Office of the Conflict of Interest and Ethics Commissioner

Commissariat aux conflits d'intérêts et à l'éthique

The 2010-2011 ANNUAL REPORT

in respect of the
CONFLICT OF INTEREST ACT

June 16, 2011

Mary Dawson
Conflict of Interest and Ethics Commissioner

The 2010-2011 Annual Report

in respect of the
CONFLICT OF INTEREST ACT

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Office of the Conflict of Interest and Ethics Commissioner

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June 16, 2011

The Honourable Andrew Scheer, M.P.
Speaker of the House of Commons
House of Commons
Room 224-N, Centre Block
Ottawa, ON K1A 0A6

Dear Mr. Speaker:

I am pleased to submit to you my report on the performance of my duties and functions under the *Conflict of Interest Act* in relation to public office holders for the fiscal year ending March 31, 2011.

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

Sincerely,

Mary Dawson

Mary Dawson
Conflict of Interest and Ethics Commissioner

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

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June 16, 2011

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

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I. INTRODUCTION

The Conflict of Interest and Ethics Commissioner administers the *Conflict of Interest Act* (Act) and the *Conflict of Interest Code for Members of the House of Commons* (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 mission statement of my Office is: *To administer the conflict of interest rules for Members of the House of Commons and public office holders in order to maintain and enhance the trust and confidence of the Canadian public in the conduct of these elected and appointed officials.* In line with this mission, my Office's main responsibilities 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 reporting 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.

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 appended 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 Act and the Code hold public office holders and Members to standards that place the public interest above 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.

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

II. OVERVIEW - BUILDING ON OUR EXPERIENCE

In the past year, we have continued our focus on helping public office holders and Members of the House of Commons comply with the *Conflict of Interest Act* (Act) and the *Conflict of Interest Code for Members of the House of Commons* (Code), enhancing client outreach and public communications, and reviewing and investigating alleged contraventions. Providing public office holders and Members with the information and advice they need to meet their obligations under the Act or Code and to remain in compliance continue to be the core of my Office's work. Identifying improvements in these areas is an ongoing priority.

In keeping with my usual focus on preventive action to avoid conflicts of interest, the use of conflict of interest screens has become a practical measure to ensure that public office holders remain in compliance with the Act. I include in this report a discussion of the range of compliance measures that I can employ to help public office holders meet their obligations under the Act.

In the past fiscal year, I have reported on three investigations conducted under both the Act and the Code. I discussed the Cheques Report in some detail in last year's annual report. In the other investigations, I looked into the activities of a minister and a parliamentary secretary in connection with political fundraising events organized for their riding associations. While I found that no obligations under the Act or the Code had been breached, I noted that there was a need for some guidelines on the involvement of Members in political fundraising events, particularly in the case of ministers and parliamentary secretaries.

In the course of my investigative activities over the past year, I have encountered some difficulties in receiving timely or adequate access to relevant documents, and I discuss these issues more fully in this report.

Several other investigations are currently in progress under the Act or the Code, and I will issue reports on them when they are completed.

Expanded outreach and communications activities have enabled my Office to connect more effectively with public office holders and Members, and to better inform the media, the general public and those with an interest in conflict of interest and ethics issues. We have renewed and enhanced our website, one of our most important communications tools.

We have increased our outreach efforts for public office holders who are not reporting public office holders, a group with whom my Office previously had little contact. We have also made presentations to a number of stakeholders, including political party caucuses, Ministers' offices and various boards and tribunals. We have issued information notices, backgrounders and other communications tools to address specific issues. Finally, my Office continues to engage with other domestic and international organizations on conflict of interest and ethics issues.

As I am now passing the midway point of my mandate, I have also turned my attention to identifying improvements that could be made to the Act and the Code to address some of the challenges that I have encountered.

The current administrative monetary penalty regime under the Act applies only to failures to report certain matters, generally within established deadlines, and not to failures to comply with the substantive obligations of the Act. The Act provides for full examinations for all contraventions of the Act, but in many cases an examination may not be warranted. For example it would not be warranted where the facts and the interpretation of the Act are clear, where the breach appears to have been inadvertent and where the public office holder recognizes that there has been a contravention and is prepared to take whatever steps are necessary to achieve conformity with the Act. In this report, I have suggested possible avenues for future amendments to the Act to deal with certain substantive breaches.

In the absence of a formal statutory regime for such situations, where I have found that an examination is not warranted, I work with public office holders to identify the appropriate remedy for them to ensure that they meet their obligations. In the interest of transparency and where privacy issues are not a factor, I will continue to use my discretion to make public, where appropriate, any compliance measures, including measures to remedy a breach of the Act.

Another challenge concerns the Act's post-employment provisions for former public office holders. I would support an amendment to the Act to introduce reporting obligations for former reporting public office holders in relation to employment undertaken during their "cooling off" period.

Various provisions of the Code could also be improved. Some issues relating to the compliance and inquiry processes were identified in a package of proposed amendments that I submitted in March 2010 to the House of Commons Standing Committee on Procedure and House Affairs. These were not addressed before dissolution. I am planning to resubmit them to the new Committee at an early opportunity.

I believe that partisan political conduct is largely beyond the scope of both the Act and the Code, despite the many related complaints that my Office receives in this area. In the absence of any clear rules governing the ethical aspects of the partisan conduct of politicians, I have recommended that the House of Commons consider implementing separate rules to address the political conduct of Members and their staff.

Finally, the Act and Code are housed in two separate instruments, with many similar provisions but also with some significant differences. I have suggested that streamlining them, possibly within one legislative regime with separate provisions for certain classes of individuals, is an option that Parliament might wish to consider.

Subsequent sections of this annual report expand on the highlights noted in this overview, including the challenges that I have described here very briefly. I have enjoyed working with public office holders and Members of the House of Commons in the past year, and thank them for their continued support as I fulfill my role. I am pleased to note that my Office is enjoying ongoing stability, and continues to build capacity as we further solidify our management and administrative frameworks. I thank my staff for their ongoing professionalism and dedication.

III. APPLYING THE ACT

The *Conflict of Interest Act* (Act) applies to a range of government officials who are referred to in the Act as "public office holders". This group of about 2,800 individuals includes ministers, parliamentary secretaries and ministerial staff, as well as Governor in Council appointees such as deputy ministers, heads of Crown corporations and members of federal boards, commissions and tribunals.

My Office provides guidance and advice to these individuals to help them achieve and maintain compliance with the Act.

Over the last fiscal year, the number of public office holders has remained stable and, on March 31, 2011, totalled 2,789. This number includes 1,108 reporting public office holders, consisting of 38 ministers, 27 parliamentary secretaries, 511 full-time ministerial staff and 532 full-time Governor-in-Council appointees. The remaining 1,681 public office holders, who did not have reporting obligations, included mostly part-time Governor-in-Council appointees, but also included eight part-time ministerial staff members.

During the past year, 528 individuals became public office holders, including some 300 reporting public office holders. During the same period, 422 public office holders left office, of whom 322 were reporting public office holders. This number includes 27 parliamentary secretaries whose appointments ceased when Parliament was dissolved on March 26, 2011. There was less turnover of public office holders during the last fiscal year than in the year before, probably because there was no election and no major Cabinet shuffle in the last fiscal year.

Communication with public office holders

Public office holders who are not reporting public office holders must comply with the rules of conduct set out in the Act but do not have ongoing reporting obligations. These individuals are generally part-time public office holders. In the past, the practice of my Office was to send them a letter upon appointment informing them of their obligations under the Act and a letter at the end of their terms advising them of the post-employment rules.

I expressed my concern in my 2009-10 Annual Report that these public office holders may not be aware of potential conflict of interest situations because of the minimal contact with my Office. While reporting public office holders are prohibited from engaging in outside employment and from various other outside activities, the other public office holders are subject to no such restrictions. Indeed, given the part-time status of most of them, I suspect that many do hold outside employment and are otherwise engaged in outside activities, increasing the risk that they may place themselves in a conflict of interest situation.

As undertaken in my last annual report, because of these concerns and the fact that my Office did not have regular contact with public office holders who are not reporting public office holders, I have begun the practice of communicating annually with them to ensure that they are fully aware of the requirements of the Act.

Last fall, I wrote to part-time Governor-in-Council appointees, reminding them that they have certain obligations under the Act and I sent them a brief summary of the rules that apply to

them. This letter prompted an increased number of calls to my Office from this group. It also allowed us to update our files to reflect the departure of at least two dozen public office holders over the past few years, about which we were never informed. My Office will be sending out similar information on an annual basis. We will take this opportunity to inform this group of their general obligations as well as specific aspects of the Act that may be of particular relevance, such as when recusals are necessary or what rules apply to gifts.

