



Office of the Ethics Commissioner  
Bureau du commissaire à l'éthique

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# THE GALLANT INQUIRY

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



Report made pursuant to a request by  
the Honourable Mauril Bélanger, M.P.  
for an inquiry in relation to Cheryl Gallant, M.P.

Bernard J. Shapiro

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CONFLICT OF INTEREST CODE FOR  
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## APPENDIX I

*Letter from Mauril Bélanger, P.C., M.P., dated February 9th, 2006*



## EXECUTIVE SUMMARY

On February 9, 2006, the Member of Parliament for Ottawa-Vanier, Mauril Bélanger, requested that I conduct an inquiry on allegations concerning the Member of Parliament for Renfrew-Nipissing-Pembroke, Cheryl Gallant. Mr. Bélanger alleged that Mrs. Gallant had inappropriately retained and used personal information provided to her by two constituents.

It was alleged that the riding office stored the passport application information of two constituents in a database, which was subsequently used to send them birthday and Christmas cards on behalf of Mrs. Gallant. Mr. Bélanger cited paragraphs 2 (a) and (b), section 8 and subsection 10 (1) of the *Conflict of Interest Code for Members of the House of Commons* (“the Code”) in support of his request for an inquiry. On the basis of the information provided by Mr. Bélanger, I determined that there were reasonable grounds for his belief that Mrs. Gallant may have breached the Code, and therefore proceeded to conduct a preliminary inquiry.

Based upon a preliminary objection made by Mrs. Gallant, the words “private interest” as used in section 8 and subsection 10 (1) were examined in light of the definition provided at subsection 3 (2). Having reviewed the definition of “private interest” found at subsection 3 (2), I conclude that none of the six qualifications listed in the subsection apply to the alleged misconduct. Accordingly, I have concluded there is no further substantive basis to proceed with this inquiry.

## **INTRODUCTION**

### ***The Legislative Background***

Under Subsection 27 (1) of the *Conflict of Interest Code for Members of the House of Commons* ("Members' Code"), which constitutes Appendix 1 of the *Standing Orders of the House of Commons*, a request for an inquiry can be made by a Member of the House of Commons who has reasonable grounds to believe that another Member has not complied with his or her obligations under the Members' Code.

As well, Subsection 27 (4) of the Members' Code allows the Ethics Commissioner, on his own initiative, and on giving the Member concerned reasonable written notice, to conduct an inquiry to determine whether the Member has complied with his or her obligations under the Members' Code. Following the completion of an inquiry, a report is to be provided to the Speaker of the House of Commons who then tables it in the House. Once the report is tabled, it is released to the public. During the dissolution of Parliament, Subsection 28 (3) of the Members' Code provides that the Ethics Commissioner can make the report public after sending a copy of the report to the Speaker.

### ***The Cheryl Gallant Inquiry – Request for Inquiry***

This inquiry was initiated at the request of the Honourable Mauril Bélanger.

In his letter dated February 9th, 2006 (attached as Appendix 1), Mr. Bélanger requested that I conduct an inquiry into the conduct of Cheryl Gallant, Member of Parliament for Renfrew-Nipissing-Pembroke. On the basis of information made available to him from two constituents of Mrs. Gallant's, Mr. Bélanger alleged that Mrs. Gallant had inappropriately retained and used personal information that the constituents had provided with passport applications that were processed through her constituency office.

## THE ALLEGATIONS

Subsection 27 (2) of the Members' Code stipulates that a request for an inquiry from a Member of the House of Commons must (1) be in writing; (2) identify the alleged non-compliance with the Code; and (3) set out the reasonable grounds for the Member's belief that the obligations have not been complied with.

In light of the foregoing, the request submitted by Mr. Bélanger alleged that Mrs. Gallant had retained personal information specifically in the form of birthdates that they had provided with passport applications that were processed through her constituency office and that these were then apparently placed on a database that was used to send out birthday cards. Mr. Bélanger indicated his view that, if the allegation were correct, this would not seem to meet the text of the principle enunciated in section 2(b) of the Code, which provides:

*"2. Given that service in Parliament is a public trust, the House of Commons recognizes and declares that Members are expected:  
(b) to fulfill their public duties with honesty and uphold the highest standards so as to avoid real or apparent conflicts of interests, and maintain and enhance public confidence and trust in the integrity of each Member and in the House of Commons;"*

and perhaps sections 8 and 10(1), which provide:

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

and

*"10.(1) A Member shall not use information obtained in his or her position as a Member that is not generally available to the public to further the Member's private interests or those of a member of his or her family, or to improperly further another person's private interests."*

After careful consideration of the information provided by Mr. Bélanger, I was satisfied that the allegations, as set out in writing, specifically identified the provisions of the Code which he alleged had been contravened, and that he had set out the reasonable grounds for his belief. Accordingly, the decision was made to proceed with a preliminary inquiry.

## THE PROCESS

The process associated with this preliminary inquiry consisted of six steps.

