



Office of the Conflict of
Interest and Ethics
Commissioner

Commissariat aux
conflits d'intérêts et
à l'éthique

The 2009-2010 ANNUAL REPORT

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



June 23, 2010

Mary Dawson
Conflict of Interest and
Ethics Commissioner

The 2009-2010 Annual Report

in respect of the
Conflict of Interest Code for Members of the House of Commons

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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 23, 2010

The Honourable Peter Milliken, M.P.
Speaker of the House of Commons
House of Commons
Room 224-N, Centre Block
Ottawa, Ontario
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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, 2010.

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 2009-2010 fiscal year ending on March 31, 2010.

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

This is one of two annual reports issued by my Office. This report is made under the *Conflict of Interest Code for Members of the House of Commons* (Code) and the other report is made under the *Conflict of Interest Act* (Act).

The Conflict of Interest and Ethics Commissioner administers the Act and the Code. These two regimes seek to ensure that public officials, whether appointed as public office holders or elected as Members, are not in a conflict of interest. The Commissioner is also mandated to provide confidential advice to the Prime Minister about conflict of interest and ethics issues.

The Act, which came into force in July 2007, applies to public office holders, including ministers, parliamentary secretaries, ministerial staff, ministerial advisers, deputy ministers and most full- and part-time Governor in Council appointees. There are approximately 2,800 public office holders subject to the Act, more than half of whom are part-time.

The Code is included as an appendix to the *Standing Orders of the House of Commons*. It applies to all 308 Members of the House of Commons. The Code was adopted by the House of Commons in 2004 and was amended in 2007, 2008 and 2009.

The overall objective of the Act and the Code is to enhance confidence and trust in government by establishing clear conflict of interest rules for public office holders and Members. These rules hold them to standards that place the public interest above their private interests when the two come into conflict. The Act also contains a number of post-employment rules. The focus of both the Act and the Code is on prevention. Rules and procedures set out in each aim to minimize the possibility of conflicts arising between public and private interests.

The main responsibilities of the Office are to:

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



II. HITTING OUR STRIDE AND MOVING FORWARD

This Annual Report will be tabled close to the third anniversary of my appointment as Conflict of Interest and Ethics Commissioner. I believe that my Office hit its stride as we continued to administer the two conflict of interest regimes: the *Conflict of Interest Act* (Act) and the *Conflict of Interest Code for Members of the House of Commons* (Code). The accomplishments of our first two years in building the organization and understanding the Act and the Code enabled us to meet new challenges in applying these similar, but distinct ethics regimes.

Our primary mandate is to help public office holders comply with the Act and Members comply with the Code; the Office's advisory role is fundamental to helping them meet their obligations. My staff and I communicate and meet regularly with individual public office holders and Members to address their questions and concerns. Our work in this respect has been greatly advanced over the past year as a result of the continued dedication of existing staff and the completion of staffing of virtually all positions.

This year, my Office has implemented a number of process improvements, including a system of reminders that notify public office holders and Members of approaching disclosure and compliance deadlines. This has significantly reduced missed deadlines under both the Act and the Code. Advisors are also working with an improved electronic case management system that enables them to provide more timely advice to public office holders and Members.

We continued to undertake educational activities for public office holders and Members, including briefings, presentations and direct written communications to explain their obligations under the Act and the Code and to respond to their questions.

We undertook a number of major investigations over the year. For the first time, it was necessary in several instances to conduct investigations in relation to the same matter simultaneously under both the Act and Code. The individuals under investigation in these cases were Members subject to the Code who were also ministers or parliamentary secretaries subject to the Act. While both regimes are based on many of the same underlying principles, the slight differences in detail between the two resulted in the need to conduct distinct analyses under each.

I have had occasion this year to consider carefully some of the fundamental aspects of my mandate. In particular, I considered the limits of the concept of private interest. This concept is central to both regimes, each of which aims to ensure the public interest is placed ahead of private interests. I also had occasion to consider the extent to which I have a general ethics mandate that extends beyond conflict of interest. I discuss both of these issues in more detail in Section V of this report.

In this Annual Report, as in previous ones, I set out areas of the Act that have presented certain challenges and the approaches we have taken to address them. I have continued to work with the House of Commons Standing Committee on Procedure and House Affairs to suggest improvements to the Code based on our experiences over the past years.



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

Last fall, I had another opportunity to meet with the Standing Committee, this time to share my concerns about the Code's provisions relating to disclosures and inquiries. At the request of the Committee, I submitted proposals to it for amendments in these areas.

I was asked to testify on two separate occasions before the Oliphant Commission, the Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings between Karlheinz Schreiber and the Right Honourable Brian Mulroney. In June, I commented on post-employment rules and in July, on outreach activities for ministers and ministerial staff in relation to post-employment obligations.

Last year we took a number of opportunities to exchange information with representatives of provincial, territorial and international jurisdictions. This has helped us to understand how our ethics regimes compare with others.

In the past year I attended and gave a presentation at the Ethics in Democracy II Conference in El Salvador, an international event organized by the Canadian government and attended by a number of Canadian academics. The conference focused primarily on Mesoamerica but was attended by representatives of a much broader range of countries.

My Office has engaged with the Organisation for Economic Cooperation and Development (OECD) several times over the past year. The Office is also member of the Council on Governmental Ethics Laws (COGEL) and is represented at its conference every year.

In March 2010, my Office accepted a coordination role in the Canadian Conflict of Interest Network (CCOIN), which includes federal, provincial and territorial commissioners. We are now responsible for gathering and disseminating within this network information and materials acquired or developed in the various jurisdictions within Canada.

In the following sections of this Annual Report, I provide greater details on the matters touched on briefly in this summary of the highlights of the year. In reviewing what has been a busy and productive 12 months I remain grateful for the contributions of my staff and the goodwill of public office holders and Members of the House of Commons.