As a result of our increased communications efforts, particularly through our website, more and more prospective public office holders, whether reporting or not, have contacted my Office before accepting their appointment in order to understand better their obligations under the Act and what will be required of them.

Requirements for initial compliance

Reporting public office holders have a number of reporting obligations set out in the Act, most of which have specific deadlines. New reporting public office holders must complete and submit a confidential report within 60 days of appointment and must finalize all compliance measures within 120 days. My Office recently posted on our website a backgrounder on the initial compliance process for reporting public office holders.

Of the 300 new reporting public office holders appointed in the past year, 45 did not meet the 60-day deadline and nine did not meet the 120-day deadline, including three who did not meet either deadline. In the previous year, 50 individuals failed to meet the 60-day deadline and 45 failed to meet the 120-day deadline. I was very pleased to note this year the significant reduction in failures to meet the 120-day deadline.

With respect to the six public office holders who met the initial deadline but missed the 120-day deadline, one missed the deadline by one day and two others were in compliance within one week. The remaining three were required to make complex arrangements to divest controlled assets. They had all complied within 44 days after the 120-day deadline.

My Office relies on the Privy Council Office and ministers' offices to inform us when a public office holder is appointed or moves to another position. I am usually notified of these matters in a timely fashion, allowing me to ensure that newly-appointed reporting public office holders are aware of the Act's requirements and can comply within the stipulated deadlines. Delays can arise, however, when I am not notified of a new appointment or a move.

In the three cases where a reporting public office holder failed to meet both the 60- and 120-day deadlines, my Office had been informed of the appointment only after the 60-day deadline had already passed and, in the case of two ministerial staff members, after the 120-day deadline had passed.

I am happy to report that our internal procedures established around the reporting requirements are working well and reporting public office holders are co-operating with my Office in meeting these requirements. As a result, there was no need to impose any penalties for missed deadlines for the initial compliance process.

Controlled assets

Controlled assets include all publicly traded securities, such as corporate stocks and bonds, exchange-traded funds, stock market indices, closed-end mutual funds, trust units, options and warrants, commercial papers and foreign government securities. With the growing range of investment options available, it may not always be clear to reporting public office holders which financial instruments fall within the definition of controlled assets under the Act. As a result, I have issued a guideline on this matter. It can be found on our website.

Sections 17 and 27 of the Act both relate to the divestment of controlled assets. Section 17 prohibits a reporting public office holder from holding controlled assets. Section 27 spells out the allowable means of divesting them, either through a sale at arm's length or the establishment of a blind trust. Establishing a blind trust can be complicated. It is necessary to find a trustee who meets the criteria set out in the Act to whom assets can be transferred and then to have an official agreement prepared.

The requirement to divest controlled assets held at the time of appointment applies to all reporting public office holders regardless of whether or not those assets may give rise to a conflict of interest. The only exceptions are cases where a reporting public office holder's controlled assets are of minimal value and pose no risk of conflict of interest or where they are given as security to a lending institution.

It is important to recognize that the prohibition in the Act is on "holding" controlled assets. It is not enough to refrain from managing them. Reporting public office holders are personally responsible for ensuring that controlled assets are not bought for them or on their behalf, including those in discretionary investment accounts that are managed by an investment broker. It is, therefore, important that reporting public office holders inform their investment brokers or portfolio managers of their obligations under the Act. They should also maintain an open discussion with advisors in my Office to ensure their continued compliance with the Act in this regard.

During the past fiscal year, some 16 reporting public office holders divested controlled assets, nine by sale and the rest through a blind trust. In the prior fiscal year, 29 individuals divested controlled assets, a larger number due to the fact that there were more new reporting public office holders that year.

Reimbursement of costs of divestments

When reporting public office holders divest controlled assets, I am authorized to order the appropriate department or agency to reimburse reasonable costs related to the divestment once I have reviewed the claims. Reimbursement is not ordered for divestments that are not required under the Act, for example where a minimal value exemption is granted but the assets are still divested or where a trust is established for investment, rather than divestment, purposes.

The Act provides for the situation where controlled assets are received after appointment by way of a gift or testamentary disposition or in any other way over which the reporting public office holder has no control. A divestment made under these circumstances would be eligible for reimbursement.

During the past year, reimbursements as a result of divestments totalled $434,380. This figure is made up almost entirely of reimbursements related to setting up new blind trusts and administering or dismantling existing ones. These amounted to $431,670. The small remainder related to the sale of assets.

Ongoing obligations of reporting public office holders

In addition to the initial compliance requirements set out in the Act, reporting public office holders have ongoing obligations, including the reporting requirements described below. One of the most important roles of my Office is providing confidential advice to public office holders about the application of the Act. During the past year, my Office provided advice to public office holders in 1,600 instances, met personally with some reporting public office holders and made presentations to various groups of public office holders.

While some questions are relatively straightforward, others can be challenging. Half of the instances in which advice was given occurred during the course of the annual review and usually related to small changes in personal situations. The most common requests for advice outside of the annual review process related to the acceptability of gifts or other advantages and to outside activities.

Annual review of compliance arrangements

The Act requires that the compliance arrangements of reporting public office holders be reviewed annually. Over the past year, my Office contacted 820 reporting public office holders to update the information contained in their confidential reports. This is an ongoing process. By March 31, we had received responses from 800 of them. Many changes to a reporting public office holder's personal situation have been reviewed and, where necessary, compliance measures have been established or revised and public declarations updated. My Office has modified the public registry to include the date on which the most recent annual review for each reporting public office holder was completed. The registry, therefore, now shows that the information was reviewed even if no changes were made.

Material change

The annual review is not the only mechanism by which reporting public office holders must review and amend their compliance arrangements. The Act requires that reporting public office holders inform my Office of material changes to any information included in their confidential reports within 30 days of the change. In my 2009-10 Annual Report, I commented that my Office is often not informed of material changes until the annual review. This may be partly a result of uncertainty about the meaning of "material change". Because the Act does not define "material change", my Office has published an information notice on our website to provide reporting public office holders with some guidance as to when a change is considered to be a material change.

Gifts and other advantages

In the past fiscal year, my Office received over 200 requests for advice relating to gifts or other advantages received by public office holders or by members of their families. Such gifts or advantages are acceptable when they cannot reasonably be seen to have been given to influence a public office holder in the exercise of an official power, duty or function or when they fall within a small number of exceptions outlined in the Act. This test applies to all gifts and other advantages, regardless of their value. When a gift or other advantage is accepted by a reporting public office holder, it must be publicly declared if it is valued at $200 or more.

If a gift or other advantage is valued at $1,000 or more, it must be publicly declared and also forfeited, becoming the property of the government unless the Commissioner determines otherwise.

In the past year, there were several media reports regarding forfeited gifts. It was noted that there is no set process for dealing with these gifts. It is my understanding that, in the absence of written guidelines for forfeited goods, it is left to individual departments to determine how to deal with them.

In the past year 73 gifts or other advantages were publicly declared. Another 11 were publicly declared and forfeited. The forfeited gifts were mainly received by the Prime Minister or other ministers as a result of protocol activities such as the G8 Summit, the G20 Summit, official visits to foreign countries or visits from foreign dignitaries.

Where I determine that a gift or other advantage is not acceptable, I require that it be returned or that its value be reimbursed. This happened in a few instances this past year.

New public office holders coming in from the private sector may not be used to such stringent rules relating to the acceptability of gifts and other advantages. My Office continues to emphasize that the rules set out in the Act are not always reflective of practices in the private sector. For example, gifts or advantages regularly exchanged in the context of a business relationship, a negotiation or a transaction in the private sector are often not acceptable within government.

Although the rules related to gifts and other advantages received by public office holders or by members of their families seem relatively straightforward and simple, their application is not always clear-cut.

In order to help public office holders comply with their obligations relating to gifts or other advantages, in 2008 my Office issued a guideline on gifts, including invitations, fundraisers and business lunches, which contains general information and several examples. This document is distributed to reporting public office holders at the completion of their initial compliance process and is posted on our website.

My Office continues to emphasize that the value of a gift or other advantage is not a criterion of acceptability but a threshold for the purpose of disclosure. The determining factor is whether a gift or other advantage might reasonably be seen to have been given to influence a public office holder in his or her public duties.

In order to make this determination, all the circumstances surrounding that gift or other advantage must be considered. It is important to consider, among other things, who is offering the gift or advantage, why is it being offered and the donor's existing or future relationship with the public office holder, including whether the donor or the donor's firm is a registered lobbyist or has hired a registered lobbyist to lobby the federal government. Thus, a gift or other advantage may be acceptable for one public office holder but not for another, depending on the public office holder's position and relationship with the donor.

