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Ottawa, June 21, 2005

PRESS RELEASE

THE SGRO INQUIRY

On November 22 2004, I received a request from Ms. Diane Ablonczy, Member for Calgary -Nose Hill for an examination into various issues related to the conduct of the former Minister of Citizenship and Immigration, the Honorable Judy Sgro. On December 14, I received a further request from Ms. Ablonczy, one which widened the scope of the original inquiry to include thirteen separate allegations. Today, six months later, I am issuing my report.

In this particular inquiry, there was considerable disagreement over the facts. As a result, I found it necessary to both gather information through subpoena from forty individuals and examine thousands of documents and email records, primarily from the Department of Citizenship and Immigration.

The Report provides a brief reference to the legislative mandate of the Ethics Commissioner, describes in some detail the process of the Inquiry as well as both its particular context and its associated costs. The Report's appendices add such background information as (i) the initial letters from Ms. Diane Ablonczy, MP, (ii) a listing of the individuals interviewed and particular documents examined, (iii) a report commissioned from RDM Consulting (i.e. Robert Marleau, former Clerk of the House of Commons) with respect to matters of parliamentary privilege and the mandate of the Ethics Commissioner, and (iv) the letter written in May to the Honorable Judy Sgro, MP as tabled in the House of Commons on May 10, in response to her request for confidential advice.

Finally, the Report provides my findings and conclusions to those of the thirteen allegations that can be considered within my legislative mandate.

The Report is being released in electronic form and is available immediately on my website at www.parl.gc.ca/oec-bce. In addition, a limited number of printed copies will be made available today to parliamentarians and the media from the parliamentary distribution centers. Finally, additional printed copies will be made available from my Office later this week.

I will not conduct any interviews with, or make any further comments to the media.

Bernard J. Shapiro



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

THE SGRO INQUIRY

MANY SHADES OF GREY

BERNARD J. SHAPIRO
ETHICS COMMISSIONER

June 2005



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INTRODUCTION

(i) Legislative Background – Office of the Ethics Commissioner

The Office of the Ethics Commissioner was created through the adoption by Parliament of Bill C-4, *An Act to Amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in Consequence*. The bill was assented to on March 31, 2004, becoming Chapter 7 of the Statutes of Canada, 2004.

Regardless of public perception, the mandate or authority of the Ethics Commissioner does not extend to all areas of ethical behaviour: the Ethics Commissioner cannot be considered a general ombudsperson with the authority to respond to citizens who are dissatisfied with their particular experience with a parliamentarian, minister or public office holder, or with a federal government department or agency. The particular responsibility of the Ethics Commissioner is limited primarily to the administration of the conflict of interest codes that apply (i) to members of the House of Commons, and (ii) to public office holders (i.e. ministers, deputy ministers, ministers of state, parliamentary secretaries and other Governor-in-Council appointees).

In addition, with respect to public office holders, the mandate of the Ethics Commissioner includes examining the conduct of a minister of the Crown, a minister of state or a parliamentary secretary, in response to a request from a member of the Senate or the House of Commons. The legislation also provides that, in carrying out such an examination or inquiry, the Ethics Commissioner can summon witnesses both to give testimony under oath and to produce any documents deemed necessary. The relevant sections of Chapter 7 of the Statutes of Canada, 2004 are attached as Appendix I to this report.

As this report was being prepared for printing, the matter as to whether there was a contradiction between two sections of the *Parliament of Canada Act* arose. The question was whether a particular section requiring confidentiality with respect to documents produced and/or evidence taken under oath pursuant to section 72.1 was consistent with section 72.08(4) requiring the Ethics Commissioner to “set out the facts” along with his analysis in his final report.

Legal advice was sought from a number of sources, and after careful consideration of this advice, I am satisfied that not using the information gathered under section 72.1 in preparing this report would, in my view, defeat the intent and purpose of the legislation.

(ii) The Sgro Inquiry

On November 15, 2004, I, as Ethics Commissioner, received a letter from the Honourable Judy Sgro, then Minister of Citizenship and Immigration, asking for confidential advice, as provided for in section 72.07(c) of the *Parliament of Canada Act*. That same day, the Minister’s Parliamentary Secretary informed the House of Commons during Question Period that the Minister had requested advice from the Ethics Commissioner. Subsequently, the Minister made a commitment to make the advice received available to the public, thus effectively putting aside its confidential nature.

One week later, on November 22, 2004, I received a letter from the Member of Parliament for Calgary-Nose Hill, the Honourable Diane Ablonczy, requesting that I inquire into:

“...whether the Minister of Citizenship and Immigration, Judy Sgro, has fully observed the rules established by the Prime Minister for Ministers of the Crown as set out in the *Conflict of Interest and Post-Employment Code for Public Office Holders*.”

It was this letter, a copy of which is attached as Appendix II, which initiated the inquiry of which this report is the result.

Several weeks later, on December 14, 2004, I received a second letter from Ms Ablonczy (Appendix III) asking that additional matters be examined. Since the issues raised in the second letter were closely related to the inquiry already under way in response to Ms Ablonczy’s first letter, I decided that, rather than creating a second inquiry, the new request would be incorporated into a single but broader examination.

THE PROCESS

In recent years, the majority of the conflict of interest allegations that have emerged in the various provinces of Canada have begun with “agreed upon” facts, and the task of the ethics officer has been to assess the extent to which these facts indicated that an individual was or was not in compliance with the relevant code or legislation. In this case, however, it was immediately obvious that the allegations contained in the Ablonczy letters related to facts that would themselves probably be in dispute. As there were insufficient staff resources in my office at the time these requests were received to conduct the fact-finding exercise that would be necessary, in my capacity as Ethics Commissioner I contracted with counsels David W. Scott and Lisa Micucci of the law firm Borden Ladner Gervais LLP to conduct the fact-finding stage of the inquiry. In addition, I contracted with RDM Consulting (Robert D. Marleau) to advise me on the extent to which certain of the allegations made could be understood as properly within the jurisdiction of the Ethics Commissioner.

The report from RDM Consulting was received in mid-January 2005 and it is attached as Appendix IV to this report. The Borden Ladner Gervais LLP report took somewhat longer. The lawyers from this firm interviewed, under oath, forty individuals (their names are listed in Appendix V) and they received, through subpoena, several sets of documents. Their main fact-finding report was, however, received on February 18, 2005, along with the transcriptions of the evidence taken under oath. On the basis of this material, further and very extensive analyses were conducted by my office, including (i) the issuance of a small number of additional subpoenas to selected individuals (their names are also listed in Appendix V), (ii) the examination of numerous documents from Citizenship and Immigration Canada, and (iii) the e-mail correspondence of particular members of the former Minister’s staff. The scope and numbers of these materials are outlined in Appendix VIII.

In addition, given the central nature of the roles they played in the events being examined (and, therefore, the value which I attached to their sworn testimony), as well as the importance of assessing their credibility, I personally interviewed on an informal basis the Honourable Judy Sgro, the now former Minister of Citizenship and Immigration, as well as Ms Katherine Abbott, the designated liaison between the Minister and the department during the federal election campaign in May-June, 2004, and Mr Ihor Wons, a senior policy advisor to the Minister (and later her acting Chief of Staff), who was on a leave of absence during the campaign leading up to the federal election on June 28, 2004. Later in the inquiry, I also re-examined, under oath, Ms Katherine Abbott, Mr Leigh Lampert and Mr Ian Laird, all formerly of the Minister's staff. Mr Harjit Singh refused to be interviewed. All other participants were very cooperative.

In addition, all individuals named in this report or about whom any observation was made in terms of their conduct relating to the allegations made against the former Minister of Citizenship and Immigration were provided with an opportunity to respond to excerpts of the comments about them contained in the report's penultimate draft.

Initially, Ms Sgro had agreed that this report would deal both with the confidential advice she had initially requested and with the allegations made by Ms Ablonczy. Ms Sgro later changed her mind and asked if I would deal with her letter on a separate basis. I complied with this request, and my letter, limited as she requested initially to the matter of Ms Alina Balaican, was delivered to her on May 2. My letter to Ms Sgro was confidential, but since she subsequently made it public, it is included in this report as Appendix IX.

In addition, Ms Sgro was provided with an opportunity to consider the facts material and relevant to the allegations made and with an opportunity to respond to them. Finally, again as required by the Act, Prime Minister Paul Martin, the Member for Calgary-Nose Hill, Ms Diane Ablonczy, and the Member for York West, Ms Judy Sgro, were provided with a copy of this report at the same time as it was released to the public.