III. APPLYING THE CODE

The *Conflict of Interest Code for Members of the House of Commons* (Code) applies to the 308 elected Members of the House of Commons. They include ministers and parliamentary secretaries, who are also subject to the *Conflict of Interest Act*.

All Members must comply with a number of basic rules. There is an initial disclosure requirement, described below, following their election. As well, they are subject to a general prohibition against furthering certain private interests. They cannot use their influence as Members, or insider information gained through their position, for private ends. They cannot accept gifts or other benefits that appear to have been given to influence them in their official capacity. There are disclosure rules related to matters that may come up from time to time as they perform their parliamentary duties that could affect private interests, along with a prohibition against participating in a debate or vote on any question where they have a private interest.

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 in order to prevent contraventions of the Code. During the year, we responded to almost 300 phone calls and emails from Members. While some questions are relatively straightforward, others can be challenging.

In this section, I report on the activities undertaken by my Office to help Members meet the requirements of the Code. In the following section, Matters of Note, I elaborate on other aspects of our dealings with Members and our administration of the Code.

Disclosure Requirements of Members of the House of Commons

Advisors in my Office guide Members through the initial compliance and annual review processes and provide ongoing advice as needed. The Code is based on self-reporting. The guidance and advice we provide is therefore largely dependent on the information Members submit to my Office. My Office will solicit additional information as needed and will consult public documents such as corporate registries or company websites where appropriate. We also take note of any media or other public information that may be relevant to the compliance requirements of Members. At the same time, it is the responsibility of the Members themselves to provide complete and accurate information to us.

Disclosure requirements for initial compliance with the Code

Each Member of the House of Commons must submit a confidential disclosure statement to my Office within 60 days of the *Canada Gazette* publishing his or her notice of election to the House of Commons. The statement must list his or her assets, direct and contingent liabilities, sources of income, every known trust from which he or she could derive a benefit or income, benefits related to government contracts and activities outside of Parliament. Members must also make reasonable efforts to disclose the same information for their spouses or common-law partners and their dependent children. Information provided to my Office is reviewed by advisors who, in consultation with Members, ensure that they meet their obligations under the Code.



At the completion of this compliance process each Member must sign a disclosure summary that is prepared by my Office. Once signed, it is made public. While not as detailed as the information received by my Office, the disclosure summary provides a degree of transparency. Disclosure summaries are available for examination in the public registry on our website, and are also available in my Office or, on request, by fax or mail.

While the Code imposes a 60-day deadline for initial disclosure, there is no deadline for completing the initial compliance process. This is in contrast to the *Conflict of Interest Act*, which requires that public declarations, divestments and other measures be completed within 120 days. I believe that the lack of a deadline under the Code diminishes the urgency and importance of completing the initial compliance process. As a result, there are sometimes longer delays under the Code than under the Act to complete similar compliance arrangements. I note that two Members have yet to sign their disclosure summaries following the October 2008 election.

Annual review of compliance arrangements

The Code also requires that a review of the information contained in disclosure statements be made on an annual basis. We send an annual review letter to Members each year around the anniversary of the day they signed their first disclosure summary. Responses are reviewed and, where necessary, compliance measures are updated. If there are no changes to the public information, no new disclosure summary is required; the most recent one remains valid.

Over the past fiscal year only 75 Members were due for their annual reviews because they were the only Members who, following the general election in October 2008, had signed their initial disclosure summary by the end of that fiscal year. By March 31, 2010 we had received responses from 42 of them.

Other disclosure requirements

The annual review is not the only mechanism by which Members' compliance arrangements are reviewed and amended. The Code sets a limit of 60 days for Members to inform my Office of material changes to any information required in their disclosure statements. In some cases changes to Members' information that should be disclosed as a material change within the 60 days only come to our attention during the annual review process. More will be said about this in the next section of this report.

Members must also inform my Office when they accept gifts or benefits related to their position that are valued at \$500 or more, either individually or cumulatively from a single source. Members must also disclose when they accept sponsored travel worth more than \$500.

I cannot emphasise enough that, while Members are required to disclose a gift or other benefit when the value is of \$500 or more, the monetary value is not the determining factor as to whether or not the Member should accept the gift or benefit. I encourage Members to contact my Office when they do receive a gift or benefit if they have any doubt about its acceptability.



We are able to keep track of confidential disclosures, disclosure summaries and annual reviews because they are initiated and managed by my Office. We do not, however, necessarily know when Members accept gifts or benefits or sponsored travel, or have a material change to their information on file, because it is at the Member's initiative that these are reported.

Members' Registry

Since March 31, 2009, my Office's website has included an online public registry that provides easy access to the information that Members are required to disclose publicly, including public statements of gifts and other benefits and of sponsored travel.

It should be noted, however, that the online registry only contains information that has been made public since January 27, 2009, when the House of Commons approved the related forms. Information that was made public prior to that date is found only in the Members' paper registry housed in my Office. It is available for public inspection during office hours or, on request, by fax or mail.

My staff is often asked by members of the public and the media why a full set of documents supporting each sponsored travel statement made by a Member is not made available on the online public registry. Where possible, we have recently begun disclosing this information and supporting documentation is available in the paper registry housed in my Office. In some cases, however, Members indicate to my Office that they were unable to obtain supporting documents. We are currently enhancing the online public registry system to make all supporting documents related to sponsored travel that are submitted to my Office available to the public.

Improved Compliance Processes

My Office continues to find ways to improve our compliance processes in order to help public office holders and Members of the House of Commons to comply with the *Conflict of Interest Act* or the Code. We offer individual meetings with newly elected Members, and encourage Members to meet with advisors during the initial compliance process. In my annual report for the Code last year, I reported on the implementation of a series of reminders relating to the 60-day deadline for filing confidential disclosures. I am happy to report that the reminders have proven very effective in ensuring that these deadlines are met.

