

**Response to the motion adopted by the
House of Commons on June 5, 2008
for further consideration of the
Thibault Inquiry Report**

June 17, 2008

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Conflict of Interest and
Ethics Commissioner**

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House of Commons on June 5, 2008
for further consideration of the Thibault Inquiry Report**

pursuant to the
CONFLICT OF INTEREST CODE FOR
MEMBERS OF THE HOUSE OF COMMONS

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PREFACE

Under subsection 28(13) of the *Conflict of Interest Code for Members of the House of Commons* (the Code), which constitutes Appendix 1 of the *Standing Orders of the House of Commons*, the House of Commons may, at any point before it has dealt with a report of the Conflict of Interest and Ethics Commissioner under the Code, refer the report back to the Commissioner for further consideration.

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INTRODUCTION

On May 7, 2008, the Thibault Inquiry Report (the Report) was tabled in the House of Commons following an inquiry conducted under the *Conflict of Interest Code for Members of the House of Commons* (the Code).

By letter received on June 9, 2008, the Clerk of the House of Commons sent me a motion adopted by the House on June 5, 2008. That motion, which is set out in its entirety below, referred the Thibault Inquiry Report back to me pursuant to subsection 28(13) of the Code for reconsideration in light of an amendment to the Code adopted by the House of Commons pursuant to the motion.

BACKGROUND

In the Report, I determined that a lawsuit constituted a contingent liability and fell within the scope of a private interest under the Code. Consequently, I concluded that Mr. Thibault's obligations under sections 8, 12 and 13 were engaged and that he had failed to comply with them. However, I stated that because the case involved questions that had not been addressed before and because it was reasonable to expect that the meaning of central concepts such as "private interest" and "liability" may be unclear to Members, Mr. Thibault's non-compliance with the Code occurred through an error in judgment made in good faith. For that reason, subsection 28(5) of the Code applied and I recommended that no sanction be imposed.

I was aware of concerns that had been raised about the potential use of lawsuits to prevent Members from performing their duties in the House of Commons. Therefore, in the Final Observations section of the Report, I indicated that, should Members believe that this possibility raises serious concerns, the Code could be adjusted to exclude libel suits from the ambit of "private interests" for the purposes of sections 8 and 13. I did not believe this step to be necessary in relation to disclosures under section 12.

On June 5, 2008, the House of Commons adopted the following motion:

That this House reaffirm all of its well-established privileges and immunities, especially with regard to freedom of speech;

that, in order to clarify and assure those privileges, Section 3(3) of the Conflict of Interest Code for Members of the House of Commons, which is Appendix I to the Standing Orders of the House of Commons, is amended by deleting the word "or" at the end of paragraph (b) and by adding the following after paragraph (b):

“(b.1) consists of being a party to a legal action relating to actions of the Member as a Member of Parliament; or”;

that, pursuant to section 28(13) of the Conflict of Interest Code, the House refer the Thibault Inquiry Report back to the Conflict of Interest and Ethics Commissioner for reconsideration in the light of the amendment to the Code; and

that the House affirm its confidence in the Conflict of Interest and Ethics Commissioner.

CONSIDERATIONS

The facts of this matter have not changed and are set out in the Report. I will therefore limit my observations and conclusions to the question of whether I would have determined that Mr. Thibault failed to comply with sections 8, 12 and 13 of the Code if the amendment had been part of the Code at the relevant times.

Effect of Amendment

Members have chosen to amend subsection 3(3) of the Code, which applies to the Code in its entirety. Subsections 3(2) and (3) of the Code provide a list of situations where a Member would or would not be considered to further private interests. The effect of the amendment to subsection 3(3), adding paragraph (b.1), is to exclude matters related to legal actions from the scope of private interests. As amended, subsection 3(3) now reads as follows:

3(3) For the purpose of this Code, a Member is not considered to further his or her own private interests or the interests of another person if the matter in question

- (a) is of general application;*
- (b) affects the Member or the other person as one of a broad class of the public;*
- (b.1) consists of being a party to a legal action relating to actions of the Member as a Member of Parliament; or*
- (c) concerns the remuneration or benefits of the Member as provided under an Act of Parliament. [Emphasis added]*

This amendment will affect the interpretation of sections 8, 9, 10, 12, 13 and 20 of the Code. Only sections 8, 12 and 13 relate to the Thibault Inquiry.

Subsection 3(3) applies to section 8, which provides that Members cannot act in any way to further their private interests. It also applies to sections 12 (disclosure) and 13 (recusal), as specifically provided by section 13.1.

The new paragraph 3(3)(b.1) expressly removes from the scope of private interests liabilities arising from any type of legal action to which a Member is a party where the legal action relates to the actions of the Member as a Member.

In the circumstances of this case, Mr. Thibault became the defendant of a libel lawsuit because of comments he made outside the House of Commons. In making these statements, he was described as the Liberal Party's lead critic on the Mulroney-Schreiber affair. In my view, this lawsuit was related to his actions as a Member of Parliament. Accordingly, the matter would fall within the exception set out in paragraph 3(3)(b.1) and would not constitute a private interest for the purposes of all the relevant sections of the Code, including sections 8, 12 and 13.

Although it may be challenging in practice to determine whether a legal action to which a Member is a party relates to his or her actions as a Member of Parliament, in light of the clear intention of the House of Commons to ensure that legal actions do not inappropriately interfere with the ability of Members to perform their parliamentary duties and functions, I will give paragraph 3(3)(b.1) a broad interpretation.

Contingent Liabilities

In the Report, as a preliminary matter, I had to determine whether a lawsuit constituted a liability and, hence, a private interest. I found that nothing in the Code suggested a limited interpretation of the term "liabilities" and that both actual and contingent liabilities were included. The amendment to section 3(3) of the Code does not affect this finding except to the extent that legal actions are now outside the scope of private interests.

CONCLUSION

The addition of paragraph (b.1) to subsection 3(3) of the Code has the effect of excluding from the scope of private interests any liability arising from a legal action relating to the performance and functions of a Member of Parliament as a Member. Applying sections 8, 12 and 13 to the facts underlying the Report as if the amendment to subsection 3(3) of the Code had been made at the relevant times, I conclude that Mr. Thibault would not have failed to comply with the Code had that amendment then been a part of the Code. Furthermore, as of June 5, 2008, Mr. Thibault no longer has any obligations under section 8, 12 or 13 in relation to his previous private interest resulting from the lawsuit.