code.

It remains a priority to provide information to Members about their obligations under the Code and to address any gaps in knowledge and understanding that we observe. I have identified the recent amendments to the Code relating to the acceptance of gifts and other benefits as a communications priority.

We will also put more emphasis on communications with the public in order to create more awareness of the Members' Code and its purposes.

We will continue to work with the Standing Committee on Procedure and House Affairs on issues as they arise.

We still have a few important staffing actions to complete, including that of a senior position responsible for learning and communications. In order to provide better support for our advisors in their communications with Members of the House of Commons as well as with public office holders, we will continue to improve our internal working tools and to make them more easily available to our advisors.

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	<u>437,301</u>	266,596
Vacation pay and compensatory leave	<u>143,400</u>	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
	<hr/>	<hr/>
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