Some potential donors are now consulting my Office before sending invitations or offering gifts to public office holders, seeking to better understand the rules related to gifts and other advantages. In all instances, my Office explains the general rules, as presented above, while reiterating that it is the responsibility of each individual public office holder to seek guidance if there is any doubt as to the acceptability of a gift or other advantage, and, to publicly disclose those that are accepted, if required.

Outside activities

Section 15 prohibits reporting public office holders from engaging in outside activities, including employment or the practice of a profession, managing or operating a business, being a director or officer in a corporation or an organization, holding office in a union or professional association, serving as a paid consultant or being an active partner in a partnership. The prohibition is an absolute one and does not depend on whether or not participating in the outside activity would place the reporting public office holder in a conflict of interest. In the past year, my Office received 79 requests for advice with regard to outside activities.

A number of these requests related to the prohibition against engaging in outside employment. These cases are not always straightforward, as a reporting public office holder could undertake the same kind of work under a contractual arrangement. In order to determine whether someone is engaging in employment, as opposed to performing work on a contractual basis, and hence whether the activity is prohibited, my Office considers, among other factors, whether the individual signed a written employment agreement, whether there are benefits such as vacation pay and whether taxes or other deductions are automatically deducted from the individual's pay.

My Office also received a number of questions from reporting public office holders relating to the prohibition against managing or operating a business or commercial activity. In some cases, it can be difficult to distinguish between these prohibited activities and similar activities that could be considered a hobby, such as a hobby farm that sells a small amount of produce. In making this decision my Office considers, among other things, whether the main purpose of the activity is to make a profit. It is important to note, however, that a business or commercial activity does not need to generate an actual profit to be prohibited.

In some cases, a reporting public office holder will be connected to a business through family ties or an ownership interest. The Act does not prohibit reporting public office holders from engaging in all activities related to a business. In considering whether such activities amount to managing or operating a business or a commercial activity, the nature of the activities must be considered, including whether or not the public office holder is negotiating contracts on

behalf of the business, promoting the business or making decisions on a regular basis that impact the business.

The Act also prohibits reporting public office holders from acting as directors or officers in a corporation or an organization. There are two specific exceptions to this prohibition. For these exceptions to be granted, the Commissioner must be of the opinion that the activity is not incompatible with the reporting public office holder's public duties. The first exception allows reporting public office holders who are directors or officers in Crown corporations to act as a director or officer in a financial or commercial corporation. The second exception allows reporting public office holders to act as a director or officer in an organization of a philanthropic, charitable or non-commercial character.

My Office has also been asked to clarify what would constitute a professional association within the meaning of section 15. I interpret "professional association" to mean the governing body of a self-regulating professional organization, such as a bar society or a medical association. Determining whether a particular association meets this criterion may require a review of the applicable rules and regulations governing the organization.

Political activities are expressly excluded from the scope of section 15. Reporting public office holders should be aware, however, of other government guidelines and policies related to political activities that could affect them, in particular those issued by Treasury Board or the Privy Council Office. As a matter of practice, I think it is in the public interest to make certain political activities public and I have used my discretion to do so where a reporting public office holder is a director or officer of a political party or a riding association.

Offers of employment

Under section 24 of the Act, public office holders must disclose any firm offer of employment to my Office in writing within seven days of receiving it. Furthermore, once an offer is accepted, the acceptance must also be disclosed to my Office in writing within seven days. These are two distinct obligations. Failure to meet either deadline could result in an administrative monetary penalty.

For the purposes of section 24, I interpret the term "employment" broadly because I think it should be interpreted in line with the post-employment rules under section 35, which I also interpret broadly. Accordingly, an "offer of employment" does not exclude service contracts or partnerships, and any such offer must be disclosed to my Office. I interpret the phrase "firm offer" to include any offer, whether written or verbal, that is more than a preliminary discussion. I have issued an information notice on offers of outside employment that provides further clarification. It can be found on our website.

Once my Office is informed of a firm offer of employment, the offer is reviewed to determine whether it is acceptable in light of the Act's post-employment rules and obligations. An offer of employment is not acceptable if the reporting public office holder has had direct and significant official dealings in the preceding year with the person or entity offering employment. A determination is made on a case-by-case basis, but all three conditions − direct, significant and official − must exist in order to trigger the post-employment restrictions under section 35. My

Office has issued an information notice providing guidance on the kinds of dealings that may be deemed direct, significant and official. It can be found on our website.

In the past year, 24 reporting public office holders contacted my Office to disclose firm offers of employment within the timeframe specified in the Act. Given the number of reporting public office holders who left office in the past year, it may be that some have not complied with these disclosure requirements. I believe that this requirement is not well known or well understood among reporting public office holders and my Office is now emphasizing this obligation in communications with them.

I note that the obligation to disclose offers of employment applies only while a reporting public office holder holds office and not during the "cooling off" period under the post-employment rules. This constitutes a significant gap. Post-employment issues are discussed in more detail in the section entitled *Matters of Note.*

This past year, 322 reporting public office holders became subject to the post-employment rules of the Act, including 27 parliamentary secretaries as a result of the dissolution of Parliament in March 2011. My Office received 76 requests for advice related to post-employment during this period.

Administrative measures to effect compliance with the Act

The Act sets out a number of general measures beyond the reporting requirements that assist me in ensuring compliance. Three of these are discussed below. I refer to them again in the section entitled *Matters of Note* under the heading *Where obligations are not met.*

Discretionary compliance measures

As I indicated in last year's annual report, there are situations where the specific rules and compliance measures provided for in the Act are not easy to apply for various practical reasons. Accordingly, to deal with these situations, I have relied more and more on the discretion provided to me under section 29 of the Act to determine, in consultation with the public office holders concerned, appropriate compliance measures.

The most common measure that we establish under section 29 is a conflict of interest screen. This is an administrative measure set up to avoid conflicts of interest whenever there is a significant likelihood that a reporting public office holder's private interests, or those of family members, relatives or friends, could come into conflict with the exercise of the reporting public office holder's official duties and responsibilities.

Arrangements are made within the reporting public office holder's organization or department to ensure that he or she has no involvement in files, decision-making processes or discussions that could result in a conflict of interest. Individuals within the organization or department who are responsible for handling the subject matter of the screen are put on notice and another individual within the organization or department is tasked with administering the screen and ensuring that the reporting public office holder does not participate in any matter related to the subject matter of the screen.

To date, all of the conflict of interest screens that I have determined to be necessary have been established with the full cooperation and agreement of the reporting public office holders affected.

In my last annual report, I noted that the establishment of conflict of interest screens removes potential conflicts of interest and avoids the need for recusals under section 21. Because the Act requires that all recusals by reporting public office holders be made public, I have decided to use my discretion under paragraph 51(1)(e) to make conflict of interest screens public as well. All reporting public office holders subject to these screens have signed public declarations, which can be found in our public registry as part of the reporting public office holder's declarations.

I have also relied on section 29 to determine other compliance measures, where appropriate, to comply with the Act. For example, such measures have been established in cases where a reporting public office holder is executor or trustee of an estate that holds controlled assets or where he or she has been registered, as an estate planning measure, as a joint owner of publicly traded securities owned by a parent. These may require special undertakings, non-disclosure agreements or other special arrangements between the reporting public office holder and certain other parties.

Section 29 can also be used to remedy situations where there has been a contravention of the Act and where the facts of the case and interpretation of the relevant provisions of the Act are not in dispute.

Compliance orders

The Act also gives the Commissioner the power under section 30 to order a reporting public office holder to take any compliance measure that the Commissioner determines to be necessary to comply with the Act. Compliance orders are seldom used, and are a measure of last resort. I issue them when it appears that an agreement with a reporting public office holder may not be reached on a compliance measure, when I have reason to believe that there might be obligations that are not being strictly adhered to or, more generally, when there is a lack of cooperation on the part of the public office holder.

In the last year, I issued three compliance orders. One of them ordered a reporting public office holder to refrain from communicating with the trustee of his blind trust without the approval of the Commissioner. The other two restricted the outside activities of a reporting public office holder. Orders issued under section 30 are always made public and can be found on our website.

Administrative monetary penalties

The Act establishes an administrative monetary penalty regime that gives the Commissioner discretion to impose penalties on reporting public office holders. The regime only covers failures to report certain matters, generally within established deadlines.

During this reporting period, I issued six notices of violation. Five were for a failure to report a material change within 30 days and one was for a failure to provide a description of all activities required to be disclosed in a confidential report. Five of the six notices of violation resulted in a monetary penalty and these have been made public, as required under the Act, on our website. I decided not to impose the penalty in the other case. During the 2009-10 fiscal year I also issued six notices of violation that resulted in five monetary penalties.