Copies of the report are available to members of the media and all parliamentarians, among others. A limited number of copies of the printed report are available from the Office of the Ethics Commissioner, and the report is posted on my Web site, at <<http://www.parl.gc.ca/oec-bce>>.

THE COSTS

There were substantial costs involved in conducting this inquiry. Aside from the costs represented in the time and effort invested by the staff of the Office of the Ethics Commissioner and other offices (primarily Citizenship and Immigration Canada), there were substantial out-of-pocket costs that arose from the contracts with Borden Ladner Gervais LLP and, on a much smaller scale, with RDM Consulting. In addition, there were costs associated with (a) the special legal advice needed with respect to the interpretation of the *Parliament of Canada Act* and (b) the publication of the final report, including editing and printing.

All of these costs have been or will be absorbed within the budget of the Office of the Ethics Commissioner, but for the general interest of readers of the report, they are listed in Appendix VI.

THE CONTEXT

In coming to my findings with respect to the allegations made by Ms Ablonczy, I have relied almost entirely on the sworn testimony of those interviewed under oath and the documents produced by Citizenship and Immigration Canada and Ms Sgro's office. The sworn testimony was not, however, always consistent or clear. For example, the claims made by one witness were sometimes contradicted by those of another. In such cases, I have relied on additional factors, such as my judgment about the credibility of a particular witness, as well as the apparent selectivity of his or her memory.

Considering the context in which the events took place was also helpful, I believe, in understanding (though not, of course, excusing) the events themselves. For general contextual interest, the allegations made in this case relate primarily to events that took place in May and June 2004, the period of the most recent federal election. Election periods are notoriously hectic for all those involved, but they present particular challenges to ministers, especially new ministers, who must not only present themselves as candidates in their constituency, but also carry out their departmental responsibilities while at the same time keeping campaign and government business strictly separate. All sitting ministers seeking re-election must find ways to cope with this challenge.

As an example of what can happen, Ms Sgro, the then Minister of Citizenship and Immigration, apparently began the campaign by making it clear to her staff that (a) it was particularly important during this period to avoid even the appearance of political partisanship with respect to her ministerial responsibilities (including the exercise of her discretion in approving Temporary Residence and Work Permits (TRPs)), and (b) as a consequence, she intended to limit the use of her discretionary powers. As the campaign progressed, there was, at least from the point of view of several on the Minister's staff, some slippage in the rigour with which these objectives were pursued.

Of additional interest are two contextual matters pertaining particularly to Ms Sgro. First, the then Minister was ill during the campaign, and she was not, therefore, able to be as "present" as usual either as a candidate or as Minister, during the campaign period. Second, for reasons that I have been unable to clarify fully, there were serious tensions among the members of the Minister's staff. It appears – the evidence is not entirely clear – that there were two "camps": staff perceived to be associated with Ian Laird, then Chief of Staff to the Minister, and those who were more closely identified with Ihor Wons, one of the Minister's policy advisors, who was on a leave of absence during the election campaign itself. These tensions certainly pre-dated the campaign, but their consequence during the campaign was a staff divided and not inclined, therefore, to be either as cooperative with each other or as helpful to and careful of the Minister as they might otherwise have been. The decision made following the campaign to dismiss virtually the entire staff speaks volumes as to what must have been occurring in the previous weeks and months.

THE FINDINGS

(i) Preliminary comment

This section of the report deals with each of the allegations made in Ms Ablonczy's letters of November 20 (Appendix II) and December 14 (Appendix III). Although, as indicated above, these findings are based almost entirely on the sworn testimony, I have made no effort to include all of the testimony in what follows below. Rather, I have attempted to summarize it and cite specifically only those individuals whose involvement with or whose connection to the allegations is, from my perspective, central.

As outlined in the introduction to this report, there are limits to the legislative authority of the Ethics Commissioner. It is within this context that I have arranged the allegations as follows: (i) the allegations which are matters of parliamentary privilege rather than matters for the Ethics Commissioner, (ii) the allegations which should, in my view, be referred to other agencies, (iii) two allegations that seem to not quite "belong" anywhere specific, but to which I have attempted a brief response, and, finally, (iv) the allegations appropriate for examination by the Ethics Commissioner.

(ii) Allegations: Parliamentary Privilege

As outlined in the RDM Consulting Report (Appendix IV), parliamentary privilege refers to the rights and immunities necessary for a legislature and its members to function and carry out their duties and responsibilities. This privilege is distinctly different from the jurisdiction conferred on the Ethics Commissioner under the *Parliament of Canada Act*, to conduct an examination into an allegation that a minister, minister of state or parliamentary secretary has not observed the ethical principles, rules and obligations established by the Prime Minister. Moreover, in cases involving a matter of parliamentary privilege, the matter should, indeed must, be dealt with by the House of Commons itself.

There were three allegations in Ms Ablonczy's letter of December 14, 2004 relating to matters of parliamentary privilege and, although I have made a brief comment on each of them, any fuller response must, I believe, be pursued by the House of Commons itself. The three allegations are:

- A. That the Minister's staff said or implied that she would not look favourably on immigration requests that certain MPs might make on behalf of their constituents.
- B. That there was a contradiction between the Minister's document indicating that there was no record of Temporary Residence Permits (TRPs) by riding and her apparent knowledge of such requests.
- C. That the Minister had misled the House by directly stating and clearly implying that she requested a full inquiry by the Office of the Ethics Commissioner of all allegations relating to questionable activities by herself and her staff, whereas the Office of the Ethics Commissioner has stated that the Minister's request was only for confidential advice regarding the issuing of a Minister's TRP to Alina Balaican.

Allegation “A” implies, of course, that an MP’s office was contacted as a consequence of questions raised during Question Period, and that the contact resulted in some form of intimidation because of the manner in which a member was discharging his or her duties. If there is a desire to pursue this allegation about intimidation of MPs (it might, of course, have been an honest misunderstanding between staff members), it can be dealt with appropriately, not by the Ethics Commissioner as a matter of conflict of interest, but by the House of Commons as a matter of contempt.

Allegation “B” addresses what was perceived as a contradiction between an answer given in Question Period and the content of a document tabled in the House. The allegation refers to two proceedings of the House of Commons, and it does not, therefore, fall within the jurisdiction of the Ethics Commissioner. This is a matter that should be dealt with exclusively by the House, following a ruling by the Speaker.

I would like to add, however, that the contradiction *may* be more apparent than real. The Minister may, in fact, remember specific cases without having them permanently filed in a specific way. In addition, the organization of temporary files, as cases are being considered, may be quite different from how the information is filed or archived at a later date.

Finally, with respect to allegation “C”, although the Minister’s request was for confidential advice, and, in this context, my Office has not made the Minister’s request public, the Minister’s Parliamentary Secretary made the matter public on November 15 by informing the House of Commons of the Minister’s referral to me on that issue (see *House of Commons Debates*, pp. 1328-29). On the other hand, during the December 8, 2004 meeting of the House of Commons Committee on Access to Information, Privacy and Ethics, I did indicate in response to a question put to me by MP Russ Hiebert that the Minister had not updated her November 15 request for advice from my Office, a request which was limited to the case of Ms Balaican. This was an inadvertent error on my part as confidentiality should have been maintained unless the Minister herself chose to act differently. With respect to this particular allegation, my Office’s analysis of the evolution of the related issues raised during Question Period in the House, as well as the line of responses, is included in Appendix VII. It should be noted that, by tabling my response to her initial request for confidential advice, Ms Sgro has, in fact, provided the House with the relevant material.

With respect to the main issue, misleading the House of Commons, only the House of Commons is competent to deal with the matter, and there is a procedure available to members of Parliament for dealing with this and other similar issues.

(iii) Allegations: Other Agencies

In addition to the allegations that I believe relate to parliamentary privilege rather than to the mandate of the Ethics Commissioner, there were two additional allegations that seemed to fall neither within the jurisdiction of the Ethics Commissioner nor that of the House of Commons itself. These two allegations are:

- D. That the Minister accepted a \$5000 campaign donation from an individual named in her election return as Naseer Sadiq, on behalf of Mohsin Sheikh, contrary to the**

Canada Elections Act, and in violation of section 3(l) of the *Conflict of Interest and Post-Employment Code for Public Office Holders*.