First step: Following the receipt of the request from Mr. Bélanger on February 16, 2006, the Registrar, Inquiries from my office acknowledged in writing on February 17, 2006 the receipt of his request and noted that the issue would be taken under advisement.

Second step: On February 24, 2006, I wrote to the Speaker of the House of Commons, Mr. Bélanger and Mrs. Gallant to inform them of my decision to proceed with a preliminary inquiry. My letter to Mrs. Gallant indicated that my office would be in contact with her to schedule a formal interview.

Third step: Since my office had not been able to establish direct contact with Mrs. Gallant to schedule the interview, I wrote again to her on March 27, 2006 to obtain her cooperation with the inquiry, as required under section 27(8) of the Code.

Fourth step: On March 31, 2006, Mr. Malcolm Montgomery, executive assistant to Mrs. Gallant responded to my letter of March 27<sup>th</sup>, indicating that as the House was dissolved at the time of the incidents in question, Mrs. Gallant was not subject to the Code and, accordingly, that I was without jurisdiction to proceed.

Fifth step: I wrote to Mrs. Gallant on April 18, 2006 to respond to the points raised in the letter from Malcolm Montgomery, which are addressed in the next section of this report, and to reiterate my request that she cooperate with the inquiry.

Sixth step: On May 1<sup>st</sup>, 2006, Mrs. Gallant responded to my letter of April 18, 2006 seeking clarification of the “private interest” as defined in sections 8 and 10(1) of the Code that she was alleged to have furthered in the carrying out of her duties and functions as a member of the House.

## PRELIMINARY ISSUES

Mrs. Gallant and Mr. Montgomery raised two issues that were necessary to consider and decide upon before any further decisions could be made on an inquiry into the substance of the allegations raised by Mr. Bélanger.

### ***Application of Conflict of Interest Code for Members of the House of Commons during dissolution***

The correspondence from Mr. Montgomery contended that as the House stood dissolved at the time of the events at the centre of this allegation, Mrs. Gallant and all other members of the 38<sup>th</sup> Parliament were no longer subject to the Code.

I addressed this issue in my report on the Harper-Emerson Inquiry, in which I stated:

*“First of all, I would like to address the issue of initiating an inquiry during a period when Parliament is dissolved. Specifically, is there a period of time during the dissolution of Parliament that an inquiry can be initiated, or is the application of the Members’ Code completely suspended during dissolution of Parliament?”*<sup>1</sup>

Citing constitutional experts, I further noted that,

*“Upon dissolution of the 38th Parliament, the House as an Assembly ceased to exist. As a consequence, all activities in the House and before Parliamentary Committees ceased. In addition, members of the House cease to exist constitutionally. However, for the purposes of their continued receipt of salary and benefits, the Parliament of Canada Act “deems” them to continue to be members.”*

Of relevance to the specific situation at issue in this inquiry, I also stated;

*“I have indicated previously that, because the Standing Orders of the House have no effect during dissolution of Parliament, the Members’ Code has no effect. In light of the circumstances in this case, I now do not consider that to be the case. The Members’ Code clearly does not cease during dissolution. Indeed, the Members’ Code itself provides in Section 20 that a member shall, within 60 days of his or her name appearing in the Canada Gazette, file with the Ethics Commissioner his or her confidential Disclosure Statement. As well, Section 28(3) of the Members’ Code provides that, during a period of dissolution, the Ethics Commissioner shall make his report public after it has been submitted to the Speaker.”*

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<sup>1</sup> Office of the Ethics Commissioner, *The Harper-Emerson Inquiry*, 2006, p. 9

Parliament accepted this revised view of the application of the Code when it concurred in my report on the Harper-Emerson Inquiry on April 28, 2006.

*"Pursuant to section 28(1) of the Conflict of Interest Code for Members of the House of Commons - Appendix to the Standing Orders, the report of the Ethics Commissioner entitled "The Harper-Emerson Inquiry", presented on Tuesday, April 4, 2006, was deemed concurred in."<sup>2</sup>*

### ***"Private interest" as it relates to Sections 8 and 10 of the Code***

In her letter of May 1, 2006, Mrs. Gallant requested clarification of the private interests that were deemed to have been furthered by the actions she was alleged to have taken.

Subsection 3(2) of the Code sets out the interpretation of the concept of private interests to be used, as follows:

*"(2) A Member is considered to further a person's private interests, including his or her own private interests, when the Member's actions result, directly or indirectly, in any of the following*

- (a) an increase in, or the preservation of, the value of the person's assets;*
- (b) the extinguishment, or reduction in the amount, of the person's liabilities;*
- (c) the acquisition of a financial interest by the person;*
- (d) an increase in the person's income from a source referred to in subsection 21(2);*
- (e) the person becoming a director or officer in a corporation, association or trade union;*
- and*
- (f) the person becoming a partner in a partnership."*

## **THE FINDINGS**

In my response to Mrs. Gallant on May 29, 2006, I indicated that I had reviewed carefully the wording of section 3(2) of the Code, which defines, furthering private interests, for the purposes of the Code. I found that none of the six actions specified, applied in this case.