As a result of by-elections in 2009, four new Members took office. Our advisors worked with the new Members to ensure they were in compliance. Compliance advisors closely monitored the 60-day deadline for confidential disclosures and followed up with the new Members when the deadlines were approaching. As a result, not only were the disclosures made within the 60-day deadline, but the new Members were also all in compliance in a time comparable to the deadlines required under the Act.

Improved case management system

Our electronic case management system, which maintains relevant information on public office holders and Members, has undergone a significant upgrade. While no additional



information is being collected from Members, the information that they disclose to the Office is now stored in a more user-friendly format that provides advisors with instant access to recent correspondence.

The upgraded system continues to be supported by the infrastructure necessary to protect the security of the information that the Office collects and processes. At the same time, it allows our advisors to deal more efficiently with Members' ongoing issues when they call the Office and generally to better manage Members' files on a day-to-day basis.

Sponsored Travel List

I am required to submit to the House of Commons a list of sponsored travel accepted by Members during the previous calendar year.

In previous years, I was required to prepare the list by January 31 of each year, although Members had until the end of February to submit their information. As a result, some information was not submitted before my deadline. Each year I had to include an addendum to the list to cover those who did not report by January 31 for the previous year. Last year, I suggested to the Standing Committee on Procedure and House Affairs that it consider, as a technical amendment to the Code, making March 31 the deadline for submitting the report to the House of Commons. The Committee accepted this suggestion and it was approved by the House of Commons on June 4, 2009. Members' deadline to report sponsored travel within 60 days of the travel remains unchanged. This should help to ensure that all sponsored travel in a given calendar year is reported to this Office before the list is finalized and tabled.

The 2009-2010 list of sponsored travel was presented to the Speaker of the House of Commons and tabled on March 29, 2010. The document is available on the Office's website.



IV. MATTERS OF NOTE

Amendments to the Rules on Gifts

In the previous reporting period, 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. The prohibitions were overly broad and I was concerned that, as a result, the rules were not being taken seriously. All gifts that related to a Member's position were prohibited without any consideration of whether there was a conflict of interest. At the request of the subcommittee, I suggested several amendments to the Code relating to those provisions.

I was very pleased to see most of my suggestions reflected in amendments to the Members' Code approved by the House of Commons on June 4, 2009. I believe the changes were a step forward in ensuring that this section of the Code is respected consistently by all Members. My Office has seen an increase in the number of public statements of gifts since the amendments were made. In 2009-2010 my Office received 29 statements of gifts, up from five statements in 2008-2009.

While the prohibition is now narrower than before in that there is a conflict of interest test, the disclosure requirements have been significantly broadened to include all gifts or benefits accepted by a Member or his or her family that are related to the Member's position if they are valued at \$500 or more. Previously, only those gifts that were an expression of courtesy or protocol, or that were within the customary standards of hospitality, had to be reported.

As well, the Code's definition of "benefit" in subsection 3(1) remains broad, including money, services or property. New provisions were added in subsection 14(1.1) to clarify that certain specific types of benefits are covered by the Code. It is made clear in that provision that gifts or benefits related to attendance at a charitable or political event, such as free tickets to attend a charitable event in a Member's riding, are included. Although this kind of benefit will often be acceptable under the Code as not involving a conflict of interest, it would still need to be disclosed if the combined value of the tickets is \$500 or more. As well, gifts and benefits received from all-party special interest caucuses are expressly included in the revised Code. Both types of benefits had been matters of some confusion.

Members sometimes receive gifts or other benefits from organizations or associations, often as a courtesy or in recognition of the work they do in their riding, and they may view these gifts or benefits as automatically acceptable. There have also been situations where all Members have received gifts or benefits from an organization highlighting a cause or campaign. All of the circumstances surrounding the offer of a gift or benefit must be taken into consideration, including what the gift or benefit is, who is offering it, why it is being offered and whether current or future parliamentary business may focus on the interests of the organization. The acceptability of a gift or other benefit depends on the context in which it is being offered.

The recent amendments removed from the scope of the Code gifts and other benefits received from a riding association or political party as well as services provided by a volunteer working on behalf of a Member. This gives me some concern. While such gifts or benefits would not usually place a Member in a conflict of interest, the effect of this amendment is to remove



these gifts and benefits from the disclosure requirements, thus reducing transparency in relation to any such gifts or benefits that are accepted.

Another concern is that lobbyists could gain access to Members by volunteering for them, since volunteer services have been removed from the definition of “benefit” under the Code. I understand this concern and questioned whether volunteer services were intended to include lobbyists in my recent report following an investigation into allegations made against the Honourable Lisa Raitt, Member of Parliament for Halton and the former Minister of Natural Resources, referred to in Section V of this report.

Ongoing Review of the Code

I meet from time to time with the Standing Committee on Procedure and House Affairs to discuss matters related to the administration of the Code. In October 2009, I met with the Committee and suggested that there were some other parts of the Code where some changes would be desirable, particularly in the disclosure provisions and those relating to the inquiry process.

With respect to the disclosure provisions, I recommended that the Code include deadlines to complete the initial compliance process, including finalizing the disclosure summary so that it can be made available on the public registry.

With respect to the inquiry process, I suggested that the Commissioner be given the discretion, where a request has been made public, to make public his or her reasons for deciding to decline a request or, on the basis of a preliminary review, not to proceed with an inquiry. Currently, the Commissioner is prevented from publicly commenting on any requests until a report is issued after an inquiry. I discuss the challenges with the inquiry process in more detail in Section V of this report.

There are also a number of technical amendments that could be made to clarify and streamline both the disclosure provisions and those relating to the inquiry process.

I was encouraged by the Standing Committee to submit for its consideration proposed amendments to the Code. Consequently on March 1, 2010, I submitted a package of suggested amendments in both of these areas for their consideration. These suggestions have not yet been considered.