IV. INVESTIGATIONS

Examinations and inquiries

My Office administers two investigative regimes, one under the *Conflict of Interest Act* (Act) and the other under the *Conflict of Interest Code for Members of the House of Commons* (Code). An investigation under the Act, called an examination, can be initiated after receiving a request, either from a Senator or a Member of the House of Commons, or on my own initiative. An investigation under the Code, called an inquiry, can be initiated after receiving a request from a Member, upon resolution of the House of Commons or on my own initiative. I have issued backgrounders on investigations under the Act and the Code describing the processes that must be followed. They are available on my Office's website.

A Member making a request under the Act or the Code must set out his or her reasonable grounds to believe that a contravention has taken place. Members who are also ministers or parliamentary secretaries are subject to both the Code and the Act and their conduct can be investigated under either regime or both, depending on the circumstances. At the completion of an investigation, I report my findings publicly.

In the past year, I completed three investigations and commenced four others. I will discuss these in turn.

Investigations completed this reporting period

Cheques reports

Early in the reporting period, I released two reports relating to 63 requests for investigation into the use of partisan or personal identifiers on ceremonial cheques and other props in connection with government funding announcements. My investigation related to the conduct of 60 Members of the House of Commons, 25 of whom were also ministers or parliamentary secretaries. Reports under the Code and Act were issued on April 29, 2010 at the conclusion of the investigation. They were described in detail in my last annual report.

I determined in the Cheques Reports that the practice of using partisan or personal identifiers in announcing government initiatives did not constitute a breach of the Act or the Code, because the concept of "private interest" in the relevant provisions of the Act and Code does not cover partisan political interests. However, I concluded that this practice has the potential to diminish public confidence in the integrity of Members and the governing institutions they represent.

Reports on political fundraising and the involvement of lobbyists

The other reports that I issued in the past fiscal year considered the activities of a Member who was also a minister and, in a separate investigation, the activities of a Member who was also a parliamentary secretary. Both investigations related to the involvement of lobbyists in political fundraising events. Following each of these investigations I released reports in relation to both the Act and the Code.

The first investigation considered allegations involving the Honourable Lisa Raitt, Member of Parliament for Halton and Minister of Natural Resources at the time. It was alleged that Ms. Raitt had accepted the assistance of a lobbyist in the organization of a political fundraising event at the same time as the lobbyist was lobbying her as minister. It was alleged that these volunteer services constituted a gift or benefit that could reasonably be seen to have been given to influence her and were therefore prohibited under the Act and Code. Reports under the Act and Code were both released on May 13, 2010.

I concluded as a factual matter that Ms. Raitt was not involved in the organization of the fundraising event and that the volunteer services provided in connection with this event were given to Ms. Raitt's electoral district association.

The second investigation considered the activities of Mr. Rick Dykstra, Member of Parliament for St. Catharines and Parliamentary Secretary to the Minister of Citizenship and Immigration, in connection with a political fundraising event organized for the benefit of the St. Catharines Electoral District Association and held in the Owner's Suite at the Rogers Centre in Toronto.

It was alleged that Mr. Dykstra had obtained access to the Owner's Suite at less than full market value from Rogers Communications, an organization registered to lobby the government, and that, in so doing, he received a gift, advantage or benefit that could reasonably be seen to have been given to influence him in the exercise of an official power, duty or function.

I found that the Owner's Suite could be rented by third parties and that full market value was paid both to rent the Owner's Suite and to cover the cost of food and beverages. Therefore, there was no gift or other advantage or benefit involved.

Mr. Dykstra had also sent an e-mail, using his parliamentary account, to a list of potential contributors inviting them to attend the fundraising event. The Act prohibits public office holders from personally soliciting funds from individuals or organizations where to do so would place them in a conflict of interest; I found no evidence to suggest that Mr. Dykstra was in a conflict of interest. There is no equivalent provision in the Code.

Although I did not find contraventions of the Act or the Code, the investigations relating to Ms. Raitt and Mr. Dykstra raised concerns about the involvement of lobbyists in the organization of political fundraising events and their attendance at those events. A conflict of interest can potentially arise when a Member seeks or accepts political contributions or volunteer services from lobbyists or other stakeholders, particularly if the Member is also a minister or parliamentary secretary.

In my reports, I suggested that consideration should be given to amending the Code to include provisions dealing with political fundraising, perhaps to include prohibitions against solicitation of funds, broader recusal obligations and provisions for the establishment of conflict of interest screens.

With respect to Members who are also ministers and parliamentary secretaries, I suggested that more stringent provisions relating to fundraising should be considered. In this connection, I noted that the predecessor to the Act, the *Conflict of Interest and Post-Employment Code for*

Public Office Holders (2006), prohibited ministers, parliamentary secretaries and other full-time public office holders from personally soliciting funds, regardless of whether doing so would place them in a conflict of interest.

I recommended that consideration be given to reinstating this prohibition, at least in relation to ministers and parliamentary secretaries, as it would remove a source of public concern in this area.

At the time of the events in question, there were no guidelines that applied either to Members or specifically to ministers or parliamentary secretaries in relation to political fundraising events that could help them to ensure that they are not placed or seen to be placed in situations of actual or potential conflicts of interest.

During the course of my investigations, the Prime Minister issued guidelines for ministers and parliamentary secretaries in relation to the involvement of lobbyists and other stakeholders in political fundraising. I noted in the Raitt reports that this document applies to Members of Parliament who are public office holders, namely ministers and parliamentary secretaries, but not more broadly to all Members of the House of Commons. These guidelines were made public in the fall of 2010 as an Annex to the 2008 publication *Accountable Government: A Guide for Ministers and Ministers of State*. A revised version of the guidelines appears in the 2011 version of that guide.

Examinations and inquiries commenced this reporting period

This past year I commenced three examinations under the Act, one of which was self-initiated, and one inquiry under the Code. These are discussed below.

The first examination under the Act relates to the conduct of the Honourable Christian Paradis when he was Minister of Public Works and Government Services Canada. It was alleged that Mr. Paradis had extended preferential treatment to a former Conservative Member in connection with a request to Public Works for a meeting on a solar panel project proposal. This examination is ongoing.

The second examination, commenced on my own initiative, was discontinued after considering the circumstances of the case. The Act does not contemplate a public report when a self-initiated examination is discontinued.

The third examination relates to the conduct of Mr. Bruce Carson, a former public office holder, in relation to his post-employment obligations. This examination is ongoing.

Under the Code, I commenced an inquiry relating to a letter of introduction to municipal officials sent on behalf of a constituent and his company by the Honourable Helena Guergis, when she was the Member of Parliament for Simcoe–Grey. It was alleged that, at the time the letter was sent, Ms. Guergis' husband was involved in business dealings with that company. I am in the process of finalizing my report on this inquiry.

Cases that did not result in an inquiry or an examination

In addition to the matters already referred to, my Office carried out a number of initial assessments as a result of information received from a variety of sources − Members, government officials, private citizens and media reports. My Office handled these cases in a variety of ways. In some, I concluded relatively quickly that the matter fell outside my jurisdiction or that further steps by my Office were not warranted. In others, where I found circumstances that warranted follow-up with a Member or public office holder, I did so.

The Act and Code establish evidentiary thresholds that must be met before an investigation can be commenced. I cannot launch an examination or an inquiry based simply on a suspicion or appearance of conflict of interest in the absence of credible information indicating that a contravention may actually have occurred.

That being said, staff in my Office review all correspondence received. We solicit further information where warranted and consider the relevant information carefully before determining whether any sections of the Act or Code could apply. Where I do not proceed to an investigation, I consider whether other steps may be warranted. In some cases I have addressed the concerns raised by private citizens with the Members or public office holders concerned. In the case of a reporting public office holder, new compliance measures may also be considered to help the public office holder to ensure that his or her obligations under the Act are met.

My ability to report publicly on activities that do not lead to a public report is limited. The Act and the Code prevent me from making public my reasons for not proceeding to an inquiry or examination. In a limited number of cases, however, I may release some information because the matter has already become one of public record.

When I receive a request for an inquiry that meets the requirements of the Code, I must send the request to the Member against whom the complaint has been made and afford him or her 30 calendar days to respond. I then conduct a preliminary review to determine if an inquiry is warranted. During the past year I received two requests from Members for separate inquiries under the Code that resulted in a preliminary review. In both cases I concluded that inquiries were not warranted after conducting the preliminary reviews.

The process for commencing an inquiry on my own initiative is similar. I must give the Member in relation to whom I have concerns 30 days to respond to those concerns. Last fall I received correspondence from a member of the public who raised concerns about the conduct of a Member that I thought might lead to a self-initiated inquiry. After reviewing the Member's response and soliciting additional information, I determined that I did not have grounds to commence an inquiry.

In the past year I received some seven requests and related correspondence from Members raising concerns about the conduct of other Members, including ministers and parliamentary secretaries. The matters raised related to partisan political activities and the appropriate use of public funds.