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<sup>2</sup> House of Commons Journals no.12, Friday, April 28, 2006, p.108

First, let me reiterate the point that I was satisfied that a preliminary inquiry was warranted on the basis of the request, as submitted by M. Bélanger. However, in proceeding with this inquiry the member for Renfrew-Nipissing-Pembroke chose to raise two preliminary issues, as have been set out above.

In terms of the first issue raised by Mr. Montgomery, I find that the House has accepted that the Members' Code does continue to have effect during the dissolution of a Parliament, although there are specific limitations on the ability of Members to request that the Ethics Commissioner undertake an inquiry between the date of dissolution and the date that the Members of the next Parliament are listed in the Canada Gazette.

In this specific situation, since:

- the Code does have effect during dissolution;
- Members continue to provide services to constituents while Parliament is otherwise dissolved; and
- Members receive public funds with which to do so,

it follows that Members should be expected to conduct themselves in a manner that is consistent with the requirements of the Code. To do otherwise would be to accept that Members are free to further their private interests once Parliament is dissolved.

In terms of the second issue raised by Mrs. Gallant regarding private interests, I have found that there was no "furthering of a private interest", as that phrase is defined by section 3(2) of the Code, in relation to the allegations made, particularly as they relate to sections 8 and 10 of the Code. Accordingly, as a matter of interpretation, there is no further basis to proceed with this inquiry. I find that the allegations do not speak to any actions that would have furthered Mrs. Gallant's private interests, as defined in the Code.

## COMMENTS

The primary issue raised in the allegation related to the privacy of an individual's personal information when dealing with his or her Member of Parliament. It is important to emphasize that all Members have a duty to maintain and enhance public trust in the House of Commons and to act at all times in the public interest. That is the essence of the principles outlined at paragraphs 2(a) and (b) of the Code, which were raised by the Member from Ottawa-Vanier in his request for an inquiry.

Constituents call upon Members of Parliament to assist them in relation to many matters.

As they carry out this responsibility, Members of Parliament and their staff have access to a wide range of personal information regarding individuals.

The question is the use to which that information is put. Parliament addressed this issue for federal departments, agencies and other entities, when it passed the *Privacy Act* in 1985.

Section 2 of that Act sets out this purpose:

*“The purpose of this Act is to extend the present laws of Canada that protect the privacy of individuals with respect to personal information about themselves held by a government institution and that provide individuals with a right of access to that information.”*

Parliament also addressed this issue in Canada's private sector when it passed the *Personal Information Protection and Electronic Documents Act* in 2000. Section 3 of that Act sets out this purpose:

*“The purpose of this Part is to establish, in an era in which technology increasingly facilitates the circulation and exchange of information, rules to govern the collection, use and disclosure of personal information in a manner that recognizes the right of privacy of individuals with respect to their personal information and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.”*

Subsection 5(3) states that “*An organization may collect, use or disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances.*”

These laws reflect the rising concerns that Canadians have about the use of their personal information by others.

As legislators, members should be guided by the principles they themselves have established in the various pieces of legislation related to the privacy of information. I only wish to draw attention to one of the overriding principles.

That is, personal information should only be used for the purpose for which it is gathered, or for a use consistent with that purpose.

\* \* \*



February 9th, 2006

Mr. Bernard Shapiro  
Ethics Commissioner  
Office of the Ethics Commissioner  
66 Slater Street, 22nd Floor  
Ottawa, Ontario  
K1A 0A6

Dear Mr. Shapiro:

This is further to my January 11th, 2006, letter to you, along with attached correspondence, and your response to me dated January 23rd, 2006.

Subsequent to your response, I wrote to Mr. and Mrs. White, offering to pursue the matter on their behalf if they wished. They have responded asking me to do so.

Therefore, in accordance with the Conflict of Interest Code for Members of the House of Commons, I ask you to conduct an inquiry into the matter raised by Leslie and Andrew White, residents of Deep River, Ontario, in the constituency of Renfrew-Nipissing-Pembroke, represented in the House of Commons by Ms. Cheryl Gallant.

First, Mrs. and Mr. White allege that Ms. Gallant inappropriately retained and used private information that had been previously provided to Ms. Gallant for the purpose of a passport application. This allegation, if sustained, would not seem to meet the test of the principle enunciated in section 2(b), and perhaps sections 8 and 10(1).

Also, Mrs. and Mr. White allege that Ms. Gallant may have failed to meet the test of principle 2(a), in the way in which their request for an explanation was refused and trivialized. I attach for your consideration, in addition to previously forwarded correspondence, a copy of the letter I received from them by fax in my office on February 7th, 2006.

I thank you in advance for your thoughtful consideration of the matter at hand.

Sincerely,

*Mauril Bélanger*, P.C., M.P.  
Ottawa-Vanier

c.c. : Mrs. Leslie and Mr. Andrew White