Material Changes

Members are required to file a statement with my Office reporting material changes to the information that they are required to include in their disclosure statement within 60 days after the change.

Whether a change to information required in the disclosure statement is material often depends on individual circumstances. Generally speaking, a material change is one that would require a modification to the information contained in the disclosure summary filed in the public registry maintained by my Office for Members, or that would affect the obligations of a Member under the Code.



For example, the acquisition by a Member or his or her spouse of an ownership interest valued at \$10,000 or more in a commercial venture must be publicly disclosed and would thus be considered a material change. A Member or his or her spouse incurring a liability with a value of \$10,000 or more, or having a new source of income of \$10,000 or more, would also be considered a material change. Other examples of material changes would be a change in marital status, being named a director or officer in a corporation, a professional association or a trade union, or acquiring a partnership or shareholding interest in a business venture.

Erroneous or outdated information may affect the correctness or thoroughness of the advice we provide. In case of doubt as to whether a change is material or not, Members are encouraged to seek advice from my Office. We will then advise them whether or not a modification is required to their disclosure summary in the public registry, and whether or not other arrangements are required in order to comply with the Code.

As previously stated, my Office is more frequently apprised of changes to the information previously disclosed through the annual review process. While in most cases these are not deemed material in nature, in some cases they are.



V. INVESTIGATIONS, EXAMINATIONS AND INQUIRIES

Examinations and Inquiries

My Office administers two separate but overlapping conflict of interest regimes; one is established in an Act of Parliament and the other is a Code set out in an appendix to the *Standing Orders of the House of Commons*. When I formally investigate a matter under the *Conflict of Interest Act* (Act) it is called an examination and when I formally investigate a matter under the *Conflict of Interest Code for Members of the House of Commons* (Code) it is called an inquiry.

This spring I completed and released two sets of reports, each in relation to matters raised at the same time under both the Act and the Code. One of these related to the use of partisan or personal identifiers on ceremonial cheques. The other related to the involvement of lobbyists in political fundraising events. This was the first time I have had to deal simultaneously with the Act and the Code on a particular matter. A third investigation involving an examination under the Act and a parallel inquiry under the Code is ongoing. Reports will be issued on their completion.

Identifiers on ceremonial cheques or other props

I commenced an inquiry under the Code in the fall after receiving 63 separate requests from four Members of the House of Commons, naming a total of 60 other Members who were alleged to have used partisan or personal identifiers on ceremonial cheques or other props in connection with federal funding announcements. A parallel examination was initiated under the Act with respect to 25 of those Members who were also ministers, ministers of state and parliamentary secretaries. Both reports were released on April 29, 2010.

In those reports, I concluded that the practice of using partisan or personal identifiers in announcing government initiatives goes too far and has the potential to diminish public confidence in the integrity of Members and the governing institutions they represent. I found, however, that the interests in question are not covered by the existing conflict of interest regimes. This finding was based on my conclusion that the prohibitions in both the Act and the Code relate to private personal interests and do not extend to partisan political interests, such as raising one's profile or enhancing one's electoral prospects.

There appears to be agreement, both on the part of the government and the House of Commons, that there is a need to address the issue of the politicization of government communications. Following the release of the Cheques reports, Treasury Board President Stockwell Day announced that he had begun discussions on how best to implement my recommendations. As well, after its review of the Economic Action Plan, the House of Commons Standing Committee on Government Operations recommended, in its report presented to the House of Commons on May 6, 2010, that the government establish strict guidelines to ensure that all government advertising is seen to be strictly non-partisan in look, feel and content. The Committee also recommended that the government ensure that government websites not contain links to partisan material.



Political fundraising and lobbyists

The second set of reports under both the Act and the Code related to political fundraising and allegations that the Honourable Lisa Raitt, Member of Parliament for Halton and the former Minister of Natural Resources, had accepted a gift from a lobbyist who volunteered by selling tickets to a political event for her. I commenced an examination under the Act and an inquiry under the Code in the fall of 2009 after receiving separate requests from two Members of the House of Commons. My reports under the Act and Code were both released on May 13, 2010.

I concluded that the contributions and services provided by lobbyists in connection with a political fundraising event were given to Ms. Raitt's riding association and that, as she was not involved in the organization of the event, she could not have breached the gift prohibitions in the Act or the Code. I pointed out, however, the need for effective fundraising guidelines in relation to political fundraising events for Members of Parliament and more particularly for ministers and parliamentary secretaries. I believe this would help to ensure that they are not placed or seen to be placed in situations of actual or potential conflict of interest or in situations involving preferential treatment. Furthermore, I recommended that such guidelines be made public.

Other examinations under the Act

During the past fiscal year I issued a report following the completion of an examination commenced under the Act during the previous fiscal year. That report was in relation to Mr. Colin Watson, a part-time member of the Toronto Port Authority's Board of Directors. I commenced that inquiry in the winter of 2009 on my own initiative after receiving information from another member of the Board of Directors. My examination related to allegations that, by participating in decisions of the Toronto Port Authority Board in relation to a proposal to acquire a new ferry, Mr. Watson may have been in a conflict of interest on the grounds that he had the opportunity to further the private interests of a friend. I issued my report on June 25, 2009.

The word "friend" is not defined in the Act. It is a word that is used in different ways by different people and can be used to apply to a range of relationships. I found that the prohibition was not intended to relate to individuals other than those who have a close bond of friendship, a feeling of affection or a special kinship with the public office holder concerned. It does not include members of a broad social circle or business associates. Mr. Watson was not a friend of the individual in question for the purposes of the Act. I therefore concluded that Mr. Watson was not in a conflict of interest and did not contravene the Act.