- E. That the Minister may have contravened the *Privacy Act* by providing MP Pat Martin with details of campaign worker Alina Balaican's file.

If allegation "D" were true, I believe it would, in fact, be contrary to the *Canada Elections Act*, but probably not to section 3(1) of the *Conflict of Interest and Post-Employment Code for Public Office Holders*, except in very tangential sense. Nevertheless, it is true that the Minister's agent accepted a \$5,000 campaign donation from an individual named in her election return as Naseer Sadiq on behalf of Mr Mohsin Sheikh. The former Minister regards the matter as an honest mistake, one that was corrected appropriately once it was discovered.

I have not pursued this matter further since it appears to be beyond the jurisdiction of the Ethics Commissioner. If there is interest in pursuing this issue, it should be referred to the Commissioner of Canada Elections.

With respect to allegation "E", I can indicate that, from the point of view of the Prime Minister's conflict of interest code, much would depend on just what was meant by the word "details". Pat Martin or his staff would always be entitled to ask the Minister about the current status of the Balaican case, or any other. They would not, however, at least according to the Prime Minister's code, be entitled to other details. Given that the allegation itself refers to the *Privacy Act*, it is my view that, if the matter is to be pursued further, it should be taken up with the Office of the Privacy Commissioner.

(iv) Allegations: Special Cases

Two of the allegations put forward by Ms Ablonczy were as follows:

- F. That the Minister, her office, or the Government of Canada may have been ethically compromised if it is true that a former staff member of the Minister is under investigation for security reasons.
- G. That the Minister (and/or the department) does not keep complete records of temporary resident permits personally issued by the Minister, records which could be broken down by riding or in any other way.

It is not at all clear to me how the matter in Allegation "F" could be imagined to be an ethical question unless, of course, the Minister, in hiring her staff, had somehow tried to circumvent the security clearance procedures that are in place for all Minister's Exempt Staff (MES). There is, however, no evidence that this is the case. The evidence is, in fact, that each member of the Minister's staff received the appropriate security clearance.

It is true that testimony by Ms Sgro and Mr Wons indicated that concerns had been raised regarding one member of their staff who was from Sri Lanka. However, we have verified with the Security Branch of the Department of Citizenship and Immigration that, as mentioned above, all members of Minister

Sgro's staff were security-cleared to the "secret" level. There was one case where a delay occurred in the issuance of the security clearance; however, this was attributable to inquiries that needed to be made in a foreign country because the individual had lived there for a period of time.

Moreover, the Security Branch of the Department of Citizenship and Immigration confirmed that no investigation had ever been initiated with respect to an individual working in the former Minister's office.

Of course, no security-clearance system is perfect, and it is always possible that at some later date for whatever reason a security or a security-related issue might arise in connection with a staff member still or formerly with the Minister's staff. Appropriate action at that time would, of course, depend on the context. This is a matter that can only be dealt with in the future. To date, the Minister has complied fully with her responsibilities in this area.

Allegation "G" questions whether it should be a common business practice for the Temporary Residence Permits (TRPs) being issued by the Minister of Citizenship and Immigration to be filed or archived according to the MP or the riding bringing the matter forward. This would seem to be a reasonable, although clearly not a mandatory practice, but the general question of a common business practice for recording the issuance of TRPs by riding or in any other way is an administrative matter, which is clearly outside my jurisdiction as Ethics Commissioner and, perhaps, outside the jurisdiction of the House itself, except in exceptional circumstances.

It is, however, the case that lists were obtained under subpoena from the Minister's office that were associated with the issuance of TRPs and identified with particular MPs (cf. allegation 6 below). These appear, however, to have been prepared as temporary arrangements, at the initiative of the special assistants in the office, to keep track of the TRP cases that they were handling.

(v) Allegations: Ethics

The heart of my own response in this inquiry relates to the six allegations that I understood as both central to the general issues raised and within the jurisdiction of the Ethics Commissioner. These six allegations are presented along with my response to them in the remainder of this section of the report.

- H. That Ms Sgro, just three days before the federal election, granted a temporary resident and work permit to Alina Balaican, enabling her to avoid the normal process, upon expiry of her original temporary work permit, of applying for landed immigrant status from outside the country. Ms Balaican was a volunteer in Ms Sgro's re-election campaign.**

These statements are all true. Ms Sgro did approve the issuance of a Temporary Residence and work permit to Ms Alina Balaican three days before the end of the federal election, and Ms Balaican was a volunteer in Ms Sgro's re-election campaign, for which effort she received (as did all other Sgro volunteers) a "form" thank-you note on the day of the federal election.

The sequence of events appears to be as follows:

- On May 24, 2004, Ms Alina Balaican was advised by Citizenship and Immigration Canada that her temporary work permit could not be renewed and that she was without legal status in Canada.
- Ms Balaican and her husband, a Canadian citizen, approached Allan Rock's constituency office to press their case for a Temporary Residence Permit (TRP). Mr Rock was not there (he had vacated his seat in the House of Commons); the constituency staff did, over a period of approximately one month, try to assist Ms Balaican. However, as they received no positive response, Ms Balaican and her husband went to Minister Sgro's campaign office.
- In the campaign office, they talked with Ihor Wons, presenting their case to him and providing him with 4 to 5 pages of material; in addition, they volunteered to work on the Minister's re-election campaign. Subsequently, they did actually work on the campaign: Ms Balaican's name appears on the list of volunteer workers, all of whom, as indicated above, received thank-you notes from the Minister on the day of the election.
- Mr Wons discussed the case with Ms Balaican and her husband (Mr Mulholland) and then referred it (although not, interestingly, Ms Balaican) to Katherine Abbott, the Minister's designated staff member who acted as the liaison between the Minister and the Department of Citizenship and Immigration during the election campaign.
- After a review of the case, and apparently responding both to the substance of the case and to what appears to be continuing interest in the matter by Mr Wons, Ms Abbott presented the case to the Minister who, using the discretionary powers granted to her under the *Immigration and Refugee Protection Act*, directed that the TRP be granted.
- The TRP was granted: Ms Balaican was contacted shortly afterwards by the local Citizenship and Immigration office and told that the TRP had been issued.

In this sequence of events, it is clear that the Minister acted not only entirely within her legitimate discretionary powers as provided for by law, but also for reasons (family unification, marriage to a Canadian citizen, possible exploitation by an immigration consultant) that were consistent with her previous discretionary decisions. At issue is whether there was any link between this decision and the status of Ms Balaican as a volunteer in the Minister's re-election campaign.

The crucial question is, therefore, whether the Minister knew that Ms Balaican was a volunteer when she made the decision to grant the TRP. The Minister, who has clearly never met Ms Balaican, categorically stated that she was unaware of this fact. Furthermore, Mr Mulholland and Ms Balaican affirm they never met the Minister. Katherine Abbott, who, as the Minister's designated contact with the department, presented the case to the Minister, clearly knew (as did Ihor Wons) that Ms Balaican was a volunteer and that a potential conflict of interest was involved.

Generally, Ms Abbott was a forthright and very credible witness, and her testimony was very helpful. Unfortunately, in relation to this particular issue, she expressed some uncertainty as to whether or not she had informed the Minister about Ms Balaican's status as a volunteer. She repeated that she thought she had, but she stopped short at the time of being able to fully confirm it. Perhaps her uncertainty is due to the fact that, by the time the Balaican decision was made, Ms Abbott had (as she suggested in a different but related context) "given up fighting" with Mr Wons over this and other departmental matters. On the other hand, Ms Abbott did indicate that, at the time, she raised the matter with two other colleagues on the Minister's staff. Unfortunately, neither of them was able to recall her having done so.

Following the federal election campaign, Ms Abbott did meet with Scott Reid of the Prime Minister's Office in order to express concerns about the handling of some cases by Mr Wons during the campaign. While there is some inconsistency between the testimony of Ms Abbott and Mr Reid as to whether the Balaican case was discussed during their meeting, Mr Reid was satisfied that the Minister had not, in general, intervened inappropriately in the immigration cases.

On balance, a great deal of uncertainty remains. However, given Ms Abbott's doubts at the times when evidence was taken under oath, and the Minister's absolute denial, I choose to believe that the Minister, in granting the TRP to Ms Balaican, was either unaware of the fact or did not recall that Ms Balaican was one of the many volunteers in her re-election campaign.