In the past year I received some 15 communications from private citizens raising concerns or making specific allegations relating to Members and to ministers, parliamentary secretaries

and other public office holders. This was a significant increase over the previous reporting year. Concerns raised by private citizens related to a number of areas covered by the Act or the Code, including outside activities, preferential treatment and sponsored travel. My Office considered all the concerns that were raised.

Some of the concerns raised with me from various sources related to conduct not explicitly regulated by the Act or Code, including partisan political activities, policy disputes and the appropriate use of public funds.

I declined to investigate a number of requests and communications received from either Members or private citizens relating to political activities of Members, including ministers and parliamentary secretaries. In these cases it was alleged that the Members in question improperly attempted to sway public opinion in favour of their party, themselves or their political allies. Generally, political conduct aimed at furthering political interests falls outside my mandate where there is no private interest engaged. I address this topic in more detail in the section entitled *Matters of Note* under the heading *Partisan political conduct*.

While matters relating to the use of public funds do not necessarily fall outside of my mandate, there are other institutions – such as the House of Commons Board of Internal Economy and the Treasury Board Secretariat – that have primary responsibility for such matters and have policies and procedures specifically designed to address them. Where I believed that the matter was properly within the jurisdiction of one of these bodies, the case was referred to it.

On several occasions, my Office followed up on the conduct of public officials solely on the basis of information contained in media reports. These reports related to outside activities, insider information and political fundraising.

My Office also received a few calls from individuals who implied that they had information relating to a contravention of the Act but would not or could not provide further details when asked by my staff. It was impossible to take these matters further as I did not even have the name of the persons who had allegedly contravened the Act**.**

Some of the matters raised by Members and private citizens that did not involve a contravention of the Act or Code raised broader ethical concerns. In many of these instances, staff in my Office followed up with the Members and public office holders concerned to inform them of the matters raised. They were generally receptive and appeared to appreciate the fact that these matters were raised with them. Some wanted to know who had raised the concern with my Office. My Office did not disclose this information. It is the practice of my Office to protect, where possible, the identities of those who raise concerns with us.

These instances also provided a good opportunity to review with the Member or public office holder his or her obligations. Often in these situations, the Member or public office holder will take steps to address the concerns raised, even if they do not amount to a contravention of the Act or Code. This sometimes results in a new compliance measure being established to avoid a potential conflict of interest.

Challenges in accessing documents

In two investigations undertaken in the past year I experienced significant difficulty in obtaining relevant documents from public authorities.

Cabinet confidences

Formal records of Cabinet and Cabinet committees, commonly referred to as "Cabinet confidences", are protected by special rules of confidentiality. These include memoranda to Cabinet, records of Cabinet decisions, and Treasury Board submissions and decisions. Occasionally, for the purposes of an investigation, I require access to documentation that is considered a Cabinet confidence. I had one such case in this reporting period. Although I was finally given access to the necessary documents, there were significant delays in obtaining them.

In order for me to carry out my investigative mandate, I must have access to documents when I determine it is necessary. I recognize the importance of preserving the confidentiality of Cabinet documents and, in fact, am subject to specific confidentiality obligations relating to such documents under both section 51 of the *Conflict of Interest Act* and section 90 of the *Parliament of Canada Act*. The very existence of these special confidentiality obligations indicates an expectation in the Act that I will, at least in some cases, have access to Cabinet confidences. My Office is currently working with government officials to resolve this matter so as to avoid delays in future investigations.

Accessibility of documents in inquiries under the Code

In the last year, my Office has noted several challenges with respect to obtaining documents while conducting inquiries under the Code.

Summoning witnesses to appear or to produce documents

Unlike the Act, the Code does not empower my Office to compel witnesses – either Members or private individuals – to appear or to produce documents. In this connection, although Members are required by subsection 27(8) of the Code to cooperate with me in respect of any inquiry, they are not compellable witnesses.

In March 2010, at the request of the previous Standing Committee on Procedure and House Affairs, I submitted to that committee suggested amendments to the Code. Along with some other suggestions related to the inquiry provisions, I recommended that the Code be amended to provide the Commissioner with the power to compel third party witnesses to appear for interviews or to produce requested documents in relation to inquiries conducted by my Office.

The previous Committee did not discuss these suggestions before the dissolution of the previous Parliament. I look forward to reviewing them with the current committee when I resubmit them.

Further discussions would be required to determine how such powers to compel third party witnesses to appear and to produce evidence would be enforced. In the event that this

amendment were to be adopted, it would be necessary to determine what specific procedures should be followed in such circumstances.

Documents in the custody of the House of Commons

One inquiry that I conducted over the past year required that a search be conducted of e-mail accounts of a Member and the Member's staff as well as the archives of those accounts. Two issues arose in relation to my request to the House of Commons to conduct the necessary search. First, the House would not conduct such a search without the consent of the Member. Second, the search results were provided to the Member, who then had an opportunity to review the resulting documents and the discretion to decide which of these documents should be provided to my Office.

This situation raises serious concerns about the integrity of the inquiry process. I hope to have an opportunity to work with the House of Commons to establish a process that will allow me to obtain direct and full disclosure of documentary evidence.

V. MATTERS OF NOTE

Monitoring compliance

On occasion, I am asked whether I conduct routine audits to ensure that Members and public office holders are complying with their obligations under the *Conflict of Interest Code for Members of the House of Commons* (Code) or the *Conflict of Interest Act* (Act), and whether I have the authority to do so. While we do not necessarily refer to them as audits, I undertake a range of proactive measures to monitor ongoing compliance.

When new Members or public office holders take office, my Office contacts them to guide them through the initial compliance process. In most cases, the compliance process is completed within a relatively short time and, as noted earlier in this report, may include making arrangements such as divesting assets or putting in place a conflict of interest screen to help individuals avoid potential conflicts of interest.

After the initial compliance process, my Office undertakes annual reviews of the individual's file, including examining investment records and inquiring whether gifts have been received or outside activities undertaken. This annual review process is an important tool to ensure that those subject to the Act or Code not only remain in compliance but also keep their obligations at top of mind.

In addition to the annual reviews, my Office undertakes random internal file reviews to ensure the completeness and accuracy of information held in our files. Over 200 files were reviewed in the past year.

My Office also follows up on disclosures made by one or more individuals that suggest that a similar disclosure should be forthcoming from another individual or group of individuals. For example, where a Member or public office holder has received a gift or an invitation to an event and it is clear that the same gift or invitation was offered to others, my Office follows up with the other individuals involved to ensure that they are aware of their obligations with respect to a similar gift or invitation.

Where a gift or invitation is acceptable, my Office works to ensure that the recipient completes the necessary disclosure process. Where the gift or invitation is unacceptable, I take steps to ensure that all those who may have received the same offer are advised of my opinion in as timely a fashion as possible. If a prohibited gift or invitation has already been accepted, I require that it be returned or the value repaid.

My Office regularly monitors media outlets to stay abreast of any potential concerns and checks other outside information sources, such as the lobbying registry and corporate registries, when there is a reason to do so. We also follow up on communications or complaints from the public about Members or public office holders. There have been a number of these situations in the past year.

I believe that ongoing, proactive monitoring provides an important means by which my Office helps Members and public office holders meet their obligations under the Act and Code.

Where obligations are not met

The Act provides me with a variety of ways to ensure that public office holders meet their obligations under the Act or to address situations where they fail to do so.

At the end of the section of this report entitled *Applying the Act*, I refer to the cases where penalties were applied under the administrative monetary penalty regime. These cases involved failures to meet reporting deadlines set out in the Act and, in one case, a failure to disclose the required information in a report.

In the section entitled *Investigations*, I discuss the examinations that have been completed and reported on publicly during the past year and those that have been commenced during the past year. I also discuss the cases where, after an initial assessment, I concluded that an investigation was not warranted.

While I have the option of conducting an examination and publishing a report for any breach of the Act, I have concluded that in some instances there is little public interest to be served by conducting a full examination under the Act. This includes instances where the facts and the interpretation of the Act are clear, where the breach appears to have been inadvertent and where the public office holder recognizes that there has been a contravention and is prepared to take whatever steps are necessary to achieve conformity with the Act.

Under the current legislative framework, where I do not consider it appropriate to initiate an examination in relation to a substantive contravention of the Act, sections 29 and 30 provide other ways to deal with the situation. These sections are discussed in the section *Applying the Act* under the heading *Administrative measures to effect compliance with the Act.*

Section 29 of the Act gives me the broad authority to establish, in cooperation with a public office holder, appropriate preventive measures to facilitate his or her compliance with the Act. This can occur when the public office holder is appointed, when a material change is reported or during the annual review process. Under section 30, I can order a public office holder to establish such measures. I issued only three of these orders during the past year.