I discontinued one examination under the Act this past fiscal year and issued a report explaining my reasons for doing so. That examination had been commenced at the request of Ms. Martha Hall Findlay, Member of Parliament for Willowdale. There was a relationship between this request and the requests for examinations and inquiries on the use of ceremonial cheques or other props referred to above. Ms. Hall Findlay alleged that various ministers and parliamentary secretaries had breached the Act by using their positions to develop an advertising and communications strategy to promote Canada's Economic Action Plan that incorporated "look and feel" aspects of the Conservative Party of Canada in order to improve its electoral prospects.



I discontinued that examination after ascertaining that the Conservative Party of Canada is not a “person” within the meaning of the Act and therefore was not covered under the terms of the Act.

Other investigative activities

I cannot disclose information that comes to my attention in relation to a request for examination under the Act or an inquiry under the Code unless I do so in a report that is made public under the Act or the Code. However, what follows will provide a general idea of how concerns are raised with my Office and how they are dealt with.

There was one instance where a Member of the House of Commons raised concerns with me about possible contraventions of the Act by several public office holders. In this case the Member did not make a formal request for an examination. I clarified for the Member the specific requirements of the Act in this regard but he did not proceed with a formal request, and I did not have the grounds to proceed with a self-initiated examination.

There were four other cases in relation to which my Office received information, either through media reports or from a member of the public that suggested a possible contravention of the Act. After reviewing each of these cases, I determined that I did not have the grounds to initiate an examination.

There were five instances where Members of the House of Commons raised concerns with me about possible contraventions of the Code by other Members. In one case, I determined that an inquiry was not warranted after conducting a preliminary review. In two cases, the Members decided not to make a formal request for an inquiry. I clarified for them the specific requirements of the Code in this regard but they did not proceed with a formal request, and I did not have the grounds to proceed with a self-initiated inquiry. In the fourth case, the subject matter of the request raised jurisdictional issues with respect to the Board of Internal Economy. I referred that matter to the Board. In the fifth case, an issue raised by a Member about the conduct of another Member did not fall within the scope of the Code. I therefore did not pursue the matter.

There were three additional cases in relation to which my Office received information, either through media reports or from a member of the public that suggested a possible contravention of the Code. After reviewing each of these cases, I determined that I did not have the grounds to initiate an inquiry.

Procedural Requirements for Requesting an Examination or Inquiry

An examination under the Act may be requested by a Member of the House of Commons, or a Senator, who has reasonable grounds to believe that a public office holder has contravened the Act. I can also conduct an examination on my own initiative where I have reason to believe that a contravention has occurred. When a request for an examination that meets the requirements of the Act is received from a Member or a Senator, the examination under the Act begins immediately, provided I do not determine that it is frivolous, vexatious, or made in bad faith. Unlike the Code, there are no provisions for conducting a preliminary review under the Act to determine if an examination is warranted.



Under the Code an inquiry may be requested by a Member of the House of Commons who has reasonable grounds to believe that another Member has not complied with the Code. Inquiries can also be commenced by way of a resolution of the House of Commons, or 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.

Before commencing an inquiry under the Code that is requested by a Member and meets the requirements of the Code, I must give the Member against whom the allegations have been made 30 days to respond to those allegations. Once I receive the response, or after that 30-day period expires if I do not receive a response, I have 15 working days to conduct a preliminary review to determine whether or not an inquiry is warranted. If an inquiry is commenced, I report my findings publicly upon its completion.

When a Member or Senator requests an examination under the Act or when a Member requests an inquiry under the Code, he or she must clearly identify the provisions alleged to have been contravened and set out the reasonable grounds for the belief that the contravention has taken place. Errors and omissions can cause delays in proceeding with an examination.

In order to assist Members and Senators in complying with these requirements, my Office has developed an examination request form for requests under the Act. I hope this will serve to streamline and expedite the examination process. The form is available on the Office website.

A similar form has been developed to assist Members in making requests under the Code. The form has been submitted, as is required under the Code, to the Standing Committee on Procedure and House Affairs for approval. I await the Committee's response on this matter.

Parallel investigations under the Act and Code

As noted above, this year my Office conducted investigations under both the Act and the Code in relation to the same matter for the first time. This situation can arise when allegations of conflict of interest relate to a Member of the House of Commons who is also a minister or a parliamentary secretary. In these cases I must determine whether the allegations touch upon the Member's duties as a Member, the Member's duties as a minister or parliamentary secretary, or both. The answer to that question determines whether the actions should be reviewed under the Act, the Code, or both.

There are different procedural requirements for releasing reports under the Act and the Code. Examination reports under the Act must be delivered to the Prime Minister and inquiry reports under the Code must be tabled in the House of Commons. While nothing is said in either the Act or the Code about parallel investigations, I have concluded that, because of the different procedures for releasing the reports, I must produce two separate reports in these circumstances. I take care to ensure that the two reports are tabled in the House of Commons and delivered to the Prime Minister as closely in time as possible and then immediately afterwards released to the public.



Confidentiality of Inquiries and Examinations

As noted in both my annual reports last year, the Code prevents me from making any public comment relating to a preliminary review or an inquiry, other than to confirm that a request has been received or whether or not a preliminary review or an inquiry has commenced. The Act is less explicit, but does include provisions requiring me to conduct examinations in confidence until I release my public report.

While I understand and appreciate the need for confidentiality, this has created some difficulties and should be balanced against the desirability of transparency in certain cases, in particular where information about a request already exists in the public domain. I believe the Act and Code go too far in preventing me from commenting on my investigative work.

Where I decide not to proceed to an examination or an inquiry, I can make no public statement to explain the circumstances. Nothing can become public unless the Member requesting the examination or inquiry or the Member against whom allegations have been made decides to release my final letters to them, explaining the reasons why an examination or inquiry is not warranted. This has rarely occurred to date. Where I do not proceed beyond an initial assessment of a request or of a concern raised, I cannot make known my reasons for not proceeding and cannot counter any false information that is made public by others in this regard.