However, the matter is further complicated by the actions of Mr Wons, who was on leave from his staff position in order to work on the re-election campaign. I believe that, intentionally or not, he placed the Minister in a possibly real but certainly apparent conflict of interest by (a) discussing the Balaican case more fully than appropriate with Ms Balaican instead of referring her immediately to Katherine Abbott, (b) requesting feedback from Katherine Abbott on the ongoing status of the case, and (c) allowing Ms Balaican to act as a volunteer in the campaign while she was simultaneously seeking the Minister's direct and active intervention in her case. Moreover, it is certain that Mr Wons's statement in a letter dated September 4, 2004 to Tim Murphy of the Prime Minister's Office that "...anyone that I knew who had an open immigration file was warned not to volunteer in the campaign" was either not true or not effectively followed up, at least in this particular case.

- I. That Harjit Singh, who was dodging a deportation order from Citizenship and Immigration Canada (CIC) pursuant to which a Canada-wide arrest warrant had been issued for his arrest, regularly delivered pizza to the Minister's campaign office in Toronto. It is alleged that he spoke more than once to senior Sgro staffers disclosing his status and asking for assistance from the Minister. None of the Minister's staffers, workers or associates at any time notified the authorities of this man's whereabouts.**

Mr Singh was under a Citizenship and Immigration Canada (CIC) deportation order, and on June 1, 2004, the Canada Border Services Agency did send him a letter indicating that he was under a removal order and that he was to appear for an interview on June 17, 2004. He was also advised that if he did not appear, a Canada-wide warrant might be issued. Mr Singh did not appear on June 17, 2004, but his

son, Parminder Singh, wrote a letter to the Greater Toronto Enforcement Centre, attaching a doctor's certificate in support of his father's absence. No Canada-wide arrest warrant had, however, been issued during the election campaign, and there was, therefore, no particular reason for the Minister's staff, workers or associates, to notify the authorities.

During the election campaign, Mr Singh was, however, delivering food to the Minister's campaign office free of charge. In this case, Ihor Wons acted, in the first instance, appropriately: he immediately referred the immigration matter to Katherine Abbott, the Minister's designated liaison person with the department, and in this case, consistent with his later statement to Tim Murphy of the Prime Minister's Office, he indicated to Mr Singh that "it was inappropriate" for such deliveries to be made or to be continued, and he asked that this practice cease. Apparently, however, Mr Singh continued to make the food deliveries, at least for a time, and he certainly continued to be present in the Minister's campaign office, on one occasion for an entire weekend. His contribution to the campaign, whether of free food or anything else, was officially acknowledged by the Minister in the "form letter" of thanks to volunteers signed by the Minister on June 28, 2004, the date of the federal election.

With respect to the substance of the immigration case involved, that is, the request by Mr Singh for a stay of the deportation order, active consideration of the matter continued. In an e-mail to Katherine Abbott just after the election, after Mr Singh provided additional documents for consideration, Mr Wons wrote, "We owe this guy – a look at the fax he sent you today – to see if it changes where we're going on this file. After we make the final decision we should call him with the end result." In any case, Ms Abbott explored the matter with Citizenship and Immigration Canada (CIC), and some issues arose with respect to the differences between CIC's information and the information that Mr Singh was providing. Consideration was therefore given by the Minister's staff to recommending a three-month stay of the deportation order while these differences were sorted out. In an e-mail to officials in the Department of the Solicitor General of Canada, Leigh Lampert wrote, "The minister wishes to study the case of Harjit SINGH further and is requesting a stay of removal for a period of 60 days." As well, when specifically questioned on this matter, Ms Abbott testifies that she had spoken with the Minister regarding the recommendation for a 3-month stay of deportation for Mr Singh and that the Minister "was okay with that, at that time." However, upon reconsideration, and at the urging of CIC officials, this possible course of action was not followed. In another e-mail sent to the same officials in the Department of the Solicitor General, Mr Lampert wrote, "As discussed and given the circumstances regarding Mr Singh's case please CANCEL the request for a stay." Subsequent to this, no further relief was either recommended or granted by the Minister to Mr Singh.

Despite the lack of appropriate follow-up by those in the campaign office to Mr Wons's instructions, at least the ones involving Mr Singh, that Mr Singh cease and desist in the delivery of free food and the conflict of interest introduced by continuing to tolerate Mr Singh's presence in the campaign office, there is absolutely no credible evidence to support Mr Singh's later allegation that the Minister had met with Mr Singh and had agreed to assist him in any way in exchange for the delivery of free food or anything else.

In any event, the Greater Toronto Enforcement Centre booked Mr Singh's permanent departure from Canada for July 10, 2004, and he was deported on February 2, 2005.

J. That Song Dae Ri, a North Korean defector who was seeking landed immigrant status in Canada, was also active in Ms Sgro's campaign office.

It would hardly be surprising if the Minister's campaign office attracted individuals with immigration issues, and although the Song Dae Ri case was a highly publicized immigration matter, there is no evidence to support this particular allegation. It is true that Mr Song Dae Ri visited Ms Sgro's campaign office at least twice; on the second occasion he presented supporting petitions from the Korean community, which were later forwarded to the CIC head office in Ottawa, but his case was already known to Mr Wons, Ms Abbott and other staff. The Minister was informed that Mr Ri had been in the office, and she agreed that this was inappropriate. On both visits, Song Dae Ri and those accompanying him were asked to leave the premises.

It is also true, however, that a woman who accompanied Mr Ri on his second visit was observed to be "stuffing envelopes" or "folding flyers", but she was apparently not a regular volunteer, and there is no evidence of any link between this casual and apparently one-time work and any effort by the Minister or her staff to influence the outcome of Song Dae Ri's application for immigrant status in Canada. However, what is clearly illustrated in this case, and in the cases of Ms Balaican and Mr Singh, is what turned out to be the very awkward combination of insufficient exclusion from the campaign office of volunteers with open immigration files and insufficient care taken by staff to protect the Minister by separating campaign matters from departmental business.

K. That the Minister's political staff worked on the Minister's re-election campaign while charging their expenses to the Minister's Ottawa office budget, contrary to Treasury Board guidelines. It also seems that her then Chief of Staff, Ian Laird was on leave of absence at the time he gave instructions for the issuance of the permit to Balaican.

The Minister's Exempt Staff (MES) (that is, political staff) can be broken down into three groups. The first group comprises the individuals who work in the Minister's departmental office – their salaries and benefits are paid out of public funds. The second group of individuals are employees who work out of the MP's Parliament Hill office – their salaries and benefits are paid out of the MP's budget as allocated by the Board of Internal Economy. The third group are the individuals who work in the MP's constituency office, and they are also paid out of the MP's budget as allocated by the House of Commons Board of Internal Economy.

In the case of Ms Sgro, there were 25 individuals (including eight public servants) in the first group, one in the second group and three in the third. Although my Office was unable to conduct a full professional audit, we did examine details of the work, the pay status and the travel and other expenses of each of the 29 individuals involved for each day of the period of the election campaign (May 25, 2004 - June 28, 2004). The relevant regulations governing these individuals during an election campaign allow them to work on the Minister's re-election campaign on their own time, that is, in the evenings and on weekends. Staff members working any additional time on the campaign are required to take a leave of absence (LOA) without pay.

In the case of Ms Sgro's campaign and staff, the Minister's Chief of Staff was "in place" in Ottawa throughout the campaign. It was departmental procedure that, once the Minister had approved the issuance of a TRP, the Chief of Staff or another exempt staff member would sign the ministerial authorization. Mr Laird did take an official leave of absence for a single day, Election Day (June 28, 2004), but this was not the day on which he signed the ministerial authorization for the Balaican permit.

In addition to Mr Laird's one-day absence, three other individuals from the Minister's staff were granted leaves of absence without pay so as to work full-time on the election campaign. These were Geoffrey Smith (June 3, 2004 – June 28, 2004), Ihor Wons (June 3, 2004 – June 28, 2004) and Byron Allin (May 25, 2004 - June 28, 2004), and I found no evidence that any of their (or Mr Laird's) expenses had been inappropriately charged to the Minister's Ottawa budget.

There were, however, two individuals: Emily Marangoni (Toronto constituency office, office manager) and Jenny Hooper (Parliament Hill Office staff) who were granted compensatory leave with pay, that is, in lieu of unpaid overtime, in order to work on the re-election campaign. While I have no reason to doubt the legitimacy of such compensatory leave in these two cases, no records were available to me relative to the overtime actually worked in recognition of which such leave would be justified.