Section 29 or 30 can also be used when a contravention has occurred to determine the most appropriate and efficient measure to bring a public office holder back into compliance with the Act. Where a public office holder is reluctant or unwilling to take the necessary steps to bring himself or herself into compliance, section 30 allows me to order the public office holder to take those steps. As a matter of practice, my Office takes care to ensure procedural fairness in these circumstances, and affords the public office holder the opportunity to make representations to me with respect to the circumstances of his or her situation.

During the past reporting period, my Office identified 10 cases where a public office holder had breached the Act and was required to take steps to place himself or herself in conformity with the Act. These cases involved a variety of situations, including holding controlled assets, participating in a prohibited outside activity, accepting a gift where it could reasonably be seen to have been given to influence the public office holder, failing to recuse oneself from a situation where there was a conflict of interest, and providing investment instructions to a trustee who manages the public office holder's blind trust.

In each of the 10 cases, the public office holder concerned agreed to deal with the situation immediately, for example by divesting controlled assets, reimbursing the value of a gift of tickets to an event, resigning from an outside activity, winding up a business or taking some other appropriate compliance measure.

In five of the 10 cases, the substantive breach was accompanied by a failure to notify my Office of a material change within the required deadline. As a result, an administrative monetary penalty was imposed for failing to meet the deadline, and the nature of the contravention was publicly disclosed.

In line with my desire to be as transparent as possible, I have been increasingly using my discretion under paragraph 51(1)(e) to make preventive compliance measures public where there are no privacy issues to take into consideration. For the same reason, I intend to use that discretion to make public the measures taken to remedy a breach of the Act unless there is a compelling reason not to do so.

It might be worth considering whether it would be desirable to amend the Act to provide expressly for a process to deal with substantive breaches that do not warrant a full examination. For example, provision could be made for a notice of violation in these cases, like that provided in relation to the administrative monetary penalty regime. The Act could establish a clear process for ensuring procedural fairness that would set deadlines within which to make representations before a consequence for a failure to comply with the Act is applied, such as public declaration of the failure to comply.

Another option would be to provide for a monetary penalty regime, similar to the administrative monetary penalty regime now in place, for some of the breaches that do not warrant a full examination. The fact that the Act provides for penalties for administrative breaches, but does not do so for clear substantive contraventions, such as purchasing controlled assets or participating in a prohibited outside activity, is confusing and gives the impression that some substantive contraventions are not being addressed.

Post-employment issues

Part 3 of the Act sets out the post-employment rules for former public office holders. Sections 33 and 34 prohibit former public office holders from taking improper advantage of their former office, switching sides on files they have worked on or using insider information.

Subsection 35(1) establishes a “cooling off” period during which former reporting public office holders are prohibited from entering into certain relationships with an entity with which they had “direct and significant official dealings” in the one-year period preceding their last day in office. The “cooling off” period is two years for former ministers, and one year for all other reporting public office holders.

I have not applied subsection 35(1) in two particular types of situations even though they are not expressly excluded. In my 2007-08 Annual Report, I noted that, as a practical matter, I was not interpreting subsection 35(1) to prohibit reporting public office holders as a general rule from taking up new positions within the federal public sector. To interpret this provision otherwise

would not be in the public interest and would have the effect of significantly limiting mobility within the federal government, particularly for deputy ministers, who are routinely assigned to different departments within the government.

This year, a similar issue arose with respect to ministerial staff, namely whether subsection 35(1) prevented ministerial staff from working for a political party during the post-employment "cooling off" period. After considering this issue, I determined that the prohibition in subsection 35(1) could not have been intended to prevent ministerial staff from accepting positions with their political parties during their "cooling off" period. I understand that this situation occurs relatively frequently, although it has rarely been reported to me. Many ministerial staff, particularly the senior ones, are expected to, and do, have ongoing direct official dealings with their political party while they are employed in a minister's office.

It would be desirable to have both of these issues clarified in an amendment to the Act, in whatever way Parliament considers appropriate.

This year, I issued an information notice providing reporting public office holders with some general guidance on how my Office interprets and applies the phrase "direct and significant official dealings" found in section 35. It points out that the interpretation of the phrase "direct and significant official dealings" depends on the circumstances of each case. The information notice identifies various factors that are relevant to the interpretation of this phrase. It is available on my Office's website.

Reporting public office holders are encouraged to consult with my Office when any post-employment issues arise even after they have left their position.

The post-employment regime set out in the Act has no post-employment reporting requirements (with the exception of section 37, which establishes an obligation to report to my Office certain activities described in the *Lobbying Act*) and no sanctions or penalties for contraventions of the post-employment rules. These deficiencies were identified among the recommendations in the Oliphant Commission's Report[1] released on May 31, 2010. Recommendations 16 and 17 dealt specifically with disclosure and reporting requirements for post-employment, and in particular recommended that the *Conflict of Interest Act* be amended to make it an offence to fail to meet disclosure obligations. I agree that this gap should be addressed.

Partisan political conduct

In recent inquiry and examination reports, I have offered some observations on ethical matters troubling to Canadians that have been considered in the course of my investigations but ultimately found not to be covered by the Act or the Code.

Canadians, including Members of Parliament, have brought to my attention with increasing frequency concerns about the conduct of Members, ministers or parliamentary secretaries that they view to be inappropriate. Misleading statements, personal attacks and the like that come with the partisan nature of political life are often distasteful to many Canadians. Some assume

[1] *Commission of Inquiry into certain allegations respecting business and financial dealings between Karlheinz Schreiber and the Right Honourable Brian Mulroney*

that this sort of behaviour must be covered by one or another of the various accountability regimes in force. In fact, there is no comprehensive regime that governs political conduct in general.

Political activities, such as campaigning, fundraising and engaging in vigorous debate over preferred policy approaches, are a legitimate and necessary part of the democratic process. Political activities in and of themselves are not at issue. It is the way in which these activities are pursued that gives rise to occasional criticism.

Complaints about the conduct of political figures are not new, nor are they confined to a particular party, government or era. I often receive complaints from Members or the public where there is a perception that Members, including those who are ministers or parliamentary secretaries, are using their positions inappropriately to further their political interests. Examples of matters raised in the past year include using MP mailings or communications tools in an overtly partisan manner, using partisan identifiers when announcing government initiatives, and making public announcements of budget measures before they are tabled in the House of Commons. These activities are all aimed at influencing voter perceptions for political gain.

I face a challenge when the activity itself may be questionable but does not breach the Act or the Code. In most of these circumstances political interests are at issue without involving private interests. The Act and the Code deal with situations where private interests come into conflict with public duties, not where political interests alone are being pursued.

In some cases, these activities may be covered by other regimes. With respect to matters that take place on the floor of the House of Commons, it is the Speaker who is responsible for maintaining decorum. Matters relating to the management of parliamentary resources and the use of parliamentary premises by Members and their staff are governed by the Board of Internal Economy.

At the federal level, there are other legislative and policy instruments beyond the regimes that I administer that cover a range of ethical issues and activities and apply to certain Members and public office holders. There is the Privy Council Office publication, *Accountable Government: A Guide for Ministers and Ministers of State 2011*, which addresses in part the expectations for those public office holders with respect to balancing political interests and governance responsibilities, the *Senate Code of Ethics,* which applies to Senators who are also ministers, and the *Lobbying Act*, which sets out additional post-employment rules for certain public office holders. There is also the *Canada Elections Act,* which applies primarily during election periods. The *Criminal Code* may also be relevant.

I will refer a matter to the authority that administers one of these regimes if it appears to fall within its jurisdiction. However, none of these authorities appears to have within its mandate the responsibility for regulating the ethical aspects of partisan political conduct.

Questions remain as to what constitutes acceptable behaviour, whose role it is to regulate it, and – perhaps most fundamentally – whether it should be regulated. While certain situations cause consternation for some Canadians, other Canadians simply dismiss it as part of the everyday business of political life. Would it, then, be desirable to try to regulate political conduct? Should it be left to be dealt with only at the voting booth?

In my opinion, there is a need for some guidance in this area. Resignation and acceptance of inappropriate conduct in the political sphere do a great disservice to our democratic institutions and to Parliament itself, and can only erode the confidence of Canadians in our systems of government.

The House of Commons could consider implementing a separate set of rules, perhaps a code of conduct, in relation to partisan political activities that could apply to Members as well as their staff. These rules could rely on voluntary compliance or they could perhaps be overseen by a group of former parliamentarians from various political backgrounds. The establishment of, and adherence to, rules of conduct established by Members themselves might best respond to the concerns that are raised and help enhance a positive perception of elected office.

Streamlining the Act and the Code

The two regimes that I administer, the *Conflict of Interest Act* (Act) and the *Conflict of Interest Code for Members of the House of Commons* (Code), are housed in two separate instruments and have in some respects significant differences due to the different roles of public office holders and Members. Among the more significant differences are the fact that the Act has post-employment and divestment requirements, while the Code has none, and the Act and the Code have different compliance requirements and different procedures for investigations.