This situation may sometimes lead the public and Members to surmise that I do not take requests seriously, or that I am favouring an individual or a party. Of greater concern, perhaps, where a request has been made public, the allegations can unfairly damage the reputation of the Member against whom they are made. There are instances where it would be in the interest of Members and of the public for me to be able to communicate the reasons why I have not proceeded to an examination or inquiry.

In the past year, I have had the opportunity to address this issue before the Standing Committee on Procedure and House Affairs in relation to the Code. The Code is easier to amend than the Act and I have asked the Committee to consider amending it to allow me to be more transparent in situations where I do not proceed to an inquiry requested by a Member. I have proposed that, if I receive a request and determine that an inquiry is not warranted, I be permitted to make public my reasons for not proceeding if the matter is already in the public domain. I am hopeful that the Committee will address the matter.

The Act, unlike the Code, does not include a preliminary review stage prior to the examination process. In cases where allegations of a contravention of the Act have been made, and a request meeting the basic requirements set out in the Act has been received, the only way for my Office to look into the facts relating to the allegations is to begin an examination under the Act, and then to discontinue it if I do not have sufficient information to proceed or if I conclude that the Act does not apply.

As was the case with the request received from Ms. Hall Findlay, referred to earlier, when a request that meets the requirements of the Act is received from a Member of the House of Commons or a Senator I am required to begin an examination and issue a report outlining my analysis and conclusions, even where the examination is discontinued. However, when a request



for examination does not meet the basic requirements and is therefore not accepted, I am not permitted to publicly discuss the reasons for declining it. For those cases, I would suggest that an amendment to the Act similar to that proposed for the Code would be desirable.

Role of Counsel in Investigations

I have observed that the public officials subject to examinations under the Act and inquiries under the Code, as well as the witnesses who are called upon to provide my Office with relevant information, are increasingly represented by legal counsel.

The right to legal representation is a fundamental right and the reflex to retain legal counsel is both understandable and legitimate. At the same time, the style of advocacy that is both expected and effective in the context of conventional civil litigation before the courts can be counter-productive in the context of investigations conducted by my Office.

In this connection, it is worth underscoring the important differences between the investigative process under both the Act and the Code and that under conventional judicial proceedings. My Office is not a court. The process of conducting an investigation, which is inquisitorial rather than adversarial in nature, does not amount to a trial. As Conflict of Interest and Ethics Commissioner, I am not a judge; nor am I entitled to make findings of either civil or criminal liability. In conducting investigations, I am responsible for making findings of fact and, where appropriate, conclusions of non-compliance with either or both the Act and the Code. Under the Code, I may also make recommendations to the House of Commons. These may or may not be acted upon.

My Office will give some consideration to what guidance could be developed to assist those under investigation and their counsel in understanding how they might best work with my Office to complete the process as efficiently as possible.

General Observations

Avoiding conflict of interest

The Act and the Code set out rules and procedures for avoiding conflicts of interest. Both regimes have stringent requirements for the disclosure of private interests to my Office. My Office works closely with reporting public office holders and Members to ensure that all required information is disclosed, and that potential conflicts of interest are prevented. Because of this, the potential for a contravention of the conflict of interest provisions of the Act and Code is limited. I have found in general that public officials do seek to comply with the conflict of interest regimes, and are quick to rectify situations that could place them in a conflict of interest.

The requirement for reasonable grounds to investigate

It is important to remember that the threshold for initiating an investigation is high. While parliamentarians and the media are often quick to point to behaviour on the part of public officials that seems suspicious, I cannot examine these matters based solely on appearances and suspicions. I must be in possession of information establishing reasonable grounds to believe that



a contravention has taken place before an examination under the Act or an inquiry under the Code can be commenced.

Private interests and political interests

Both the Cheques reports and the Raitt reports, as well as the Discontinuance Report relating to allegations of partisan advertising in relation to government initiatives, were requests that provided reasonable grounds and were framed in such a way that they met the requirements of the Act and the Code in that they alleged conflicts of interest between the Members' public duties and alleged private interests. As I indicated in last year's Annual Report on the Code:

[...] my general view was 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.

I found that the interests at issue in these examinations and inquiries were, in fact, political interests or political activities not covered by the Act. As I indicated earlier, Members and public office holders must disclose to my Office their private interests to prevent situations that could lead to conflicts of interest. This goes a long way in preventing contraventions of the Act and the Code and ensuring that public interests are placed ahead of private interests when the two are in conflict. If there is a real desire that my Office look into conflicts of interest in relation to political interests, changes to the Act and the Code would be required to establish this as part of my mandate. It would seem to me, however, that this is ultimately a matter for the electorate to judge.

The ethics mandate

In last year's Annual Report under the Act I noted that, although my title includes the word "ethics", the term "ethics" is not used anywhere in the Act or the Code.

Both the Act and the Code set out very specific conflict of interest rules that I must interpret. Neither addresses the ethical conduct of public officials more generally. There appears, however, to be an expectation, not only among some members of the public but also among some Members of the House of Commons, that I have the mandate to investigate all manner of ethical concerns.

This expectation was perhaps enhanced by an overbroad statement made by the former President of the Treasury Board at the time that my Office was created: "Through the new *Conflict of Interest Act* and the Conflict of Interest and Ethics Commissioner, Canadians can now voice their concerns about unethical behaviour."

This year, I have gone beyond the application of the specific provisions of the Act and the Code to offer some broader observations and recommendations in both of the Cheques reports and in both of the Raitt reports, all discussed earlier in this section. In both sets of reports, while I found that there were no contraventions of the Act or Code, there were important issues that deserved comment. The activities considered in the Cheques reports had the potential to diminish



public confidence in the integrity of elected public officials and the governing institutions they represent. Those considered in the Raitt reports had the potential to place public office holders in situations of actual or perceived conflicts of interest.