In addition to the above, travel and hospitality expenses during the election period were disclosed for MES staff members Katherine Abbott, Simone MacAndrew and Leigh Lampert. These expenses were examined in detail, but I found no instance where campaign expenses were charged to the Minister's Ottawa budget.

Further, I found no evidence that Ms Sgro's MES staff were conducting campaign business while being paid out of public funds.

- L. That the Minister offered special access to two and possibly more owners of strip clubs to discuss with her Chief of Staff, Ihor Wons and/or other ministerial staff whether the Minister might be able to assist them in bringing additional strippers into Canada.**

It appears that Ihor Wons did, prior to the period of the federal election, meet with the owners of two strip clubs: Mr Koumoudouros of the House of Lancaster and Mr Psihogios of the Airport Strip Club, although Mr Wons does not recall the meeting with Mr Psihogios. There is, however, no indication that the Minister was present at these meetings nor that these meetings were the result of the Minister's intervention in an attempt to offer special access. The requests for a meeting came in one case directly from the owner to Mr Wons in his capacity as a senior policy advisor, not Chief of Staff, to the Minister, and the meeting took place at the House of Lancaster itself. In the other case, the contact with Mr Wons was made by the Executive Director of the Adult Entertainment Association. In neither case does there appear to have been any involvement by either the Minister or other ministerial staff.

Whatever one's views may be about the appropriate policy with respect to the immigration of various occupational groups [it does beggar the imagination that Human Resources and Skills Development Canada or any other government agency might have cared whether or not there was a shortage in this

particular area], Mr Wons's choice to meet the owners of these clubs, in at least one case in their place of business rather than in government offices, seems to be indelicate and to reveal poor judgment on his part. It is clear, however, that despite the meetings, no assistance was in fact provided in response to the owners' request for permission to bring more women to Canada as exotic dancers.

M. That the Immigration Minister told her Liberal colleagues that she would not issue ministerial permits during the election and then handed out at least a dozen permits to her own political donors and campaign workers.

In this context, in her first letter, dated November 20, 2004, after her allegations in relation to Ms Balaican, Mr Singh and Mr Ri, Ms Ablonczy adds:

“These allegations raise serious questions as to whether the Sgro campaign attracted individuals seeking special preference from the Minister and whether special preference was, in fact, extended in one form or another.”

With respect to the issuance of Temporary Residence Permits (TRPs), the Minister commented under oath:

“I made people aware of the fact that I was going to be more cautious even than before with issuing TRPs through an election campaign. That I was not going to be engaged in using TRPs for election purposes or for political purposes through the campaign. I made that quite clear to people. We were going to try to keep ourselves down to the ones that were most urgent.”

This cautious approach was evident at the campaign's beginning. Thus, in an e-mail exchange between Leigh Lampert and Katherine Abbott dated June 8, 2004, Mr Lampert stated:

“I spoke with ... (Note: a Liberal MP) to reiterate the Minister's policy during the election. He/she is very unhappy that the Minister will not be intervening...”

In another e-mail exchange on May 20, 2004, Mr Lampert told Minister Sgro about a conversation he had had with another Liberal MP, and Mr Lampert stated:

“I explained “emergencies only” now ... he/she says this is an emergency given its political importance ... but the file looks no different from many others and we will give the same grounds for refusal.”

This policy seemed, however, to fade during the last part of the campaign. Thus, in her testimony given under oath on April 8, 2005, Katherine Abbott commented:

“She (Minister Sgro) really did not want to be doing a lot of permits. Her clear intention all along was not to be doing a lot of permits during the election.”

However, upon further examination, Ms Abbott indicated that in relation to the number of permits that were issued toward the end of the election campaign:

“... we were reacting to the temperature in the outside world, and we were also getting a lot of pressure, and...

... because we were in that short period of time, because there was a thought that we might not come back, there was more of a pressure of just ... getting it done.”

It is almost as if the entire issue became electorally defined rather than being understood in terms of the needs of the applicant. As Leigh Lampert testified:

“... I know certainly between ... two weeks, three weeks before the election call until mid-election, there was a significant change in attitude. You are going from a no permit except during emergencies to ... I won't say a “free for all” ... but to change of attitude that there are much more forthcoming permits.”

In the final analysis, the Department of Citizenship and Immigration, through their Department of Justice counsel, provided my Office with a list of persons who were granted ministerial Temporary Residence Permits (TRPs) during the period from May 25 to June 28, 2004. From this list, 128 individuals were granted TRPs by the Minister during the 2004 federal election campaign. When this list was compared with lists obtained from the Minister's office under subpoena and as referred to in allegation “G”, we were able to identify 94 specific files. Of these, 43 were authorized by the Minister during the last week of the federal election campaign. In 76 cases, a specific MP is listed as supporting the application. Of these, two were supported by a Conservative MP, while the remaining 74 were identified with Liberal MPs. Of these 74 cases, 24 were identified directly with Minister Sgro, 19 of which were approved between June 23, 2004 and June 25, 2004.

These permits were not, however, given to Sgro campaign donors or volunteers. In cross-referencing the donor and volunteer lists with those individuals receiving TRPs, no donors' names and only two volunteers' names appeared: the wife and daughter of one of the named volunteers obtained TRPs, and the other name that appeared was that of Ms Balaican.

On the other hand, there appeared to be some indirect connection between working as a volunteer on the minister's campaign and a benefit that might accrue to relatives, friends or specific organization. In this context, there is, for example, the case of Naseer Sadiq, the same person referred to in allegation “D”, about whom Ms Abbot noted in her testimony:

“... Naseer was a gentleman who was a great resource to the election campaign... he was able to provide volunteers, man hours, labour”

It was also the same Mr Sadiq who, in a steady stream of e-mails to Ihor Wons, asked for permits for many different individuals. During the election campaign itself, when Mr Wons's departmental e-mail was unavailable because he was on a leave of absence, Mr Sadiq would try to reach Mr Wons by sending

e-mails to other staff members but marked “For the kind attention of Ihor Wons”. One of these e-mails reads:

“One of my good friends, ... his wife, ... and daughter ... Please look into the probability of issuing Minister’s permits for this family...”

Ministerial permits were approved for four members of this family on June 25, 2004 for a period of two years. In another case, again during the election campaign, Mr Sadiq wrote to Mr Wons:

“... with reference to (this case) ... his wife ... and daughter ... he (National President of a religious organization) also said this case is No. 1 priority for him as he discussed the case with the Minister in his last meeting with her ... the best option is to get her to Toronto as a visitor on Minister’s Permit or accommodating his wife and daughter against the already requested list of forty visitors.”

The person in this case was a volunteer on the Sgro campaign and ministerial permits were approved for his wife and daughter on June 24, 2004.

Equally damaging with respect to conflict of interest is the evidence – of which the above are two examples – that Ihor Wons, while on leave of absence, was active in managing and promoting immigration cases when he should have been limiting his own work to the re-election campaign and carefully separating that responsibility from substantive ministerial and departmental work. In this context, just as it is not surprising that individuals with immigration issues should gravitate toward the Minister of Citizenship and Immigration campaign, it is not surprising that, when Mr Wons was informed on June 2, 2004 that his e-mail account would not be available during the election campaign, he indicated to a ministerial staff member in Ottawa:

“... just because I’m on leave does not mean I’m not looking after the interest of taxpayers that pay all of our salaries. I’m still working with the Minister on files how am I supposed to communicate with her? Maybe the person pushing this issue can give me some answers. I think this is a slap in my face and personally, I will not stand for it.”

In the end, Mr Wons had to “stand for it” although he found other ways in which to continue his activities. Indeed, it was this very inability and/or unwillingness of Mr Wons to separate himself from the department while he was working on the campaign that placed the Minister, with or without her knowledge, and however unintentionally, in the conflict of interest described above.

It is difficult to assess the extent to which the Minister was aware of Mr Wons’s inappropriate interventions and of the extent to which assistance in the campaign was used to make the case for TRPs for other, usually related, individuals.

During Ms Sgro’s examination under oath when she was questioned, for example, regarding the issuance of TRPs for individuals wishing to attend the annual Ahmadiyya conference in July and, in particular,

whether she was aware that anyone from that community was assisting on her campaign, she responded:

“There was a representative who was assisting – I don’t know how much, but that he was assisting on our campaign in one form or another, that was part of the organization of this conference but that was something that is done every year as far as assisting.”