At the same time, the Act and the Code have a number of very similar rules of conduct, and other provisions that contain only slight differences, that could be brought into line. For example, the Code has no definition of conflict of interest, while the Act does, and the Code describes in some detail what amounts to a private interest, while the Act does not. This can be confusing, particularly for the individuals subject to both regimes, namely ministers and parliamentary secretaries.

I note that a number of other jurisdictions, including some at the provincial or territorial level, have one statutory regime in place that covers both members of the legislative assembly and public office holders, with more stringent rules for certain classes of individuals.

The upcoming five-year legislative review of the Act could provide an opportunity to address this issue. There are several options that Parliament might wish to consider. Combining the Act and the Code into one piece of legislation is one possibility. This would facilitate a streamlining of the provisions, thereby removing some of the slight inconsistencies between the Act and the Code where there is no reason to have different rules or standards. If Parliament were to consider a single legislative regime, there would have to remain some differences in the specific rules for some of the separate classes of individuals, such as Members or ministers. This could be accommodated by establishing separate provisions of the Act applicable only to certain classes of individuals.

Members could, in any event, at least look for ways in which both regimes could be modified to ensure consistency of language and prescribed processes. As well, the Act could be modified to ensure that, for certain matters, only one regime is applicable to ministers and parliamentary secretaries, rather than both the Act and Code applying.

VI. OUTREACH AND COMMUNICATIONS

I remain committed to strengthening communications with all stakeholders. My Office continues to look for ways to inform public office holders and Members of the House of Commons of their obligations under the *Conflict of Interest Act* (Act) and *Conflict of Interest Code for Members of the House of Commons* (Code) to help them comply with their obligations. My Office is providing more information in a timely way about my role and the administration of the Act and the Code to the media and to all Canadians. We have been making greater use of the Internet and have been working to make our website more user-friendly. We also continue to share information with organizations similar to ours in Canada and abroad.

New website

On April 1, 2011, my Office launched a new website that makes it easier for visitors to find information about my Office and the conflict of interest regimes that I administer.

Our new website includes individual portals for Members, public office holders and members of the media. It gives Members and public office holders convenient access to information and forms they need to help them meet their obligations. It enables visitors to the site, including the media, to find our latest reports and background information quickly and serves as a valuable educational resource for anyone interested in conflict of interest and ethics issues.

The website will continue to evolve as further improvements are incorporated.

Reaching out to public office holders and Members

One of the primary roles of my Office is to ensure that public office holders and Members are mindful of their obligations under the Act and the Code. I continue to make outreach to these groups a priority.

During the past fiscal year, my staff and I made presentations to organizations whose members have obligations under the Act, including the Immigration and Refugee Appeal Board, the National Council on Seniors and various ministers' offices, as well as to the Privy Council Office, which has responsibility for Governor-in-Council appointments.

In November 2010, I spoke to the Conservative caucus about the requirements of the Act and Code, completing a series of presentations to the four parliamentary party caucuses in the House of Commons that began in the previous fiscal year. The sessions have been a good way to remind Members of their obligations under the Code and, in the case of ministers and parliamentary secretaries, of their obligations under the Act. It also gives Members the opportunity to raise any issues or questions in the privacy of their own caucus.

In the coming year I intend to build on our outreach initiatives through a variety of measures targeting specific groups of public office holders. For example, my Office is currently preparing material to distribute to ministerial staff through their respective chiefs of staff. This group is of particular interest because of the relatively high turnover in ministerial offices. My Office will also be contacting administrative bodies where public office holders serve, including the various

boards and tribunals, to seek opportunities to meet with the greatest number of public office holders to discuss their obligations under the Act.

In the past year, we introduced a number of new backgrounders aimed at providing quick reference information focussed on various aspects of the Act and the Code to public office holders and Members as well as to general audiences. We issued backgrounders about investigations under the Act and the Code to help individuals better understand what is required to trigger an investigation and the investigative process, and three backgrounders outlining the compliance processes for Members, Members who are also ministers or parliamentary secretaries and public office holders. These resources are posted on my Office's website.

My Office continues to issue information notices, guidelines, and advisory opinions as a way to help clarify different and sometimes complex aspects of the Act and Code. In the past year, we issued information notices under the Act on material change, categories of assets, offers of outside employment and "direct and significant official dealings." More recently, we have issued information notices under the Act on leave without pay during an election period for ministerial staff, and an updated information notice on political activities of reporting public office holders during an election period.

We have also issued a guideline under the Act on controlled assets and advisory opinions under the Code on the acceptability of gifts offered to Members at special events and the acceptability of event tickets and invitations. I have highlighted, earlier in this report, the challenges in relation to gifts and other benefits or advantages.

I note that post-employment issues have received more attention in the wake of the Oliphant Commission's hearings and its report, referred to in the previous section. As mentioned in my 2009-10 Annual Report, I testified before the Oliphant Commission twice on post-employment issues. In February 2011 I issued two new information notices related to the Act's post-employment provisions: one on offers of outside employment and one on direct and significant official dealings. They complement the existing information notice on post-employment obligations; together, these documents aim to increase public office holders' understanding of how Part 3 of the Act applies to them.

House of Commons committees

I appear regularly before the House of Commons Standing Committee on Access to Information, Privacy and Ethics regarding my administration of the *Conflict of Interest Act*, and before the Standing Committee on Procedure and House Affairs regarding my administration of the *Conflict of Interest Code for Members of the House of Commons*.

I appeared before each committee in April 2010 to discuss my Office's budgetary submission for the 2010-11 Main Estimates, and again in October to discuss my 2009-10 annual reports under the Act and the Code.

These meetings give Members a chance to question me, publicly and directly, on matters of interest. They also give me the opportunity to update the committees on the work of my Office and to bring issues and concerns to their attention.

Communicating with others

We continue to be actively involved with organizations administering conflict of interest regimes across Canada and abroad.

In September 2010 I attended the annual meeting of the Canadian Conflict of Interest Network (CCOIN), whose members are provincial, territorial and federal conflict of interest commissioners. My Office coordinates the retention of information for the network and also keeps CCOIN members aware of any investigation reports that are issued, and other developments in the field.

In December, I participated in the annual meeting of the Council on Governmental Ethics Laws (COGEL), an organization for government ethics agencies from the United States, Canada, Europe, Australia and Latin America.

During the past year, I met with representatives of the Republic of Korea National Assembly's Special Committee on Ethics. My staff also met with officials from China, and Turks and Caicos.

I participated in the annual conference of the Institute of Public Administration of Canada, where I gave a presentation on ethics in democratic development, and a representative from my Office spoke at a professional development day for the Association of Certified Fraud Examiners. I also met this year with students in public administration programs from Canada, United States and Ukraine.

My Office provided input to the Government of Canada Values and Ethics Network with regard to a new draft policy on conflict of interest for the public service. We have also provided advice to a Government of Canada working group seeking to establish a guideline on the reimbursement of costs for the divestment of assets.

My Office routinely responds to questions sent to us from organizations in other countries that are researching conflict of interest and ethics regimes. During this reporting period we assisted organizations in Australia, China, France and New Zealand.

Inquiries from the media and the general public

As public awareness of our work grows, my Office continues to receive an increasing number of inquiries from members of the public and the media on a wide range of issues, not all of which are related to my mandate under the Act and the Code. During this reporting period my Office received almost 800 communications by telephone, e-mail and letter mail.

About half of them were not related to my mandate under the Act or the Code. They involved a variety of matters and, where appropriate, were referred to other bodies. While I often receive requests that do not fall within my mandate, I ensure that a reply from my Office is sent that provides useful information about my role and mandate.

The rest of the communications covered a wide variety of topics that did relate to matters within my mandate, about half of which involved requests for information on policies, requests for documents from my Office or requests for information about ongoing investigations or compliance issues.

In last year's annual report, I committed to more proactive media relations to help the general public and our stakeholders gain a better awareness of the role of our Office. To that end, I have participated in several interviews with various media outlets this year to respond to questions regarding conflict of interest issues, including gifts and investigation processes. I have also continued to ensure that responses to media inquiries are dealt with clearly, comprehensively and in a timely manner. I am pleased to note that various journalists are making use of the information available on our website and have contacted my Office to seek clarification as needed.

VII. ADMINISTRATION

As an Officer of Parliament, I am accountable to Parliament and not to the federal government or an individual minister. My Office is part of the parliamentary infrastructure and, unlike many Agents of Parliament, not part of the federal public administration.