Although I have no mandate to review allegations relating to the total range of possible unethical conduct of Members of Parliament and public office holders, I will take the opportunity, when I am investigating alleged contraventions of specific rules in the Act or the Code, to comment more broadly on the matter under review if I believe that it has the potential to diminish public confidence in the integrity of elected public officials and the governing institutions they represent. In this way I can offer observations and recommendations on broader concerns.



VI. OUTREACH AND COMMUNICATIONS

Outreach to Public Office Holders and Members

Over the past year, my staff and I met individually with many public office holders and Members of the House of Commons to discuss their obligations under the Act and Code and to provide them with guidance on conflict of interest issues. We also continued to make presentations to groups of public office holders in a number of departments and agencies.

We met with Members' staff from all caucuses during the spring of 2009. In the fall, I offered an information session on the recent changes to the Code approved last June that was held as part of the Library of Parliament seminar series. Between December 2009 and March 2010 my staff and I made presentations to caucuses of the New Democratic Party, the Bloc Québécois and the Liberal Party. We will be making a presentation to the Conservative Members as well.

We issue communiqués, advisory opinions and information notices to inform public office holders and Members about matters related to the Act and the Code. In the past year, we issued a communiqué on the June 2009 changes to the Code's gift provisions. We also issued two advisory opinions. The first related to offers from Rogers Communications to produce and broadcast, without charge, brief messages from Members to their constituents acknowledging Canada Day, Remembrance Day and the holiday season. The second addressed an invitation from Bell Canada and the Sens Foundation to attend the Bell Sens Soirée.

Connections with Counterparts

I have had several opportunities over the past year to learn from, and exchange ideas with, counterparts in other jurisdictions.

In September I attended the yearly meeting of the Canadian Conflict of Interest Network. The network includes federal, provincial and territorial commissioners and provides an opportunity to exchange views and discuss matters of mutual interest. As noted in Section II of this report, my Office has taken on a coordinating role within the network in years to come. I look forward to exchanging views with my provincial and territorial colleagues again this September during our annual conference.

The Office is a member of the Council on Governmental Ethics Laws (COGEL), a professional organization for government agencies, organizations and individuals with responsibilities or interests in governmental ethics, elections, campaign finance, lobbying laws and freedom of information. COGEL is an international ethics network whose members are primarily from the United States and Canada, but also from Europe, Australia and Latin America. My Office was represented at its annual conference in December 2009.

The Office has also engaged with the Organisation for Economic Cooperation and Development (OECD) several times over the past year, specifically with respect to the work of the Public Governance Committee and its Expert Group on Conflict of Interest. I attended the "Global Forum on Integrity" in Paris in May 2009, and met with the Expert Group at that time.



My Office provided feedback to the Group and the Committee on several initiatives since then. We participate when appropriate and are kept informed of major events, developments and planning.

Appearances and Presentations

The invitations that I receive from parliamentary committees and other governments also provide me with an opportunity to speak about my Office and discuss issues of interest. I was asked to testify on two separate occasions before the Oliphant Commission, the Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings between Karlheinz Schreiber and the Right Honourable Brian Mulroney. In June, I commented on post-employment rules and in July on outreach activities for ministers and ministerial staff in relation to post-employment obligations.

In October 2009 I testified before the Quebec Committee on Institutions during its study of Bill 48, a Code of Ethics and Conduct for Members of the National Assembly.

I was asked to make a presentation at the Ethics in Democracy II Conference in El Salvador, in November 2009. This was an international event organized by the Canadian Government with a focus on Mesoamerica but attended by representatives of a much broader range of countries. I was pleased to have the opportunity to explain the mandate of my Office and share our experience in administering conflict of interest regimes in Canada, and to meet and hear the presentations of a number of Canadian academics in the ethics field.

I also met in Ottawa with a delegation of senior officials from Ukraine and, more recently, my staff met with a delegation from China.

I addressed the annual meeting of the Canadian Political Science Association in May 2009, and the 5th Annual National Forum on Administrative Law and Practice at Osgoode Hall Law School in October 2009. Presentations on the Act and the Code were also made to public service practitioners through the Interdepartmental Network on Values and Ethics, and the Senior Parliamentary Officials Program.

Communications with the Media and the Public

In addition to our work with public office holders and Members of Parliament and our increasing contact with various stakeholders in government ethics, we continue to strive to inform the media and the public about our mandate.

We undertook a variety of communications initiatives this past year, including the creation of a media centre on our website. I make myself available to the media when I find it necessary to clarify specific issues related to my mandate.

My Office received approximately 440 emails and 140 telephone calls from Canadians who brought a wide range of issues to my attention, not all of which were related to my mandate. We try to respond to all these communications, and where appropriate do so in some detail.



Identifying Emerging Issues

Last year I referred to my desire to develop a research agenda to identify and analyze topics of relevance to the work of my Office. It is instructive to have some awareness of the approaches taken to regulate government ethics in other parts of the world. My Office conducted some comparative analyses of provincial, territorial and international jurisdictions and took a number of opportunities to exchange information with representatives of these jurisdictions.

We have found that the governments of most countries, including our own, are increasingly regulating the behaviour of public officials and have developed codes or laws aimed at ensuring that private interests are kept separate from the broader public interest. One area on which there appears to be widespread agreement is the importance of the disclosure of private interests by public officials. The requirement to make such disclosures is a common feature of conflict of interest regimes in many countries.

An emerging concern among Organisation for Economic Cooperation and Development (OECD) member countries relates to post-employment. This was among the issues discussed at the OECD Global Forum on Public Governance (Paris, May 2009), held in cooperation with the Dutch National Integrity Office, which I attended. I was also asked by the Oliphant Commission to address this subject. The OECD acknowledged implementation challenges on the part of member countries with respect to post-employment restrictions, as contraventions are difficult to manage when individuals are no longer in public employment. This is consistent with my own observations, which are discussed in more detail in Section III of this report.