When Ms Sgro was asked to confirm whether she knew if one or more of these individuals were working on her campaign, she replied:

“I don’t know if he was working on the campaign but he is someone we know very well. I can only assume that he would have given us some hours of volunteer time.”

And finally, when questioned whether she knew these individuals were looking for assistance on the conference and at the same time working on the campaign, she replied:

“I wasn’t connecting the two,” and “Probably ... I expect so.”

With respect to specific cases, I have not been able to verify the circumstances in each instance. My judgment is that the Minister’s knowledge of specific instances where those seeking permits or their sponsors were also working on her campaign seems limited, but is not completely non-existent.

SUMMARY STATEMENTS

The Ethics Commissioner’s Mandate

The term “Ethics Commissioner” can be defined very broadly. The actual legislative mandate of the Ethics Commissioner of Canada, however, is quite narrowly defined, and is limited, in this particular instance, to the Prime Minister’s conflict of interest code, that is, the *Conflict of Interest Code for Public Office Holders*.

Thus, of the allegations made in Ms Diane Ablonczy’s two letters, five fall outside the legislative mandate of the Ethics Commissioner. As outlined earlier in this report, three of these (“A”, “B” and “C” above) relate to matters of parliamentary privilege; if they are to be pursued, they would need to be taken up by the House of Commons. Two further allegations would have to be pursued, if there is still interest in doing so, through the Privacy Commissioner in one case (“D”) and the Commissioner of Canada Elections in the other (“E”).

In addition, there were two allegations which seemed to be unrelated to the mandate of the Ethics Commissioner but for which no other entity seemed to have jurisdiction. In these two cases (“F” and “G” above), I have however, provided some remarks.

The “Ethics” Allegations

Among the allegations appropriate to the mandate of the Ethics Commissioner, three were related to

individuals: the cases of Alina Balaican (#1), Harjit Singh (#2) and Song Dae Ri (#3). All three individuals were seeking immigration status in Canada, and all three were requesting the intervention of the former Minister of Immigration, the Honourable Judy Sgro, MP for York West. Of the three cases, the Minister intervened only in the case of Alina Balaican, who was granted a Temporary Residence Permit on grounds well within the Minister's legislative discretion and entirely consistent with the Minister's ongoing criteria as reflected in her previous discretionary decisions. Although the other two cases were certainly discussed with the Minister, no relief was granted.

The difficulty common to the cases of Ms Balaican and Mr Singh was that the individuals were seeking active ministerial intervention at the same time as they were actively assisting on the Minister's re-election campaign. Based on the evidence, it is concluded that the Minister did not know that Ms Balaican was a campaign volunteer at the time she made the decision to grant her a Temporary Residence Permit, but members of her staff certainly did know that this was the case. Thus, although the Minister made her decision on appropriately substantive grounds, her staff placed her in a conflict of interest both by allowing Ms Balaican to serve as a volunteer in the first instance and then by not fully and explicitly informing the Minister when the case was brought to her for a decision.

The Minister herself recognized this issue. Although she was not surprised that individuals seeking immigration relief would go to her campaign office, when questioned whether she thought it important for her to know if a particular request related to a person who was working on her campaign, she responded:

“Of course, I should have known.”

And when asked whether she would have expected to have been told if someone seeking her help was working on her campaign, she replied:

“Well it automatically puts me in a position of conflict (of interest) if someone is helping me and then asking for something at the same time.”

However, when questioned whether she inquired of her staff whether any individuals for whom she was being asked to exercise her discretion were working on her campaign, she replied:

“No, ... I would expect that staff first off wouldn't present it to me... I would expect staff not even to bother to bring that case to me.”

The Minister, indeed, relied a great deal on her staff. As she put it:

“You have to rely more and more on your staff... these were experienced staff that knew the rules...”

Whatever the Minister's expectations, the reality seems to have been different. There was no serious attempt to screen volunteers so as to eliminate those seeking the Minister's active intervention for their own benefit. Even in the Ri case, which was disposed of more quickly and more decisively than the others, a member of Ri's accompanying entourage was observed assisting in the campaign office.

The additional difficulty observed in all three cases was the inappropriate intervention of campaign staff in ongoing ministerial and departmental work. Mr Ihor Wons, later the Minister's acting Chief of Staff, appeared to be far more involved in these matters than should have been the case, given that he was on an official leave of absence from the Minister's Office to work on her campaign. He thereby placed the Minister in yet another conflict of interest.

Some of the other "ethics" allegations can be more easily disposed of:

- there was no evidence of any mixing of the campaign and departmental accounts – all personnel, travel and hospitality expenses were charged as was appropriate to either the campaign accounts or the Minister's public budgets.
- there was no evidence that the Minister either met with Harjit Singh or agreed to be of assistance to him in return for his help on in her re-election campaign, and
- there was no evidence of any security lapses: all Sgro staff had received the appropriate security clearance at the "secret" level.

In the matter of the general issuing of Temporary Residence Permits (TRPs), however, conflict of interest difficulties do arise. Although the Minister had made a serious effort to avoid charges of partisanship by limiting such permits both in the few months before the election and early in the election campaign, this policy essentially collapsed during the final weeks and days of the election campaign. TRPs were suddenly very much more available. Of particular concern, however, is not so much the shift in policy as the apparent criteria used in granting the permits that were now becoming more readily available.

In particular, not only was Minister Sgro listed as the sponsoring MP in rather more cases than might have been expected, but also the permits themselves seemed available not to donors or individuals listed as volunteers directly but to the relatives and associates of those who were assisting the re-election campaign. This was in clear violation of Principle 7 of the *Conflict of Interest Code for Public Office Holders*, which states:

"Public office holders shall not use their position of office to assist private entities or persons where this would result in preferential treatment to any person."

It has not been possible for me to determine in each case whether there was a relationship between the person being given the permit and persons active in Ms Sgro's re-election campaign and, if that was the case, whether Minister Sgro was aware of this relationship. While the main burden of responsibility for this conflict of interest environment appears to lie with the Minister's staff, primarily Mr Ihor Wons, and while the Minister's reliance on her staff was not always well placed, this does not absolve her of major responsibility - after all, it was on her direct authorization that the TRPs were issued. As is clearly outlined in *"Governing Responsibly: A Guide for Ministers and Ministers of State"*:

"Ministers are individually responsible to Parliament and the Prime Minister for their own actions and those of their department including the actions of all officials under their management and direction, whether or not the ministers had prior knowledge."

What being responsible actually means remains vague. It is clear that – again to quote from the Guide:

“When errors or wrongdoings are committed by officials under their direction, Ministers are responsible for promptly taking the necessary remedial steps for providing assurances to Parliament that appropriate corrective action has been taken to prevent reoccurrence.”

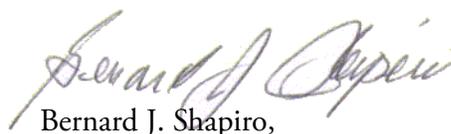
What further consequences there might be is left, perhaps intentionally, vague. Errors and wrongdoings vary, after all, in importance. In actual practice, Opposition parties, both at the provincial and the federal level, tend to call for a particular Minister’s resignation, while parties in government tend to resist such calls in most, but certainly not all, cases. In this case, Minister Sgro clearly was placed in a conflict of interest with respect to the granting of Temporary Residence Permits (TRPs) during the latter half of the federal election campaign in general and with respect to Ms Alina Balaican in particular. The Minister has already resigned, and without comment on that decision, I have no further recommendation to make. With respect, however, to the future, the principles of the *Conflict of Interest Code for Public Office Holders* clearly imply that ministers running for re-election must take particular care (i) to separate their election staff from other staff to ensure that the former do not participate in departmental business during the campaign, and (ii) to screen their volunteer workers so as to exclude those who are seeking ministerial intervention either on their own behalf and/or on behalf of relatives and close personal friends.