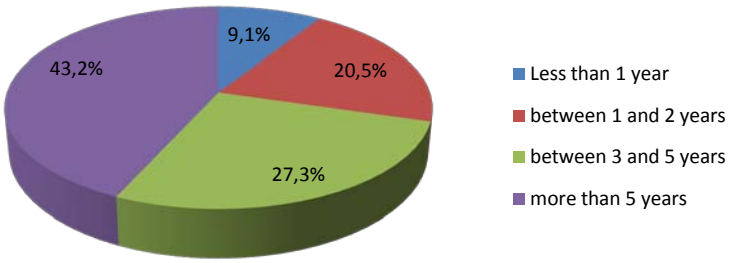
Under the *Parliament of Canada Act*, I have the rank of a deputy head of a department of the Government of Canada and therefore have control over the management of the resources of my Office. Each year, I submit the spending estimates for my Office to the Speaker of the House of Commons, who then transmits them to the President of the Treasury Board for inclusion in the estimates of the government. I then appear before the Standing Committees on Access to Information, Privacy and Ethics to report and to respond to any questions pertaining to the operations and management of my Office.

All resources assigned to my Office, whether they are financial, human or material, are managed with the same values and principles that can be found in the federal public service. In fact, the internal management framework being implemented in my Office is built on a very similar foundation.

I am pleased to report below on achievements of the last year in the area of resource management in my Office.

Human resources management

As I look back to July 2007 and the months following the creation of my Office, and note the challenges encountered at that time in the staffing of positions, I am very pleased to note the level of stability now being enjoyed by the Office in that area. The turnover rate, once we exclude two retirements and one term assignment, is 13% (or six out of 46 employees). The six employees who left the Office in 2010-11 accepted promotions in larger organizations. This is a reality that is faced by most, if not all, small organizations. It is, however, a manageable situation and the Office continues to be able to attract and retain qualified candidates. As indicated below, 70% of the indeterminate employees currently working at the Office have more than three years of service at the Office. This stability contributes greatly to its effective functioning.



As of March 31, 2011, my Office was in the process of staffing two new positions created in a recently reorganized Policy, Research and Communications Division, as well as one position left vacant after the incumbent left for a promotion in the federal public service. Anticipatory staffing is underway for three positions that will become vacant in the new year as a result of a retirement and two maternity leaves.

We also launched a succession planning exercise in order to plan systematically for the continued performance of functions in line with current and projected operational objectives and priorities.

My Office is in the process of updating its policy and guidelines on learning and development. The plan is to introduce mandatory training for targeted groups (*e.g.* new managers) and to ensure an effective and consistent approach to learning.

I mentioned in my last annual report that my Office had implemented a program to hire and develop new compliance advisors. These are the primary resource persons at the Office for public office holders and Members of the House of Commons. During the last 12 months, one more participant joined the development program.

Other progress in the establishment of an internal management framework includes the implementation of an internal policy on official languages under which my Office formalized its commitment to the equitable use of official languages with respect to the delivery of services and the language of work. In a supporting guideline, we introduced a new practice of determining the level of second official language proficiency of each position on a case by case basis instead of applying a general rule where all positions require the same level. Although all positions remain bilingual, their level of second language proficiency is better reflective of the duties of employees and their work units.

My Office also implemented a policy and guidelines on discipline, which will be further supported by a code of conduct to be developed in the new fiscal year. These documents are being implemented simply to set out standard expectations that are specific to our unique mandate and work environment, and not in response to any human resources issues.

In order to better track and manage information on employees, positions and staffing processes, in 2010 my Office launched a human resources management system, a simple but effective database. The new system is used to track and generate reminders related to key milestones, including annual salary increments, term assignments and renewal of security clearances. It is also used to produce statistics on the management of human resources, which are reviewed by my management team.

Financial management

For the third consecutive year, my Office has an operating budget of $7.1 million. We continue to rely on the House of Commons and the Library of Parliament to provide shared administrative services. These arrangements for information technology and financial services work well, even though they consume 35% of the non-salary budget of my Office. Other non-salary expenditures are typical of any public service office and include travel, service contracts for specialized services (*e.g.* classification, court reporting) and telecommunications.

It has been an objective of my Office since its establishment to have audited financial statements. However, in order to get there, we needed to put in place procedures to document the management of financial resources. I am pleased to report that the opening balance for 2010-11 was audited by KPMG and that no concerns were raised with the financial practices of the Office. The 2010-11 financial statements, once finalized, will also be audited and made public.

An important element of financial management is the control of assets. A complete inventory was prepared this past winter, using an approach and system that will facilitate the ongoing management of the equipment and furniture purchased, used and disposed of by my Office.

As a result of the distinct status of my Office, we are exempt from most policies and rules of the Treasury Board Secretariat (TBS). However, our internal policies and practices normally reflect the broad principles and values found in TBS policies and rules. Over the past year, we developed guidelines on travel, which are very closely based on the travel directive of the federal public service. We also updated our policy on the delegation of financial signing authorities and our guidelines on the purchase and use of wireless devices.

A table broadly outlining the financial information for the Office for the 2010-11 fiscal year is provided in the Appendix under the heading *Financial Resources Summary.* Detailed financial information can be found on our website.

Information management

As mentioned earlier in this report, my Office has the responsibility to receive confidential information and maintain files and registries of this information. Strong practices of information management and effective working tools are necessary to support this responsibility.

In 2010-11, the Office launched a project to replace its current case management system, which is approaching its full capacity. In close consultation with the House of Commons, the Office is looking for an integrated approach that will not only address the management of stakeholder information but also support the investigation function and records management. Business requirements have been identified and documented, and the project is now nearing the planning and design phase. The solution will likely be based on an application already developed by the House of Commons for one of its internal clients.

On a related subject, the Office introduced and implemented a functions-based classification structure for its records in the past year. This more logical approach to records management is based on the key functions of the Office and is being implemented for the management of both paper and electronic documents.

Finally and as mentioned earlier in this report, on April 1, 2011 my Office launched a new version of its website, which has been restructured to facilitate navigation. With the new design, visitors are able to locate more easily and rapidly the information they are looking for.

VIII. LOOKING AHEAD

In 2011-12, my Office will build on the momentum that we have achieved over the past four years in administering the *Conflict of Interest Act* (Act) and the *Conflict of Interest Code for Members of the House of Commons* (Code).

Providing public office holders and Members of the House of Commons with advice, guidance, information and assistance to help them understand and comply with the Act and Code, supported by proactive outreach and communications activities and effective internal systems and processes, will continue to be an important focus of our work.

We will be especially busy in this area in the weeks and months ahead in the wake of the May 2011 federal election, which brought 111 new Members to the House of Commons. My staff is helping all Members of Parliament meet their compliance obligations under the Code, assisting with their disclosure process and working to resolve any conflict of interest issues they might have.

The appointment of new Cabinet members after the election also triggered a shift in ministerial staff, a segment of public office holders that traditionally has a high level of turnover. My Office will be taking steps to ensure that new ministerial staffers understand what is required for them to be in compliance with the Act and that departing ministerial staffers understand the Act's post-employment obligations. We are ready to provide individual advice as needed.

With the legislated five-year review of the Act set to take place by July 2012 and a mandatory review of the Code also coming up next year, I hope that my Office can contribute our experience and expertise to these important processes. These reviews could provide an opportunity to bring about changes in areas where I have identified challenges over the past few years.

I will continue to work with the House of Commons Standing Committee on Access to Information, Privacy and Ethics and the Standing Committee on Procedure and House Affairs. I will resubmit to the latter committee the amendments to the Code that I proposed last year.

I will continue to expand the outreach and communications activities of my Office in a range of areas in support of my priorities. In particular, I will identify areas where additional communications tools can assist Members and public office holders to comply with their obligations under the Act and the Code. I also intend to build on our existing research and policy capabilities to monitor developments in the field of conflict of interest and ethics.

My Office will continue to enhance internal procedures and management systems in order to improve further the efficiency of our operations and our advisory services to public office holders and Members, and will continue to seek opportunities to enhance client outreach.

My staff and I look forward to continuing, in the year ahead, to advise appointed and elected officials and help them prevent and avoid conflicts between their public duties and private interests, so as to maintain and enhance the trust and confidence of the Canadian public in the conduct of their elected and appointed officials.

APPENDIX - FINANCIAL RESOURCES SUMMARY (from page 33)

	(thousands of dollars)				
Program Activity	**2009-10 Actual Spending**	**2010-11**			**Alignment to Government of Canada Outcomes**
		Main Estimates	**Total Authorities**	**Actual Spending**	
Administration of the *Conflict of Interest Act* and the *Conflict of Interest Code for Members of the House of Commons*	5,528	7,105	7,105	6,016	Government Affairs
Total Spending	5,528	7,105	7,105	6,016	
Plus: Cost of services received without charge	960	n/a	n/a	1,021	
Net Cost of Department	6,488	7,105	7,105	7,037	
# of employees	46			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 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.

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