Beyond these broad similarities, however, the measures adopted vary among different jurisdictions. My Office will continue to monitor these and other international developments in order to broaden our knowledge of government ethics in other countries.



VII. ADMINISTRATION

Human Resources

My Office is a parliamentary entity, separate from the core public administration. It has the authority to hire its own employees and to establish its own classification structure and terms and conditions of employment. Although not subject to the *Public Service Employment Act*, the Office has made it a standard practice to apply its principles when making staffing decisions.

From a human resources perspective, the Office has reached stability with all but three of its 49 positions filled as of March 31, 2010. All three vacant positions are expected to be filled within the first few months of the new fiscal year.

Advisors are essential to the smooth functioning of the two conflict of interest regimes that the Office administers. We have on staff a number of long-term, experienced advisors and we have recently implemented a new program for hiring and training new advisors. Employees who meet pre-identified competencies are provided with an opportunity to develop the skills and knowledge necessary to administer both regimes. This strategy has successfully addressed difficulties we have faced in previous years in filling the advisor positions.

This year, as in previous years, the Office has continued to develop internal policies and procedures relating to its employees, including a revised set of terms and conditions of employment that more closely reflects practices adopted in the core public administration over the last few years. A staffing manual for managers was introduced, along with policies and guidelines on staffing-related issues such as probation, acting pay and term employment.

Within the Office, we will continue to develop internal working tools to support our operations. We are already planning to implement a functions-based classification structure for our records and a more comprehensive filing system to support it.

There has also been an increased focus on internal communications, an area identified by employees as needing attention. The launch of a new Intranet created greater internal efficiencies, by consolidating frequently used employee tools through a single access point.

Finance

For the second consecutive year, my Office had an operating budget of \$7.1 million, including \$5.3 million for salaries and benefits. The same budget has been requested for next year. Given the size of the Office, arrangements have been made with larger organizations for the provision of administrative services. A large portion of our non-salary budget is therefore dedicated to the cost of these arrangements.

A table outlining broadly the financial information for the Office for the 2009-2010 fiscal year is provided in Appendix A. Detailed financial statements can be found on our website at <http://ciec-ccie.gc.ca/>.



VIII. LOOKING AHEAD

Building on the experiences and successes of 2009-2010, in the year ahead we will maintain and, where possible, strengthen our efforts to provide clear, consistent and common-sense advice to help public office holders and Members of the House of Commons comply with the Act and the Code.

Outreach and communications will be an important focus. Through presentations, discussions and targeted written communications, among other initiatives, we will seek to ensure that public office holders and Members better understand their obligations under the Act and the Code. We will enhance our outreach to part-time public office holders.

We will also continue to improve our website by making it more user-friendly, and by adding more information notices, guidelines and backgrounders to help public office holders and Members understand how we interpret various provisions of the Act and the Code. We will seek to help the general public and our stakeholders gain a better awareness of the role of our Office through more proactive media relations.

We have had a number of requests for examinations and inquiries over the past year, and may well have more in the coming year. In my reports I attempt, whenever possible, to broaden the understanding of the two regimes we administer.

I expect that we will face new challenges in interpreting the Act and the Code and in administering these two conflict of interest regimes. In meeting these challenges, we will continue to have regard to the practices and policies of other jurisdictions.

Drawing on our growing body of experience, we will continue to work with the House of Commons Standing Committee on Procedure and House Affairs on possible amendments to the Code. While seeking amendments to the Act would be more complex, some changes might be considered following the legislative review, which is required by section 67 of the Act to take place by 2012.

I am in a position to increase some of these activities because the Office now has a full and stable complement of employees. I am grateful for the contributions of my staff, and believe that with their continued dedication and support, combined with the goodwill of public office holders and Members of the House of Commons, we will continue to help ensure that the public interest is placed ahead of private interests, and in so doing will enhance the confidence and trust of Canadians in government and its institutions.



APPENDIX A – RESOURCE SUMMARY (from page 22)

(thousands of dollars)					
	2008-09	2009-10			
Program Activity	Actual Spending	Main Estimates	Total Authorities	Actual Spending	Alignment to Government of Canada Outcomes
Administration of the <i>Conflict of Interest Act</i> and the <i>Conflict of Interest Code for Members of the House of Commons</i>	5,451	7,105	7,105	5,528	Government Affairs
Total Spending	5,451	7,105	7,105	5,528	
Plus: Cost of services received without charge	917	n/a	n/a	951	
Net Cost of Department	6,368	7,105	7,105	6,479	
# of employees	38			46	

The budget process for the Office of the Conflict of Interest and Ethics Commissioner is established in the *Parliament of Canada Act*. The Speaker of the House of Commons considers the estimates for the Office and transmits them to the President of the Treasury Board for inclusion in the estimates of the Government. The Standing Committee on Access to Information, Privacy and Ethics has within its mandate the role to review and report on the effectiveness, management and operations together with the operational and expenditure plans relating to the Office.

Since 2008-09, the budget for the Office has remained at \$7.1 million, 74% (or \$5.3 million) of which is dedicated to salaries and employee benefits. Of the remaining \$1.8 million, approximately \$700,000 is used to cover the cost of shared services provided by the House of Commons, the Library of Parliament and Public Works and Government Services Canada in the area of information technology, finance and compensation, respectively.

The Office began its operations on July 9, 2007. It lapsed a portion of its budget each year to date due to vacancies and challenges in finding qualified candidates. As noted earlier in this report, most positions at the Office are now staffed. This should result in a more stable and realistic utilization of budgets, keeping in mind that a reserve is in place to cover the unexpected.

Complete financial statements can be found on our website at <http://ciec-ccie.gc.ca/>.