Future Concerns: The Ethics Commissioner

The experience of conducting this inquiry has raised for me, as Ethics Commissioner, a number of substantive and procedural issues that I intend to take up more fully in a subsequent report. Among these and in no particular order of importance will be:

- the importance of avoiding the overtly political fray that can surround inquiries undertaken either under the *Parliament of Canada Act* or the *Conflict of Interest Code for Public Office Holders*;
- the conflict of interest that can arise for the Commissioner between two of his/her roles: the provision of confidential advice to a public office holder and the conduct of inquiries concerning that same public office holder;
- the development for my staff, members of Parliament and public office holders of clearer procedural guidelines for inquiries; such guidelines would assist, among other things, in providing a more timely response to a complaint than was possible in this first instance;
- a review of the *Parliament of Canada Act* with the objective of ensuring that its various provisions with regard to the conducting of examinations by the Ethics Commissioner (i) are fully and clearly consistent with each other, (ii) provide reasonable protection not only for the individual against whom allegations are made but also to witnesses who are called to testify, and (iii) provide a framework for the range of allegations to be made in a request for enquiry.

Respectfully submitted,



Bernard J. Shapiro,
Ethics Commissioner

June 21, 2005

LEGISLATIVE AUTHORITY FOR EXAMINATIONS BY THE ETHICS COMMISSIONER

STATUTES OF CANADA 2004, CHAPTER 7, An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence – Bill C-4
[Assented to March 31, 2004]

72.07

Mandate

The mandate of the Ethics Commissioner in relation to public office holders is

- (a) to administer any ethical principles, rules or obligations established by the Prime Minister for public office holders;
- (b) to provide confidential advice to the Prime Minister with respect to those ethical principles, rules or obligations and ethical issues in general; and
- (c) to provide confidential advice to a public office holder with respect to the application to him or her of those ethical principles, rules or obligations.

72.08

Request from parliamentarian

(1) A member of the Senate or House of Commons who has reasonable grounds to believe that a minister of the Crown, a minister of state or a parliamentary secretary has not observed the ethical principles, rules or obligations established by the Prime Minister for public holders office may, in writing, request that the Ethics Commissioner examine the matter.

Content of request

(2) The request shall identify the alleged non-observance of the ethical principles, rules or obligations established by the Prime Minister for public office holders and set out the reasonable grounds for the belief that they have not been observed.

Examination

(3) The Ethics Commissioner shall examine the matter described in a request and, having regard to all the circumstances of the case, may discontinue the examination.

Report

(4) The Ethics Commissioner shall, even if he or she discontinues the examination of a request, provide the Prime Minister with a report setting out the facts in question as well as the Ethics Commissioner's analysis and conclusions in relation to the request.

Making report available

(5) The Ethics Commissioner shall, at the same time that the report is provided under subsection (4), provide a copy to the member who made the request - and the minister or parliamentary secretary who is the subject of the request - and make the report available to the public.

Confidentiality

(6) The Ethics Commissioner may not include in the report any information that he or she is required to keep confidential.

72.09

Presentation of views

Before providing confidential advice under paragraph 72.07(b) or a report under subsection 72.08(4), the Ethics Commissioner shall provide the public office holder concerned with a reasonable opportunity to present his or her views.

72.10

Powers

(1) For the purposes of paragraph 72.07(b) and section 72.08, the Ethics Commissioner has the power to summon witnesses and require them

(a) to give evidence - orally or in writing - on oath or, if they are persons entitled to affirm in civil matters, on solemn affirmation; and

(b) to produce any documents and things that the Ethics Commissioner considers necessary.

Enforcement

(2) The Ethics Commissioner has the same power to enforce the attendance of witnesses and to compel them to give evidence as a court of record in civil cases.

Powers exercised in private

(3) The powers referred to in subsections (1) and (2) shall be exercised in private.

Inadmissibility

(4) Information given by a person under this section is inadmissible against the person in a court or in any proceeding, other than in a prosecution of the person for an offence under section 131 of the Criminal Code (perjury) in respect of a statement made to the Ethics Commissioner.

Confidentiality

(5) The Ethics Commissioner, and every person acting on behalf or under the direction of the Ethics Commissioner, may not disclose any information that comes to their knowledge in the performance of their duties and functions under this section, unless

(a) the disclosure is, in the opinion of the Ethics Commissioner, essential for the purposes of this section; or

(b) the information is disclosed in the course of a prosecution for an offence under section 131 of the Criminal Code (perjury) in respect of a statement made to the Ethics Commissioner.

72.11

Suspension of examination

- (1) The Ethics Commissioner shall immediately suspend an examination referred to in section 72.08 if
- (a) the Ethics Commissioner believes on reasonable grounds that the minister or parliamentary secretary has committed an offence under an Act of Parliament in respect of the same subject matter, in which case the Ethics Commissioner shall notify the relevant authorities; or
 - (b) it is discovered that the subject matter of the examination is also the subject matter of an investigation to determine whether an offence referred to in paragraph (a) has been committed or that a charge has been laid in respect of that subject matter.

Investigation continued

- (2) The Ethics Commissioner may not continue an examination until any investigation or charge in respect of the same subject matter has been finally disposed of.

APPENDIX II

November 20, 2004

Mr Bernard Shapiro
Ethics Commissioner
66 Slater Street, 22nd Floor
Ottawa, ON K1P 5H1

Dear Commissioner Shapiro:

Re: Request for Inquiry Pursuant to Section 72.08 (1) of the Parliament of Canada Act

This letter is to formally request that you as Ethics Commissioner inquire into whether the Minister of Citizenship and Immigration, Judy Sgro, has fully observed the rules established by the Prime Minister for Ministers of the Crown as set out in the *Conflict of Interest and Post-Employment Code for Public Office Holders*. I make this request because the credibility of Canada's immigration and refugee system as being fair and impartial is at stake.

Based on statements by officials in the Department of Citizenship and Immigration, by former staffers in the Minister's Office, and by some who participated in her re-election campaign, all of which have been reported in the media, serious concerns have arisen regarding possible abuse of power by Ms Sgro. Specifically, it has been alleged that Ms Sgro, just three days before the federal election, granted a temporary residence and work permit to Alina Balaican, enabling her to avoid the normal process of, upon the expiry of her original temporary work permit, applying for landed immigrant status from outside the country. Ms Balaican was a volunteer in Ms Sgro's re-election campaign.

Further, it has been reported that Harjit, or Hajest, Singh, who was dodging a deportation order from CIC pursuant to which a Canada-wide warrant had been issued for his arrest, regularly delivered pizza to the Minister's campaign office in Toronto. It is alleged that he spoke more than once to senior Sgro staffers disclosing his status and asking for assistance from the Minister. None of the Minister's staffers, workers or associates at any time notified the authorities of this man's whereabouts.

And it is alleged that Song Dae Ri, a North Korean defector who was seeking landed immigrant status in Canada, was also active in Ms Sgro's campaign office.

These allegations raise serious questions as to whether the Sgro campaign attracted individuals seeking special preference from the Minister, and whether special preference was, in fact, extended in one form or another.

Finally, it is alleged that the Minister's political staff worked on the Minister's re-election campaign while charging their expenses to the Minister's Ottawa office budget, contrary to Treasury Board guidelines. It also seems that her then Chief of Staff, Ian Laird, was on leave of absence at the time he gave instructions for the issuance of the permit to Balaican. This raises questions as to whether Ms Sgro had people that were on the payroll of her Minister's office working on her political campaign, and whether one of her staff members who was no longer on the payroll was in fact continuing to instruct department officials on behalf of the Minister.

Should these allegations prove to be founded, Minister Sgro would have breached the following Ministerial obligations set out in the *Conflict of Interest and Post-Employment Code for Public Office Holders*:

- Ethical Standards

(1) Public office holders shall act with honesty and uphold the highest ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced.

- Public Scrutiny

(2) Public office holders have an obligation to perform their official duties and arrange their private affairs in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law.

- Decision Making

(3) Public office holders, in fulfilling their official duties and responsibilities, shall make decisions in the public interest and with regard to the merits of each case.

- Preferential Treatment

(7) Public office holders shall not use their position of office to assist private entities or persons where this would result in preferential treatment to any person.

I would respectfully request that your inquiry into this matter include, but not be limited to, discussions with:

- any civil servants in the Toronto and Ottawa offices of Citizenship and Immigration who may have dealt with any of the aforementioned individuals or with others who may come to your attention in the course of your inquiry;

-
- any of the Minister's election campaign workers and staff who have any knowledge touching upon the matters relating to the inquiry, and in particular those individuals who spoke with Mr Scott Reid;
 - Mr Scott Reid, Director of Communications in the Prime Minister's Office;
 - any present and former staff of the Minister who have any knowledge touching upon these matters.

The fairness and integrity of Canada's immigration system is of the utmost importance, not only to Canadians, but also to thousands of honest applicants waiting in the queue. Even the slightest indication that our system is open to political interference and preferential treatment undermines its credibility. Therefore this inquiry is of vital significance for our country and to maintain the respect of the international community.

This is a new process for both your office and for Parliamentarians. However, I have complete confidence that your office will act thoroughly and expeditiously to fulfill this request and set a high standard for future such inquiries.

Please contact me should you require anything further in order for this matter to go forward.

Yours truly,

Diane Ablonczy, M.P.
Calgary - Nose Hill

APPENDIX III

December 14, 2004

Mr Bernard Shapiro
Ethics Commissioner
66 Slater Street, 22nd Floor
Ottawa, ON K1P 5H1

Dear Commissioner Shapiro:

Re: Additional Request for Inquiry Pursuant to Section 72.08 (1) of the Parliament of Canada Act

This is further to my letter of November 20, 2004, which was a formal Request for Inquiry Pursuant to Section 72.08 (1) of the *Parliament of Canada Act*.

Since November 20th, additional allegations relating to the actions of the Minister of Citizenship and Immigration and of members of her staff have been raised. I therefore request that the inquiry opened pursuant to my said letter be expanded to include the following:

1. Allegations that the Minister offered special access to two and possibly more owners of strip clubs to discuss with her Chief of Staff, Ihor Wons, and/or other Ministerial staff whether the Minister might be able to assist them in bringing additional strippers into Canada. The two publicly confirmed on-site visits were to Terry Koumoudouros, co-owner of the House of Lancaster and to Peter Psihogios, of the Airport Strip Club and Vice-President of the Adult Entertainment Association of Canada.
2. It has been confirmed that the Minister accepted a \$5,000 campaign donation from an individual named in her election return as Sadi Naseer, on behalf of Mohsin Sheikh, contrary to the *Canada Elections Act*, in violation of Section 3 (1) of the *Conflict of interest and Post-Employment Code for Public Office Holders*.
3. My legislative assistant, Jason Valentin, on November 17th, received a telephone call from the Minister's Director of Parliamentary Affairs, Marc Khouri. In that conversation an implied threat was made that the Minister would not look favourably on any future requests that I might make on behalf of constituents. Attached is Mr Valentin's memo which was written that same day setting out his best recollection of this conversation. I would point out that the one request I have made to the Minister in the past was directly referred to in the call and has been raised by the Minister in the House and in media interviews on several occasions. My colleague M.P.

Pat Martin, the Member for Winnipeg Centre, has also stated that he received a similar call and that he believes that a “thinly veiled” threat was made to him also.

4. M.P. Pat Martin also alleged that the Minister’s Office provided him with details of campaign worker Alina Balaican’s file. This may have contravened the *Privacy Act*.
5. On December 8th, The Honourable Stephen Harper, Leader of the Opposition and Member for Calgary Southwest, requested the following information: *“The immigration minister told her Liberal colleagues that she would not issue ministerial permits during the election and then she turned around, went behind their backs and handed out at least a dozen permits to her own political donors and campaign workers. This is my question for the Prime Minister. Does he know how many ministerial permits the minister handed out to her riding and supporters during the election campaign?” (Hansard, December 8, 2004).*

The Minister said earlier in the House: “Mr Speaker, I was going to bring a book with me, which is thick, full of all the requests I get from all members of the House, lots of them being from the Leader of the Opposition, from the House leader and from the opposition critic. I get requests every day, yesterday included. When I leave this House and go back to the lobby, there is usually somebody from the member’s side waiting there.” (Hansard, November 19, 2004)

In the document tabled by the Minister in response to questions about how many temporary resident permits [TRPs] she has personally issued, recommended or concurred in the decision to issue, the Minister told the House that there was no record of TRPs issued by riding. This is contradicted by the fact that she appears to know of requests made by individual members and that at one point she referred to a Ministerial binder of such requests. Keeping complete records of TRPs personally issued by the Minister, and which could be broken down by riding or in any other way, surely would be an expected and standard business practice. I would ask that you inquire and specifically advise me on this issue.

6. It has been alleged that a former staff member of the Minister’s is under investigation for security reasons. The Minister has denied this in the House. Has the Minister, her office, or the Government of Canada been *ethically* compromised in any way in this specific matter?
7. On numerous occasions the Minister has both directly stated and clearly implied that she requested a full inquiry by your office of all allegations relating to questionable activities by herself and her staff. This is contradicted by your Office, which has stated that the Minister’s request was only for private advice regarding her issuing of a Minister’s Permit to Alina Balaican. It therefore appears that the Minister has misled the House and the Canadian public on the true nature and extent of your Office’s involvement in this matter at the request of the Minister. I would ask that your Office review the Minister’s statements in this regard and provide an opinion as to whether they have been misleading to the House and the public and have therefore violated Section 3 (1) of the Code.

Should any of these further allegations prove to be founded, Minister Sgro would have breached the following Ministerial obligations set out in the *Conflict of Interest and Post-Employment Code for Public Office Holders*:

3. Every public office holder shall conform to the following principles:

- Ethical Standards

(1) Public office holders shall act with honesty and uphold the highest ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced.

- Public Scrutiny

(2) Public office holders have an obligation to perform their official duties and arrange their private affairs in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law.

- Decision Making

(3) Public office holders, in fulfilling their official duties and responsibilities, shall make decisions in the public interest and with regard to the merits of each case.

- Preferential Treatment

(7) Public office holders shall not use their position of office to assist private entities or persons where this would result in preferential treatment to any person.

In light of the serious nature of all of these allegations and of how they have already impacted Canada both at home and abroad, it is essential that all of the questions that have been raised about the Minister and her staff be fully investigated by your office and the findings reported to Parliament and to the public. Thank you for your assistance and for the important role that you play in ensuring Ministerial integrity and accountability in the Parliament of Canada.

Please contact me should you require anything further in order for the inquiry into these additional matters to go forward.

Yours truly,

Diane Ablonczy, M.P.
Calgary - Nose Hill

REPORT TO THE ETHICS COMMISSIONER
ON THE LETTER OF DECEMBER 14, 2004
FROM
MS DIANE ABLONCZY
MEMBER OF PARLIAMENT FOR CALGARY-NOSE HILL

On December 14 2004, Ms Diane Ablonczy, Member of Parliament for Calgary-Nose Hill wrote a letter to the Ethics Commissioner, requesting an inquiry pursuant to Section 72.08 (1) of the *Parliament of Canada Act*. The letter requested a review of a series of allegations.

The object of this report is to review allegations 3, 5, and 7 and to provide an opinion as to whether:

- a) each allegation is related to a matter of privilege and should be dealt with either exclusively or otherwise by the House of Commons, a Parliamentary Committee or the Speaker;
- b) each allegation falls within the jurisdiction (exclusive or otherwise) of the House of Commons, a Parliamentary Committee or Speaker, indicating the basis upon which it falls within their jurisdiction;
- c) there is a separate House of Commons practice, procedure, or convention (exclusive or otherwise) for the handling of allegations of this nature.

This opinion on Ms Ablonczy's allegations is based strictly on procedural principles and practice governing the theory and implementation of parliamentary privilege in relation to the functioning of the House of Commons and the performance and conduct of its Members. The opinion, therefore, does not raise issues of constitutional law or *lex parliamenti* (the Law of Parliament). Any legal issues are left to competent authorities to argue¹.

Parliamentary Privilege

In order to have a better comprehension of the various issues raised in the allegations of Ms Ablonczy, it is necessary to precede the review with an overview of the nature and necessity of parliamentary privilege. A description of the specific right of the House of Commons to regulate its own internal affairs, including the power to discipline its Members, and some comments on who are the guardians of parliamentary privilege are also required.

The phrase “parliamentary privilege” has a very specific meaning in the lexicon of procedural terms used in legislatures under the Westminster model. It does not mean that legislators are a “privileged class” and must be treated as such. Since the parliamentary world has not yet decided to modernize its jargon, the phrase “parliamentary privilege”, with its impressive historical background and key importance, remains and carries with it a very positive connotation and purpose in modern parliaments.

What is “parliamentary privilege”? It refers simply to the rights and immunities necessary for a legislature as a distinct body (such the House of Commons of Canada), and its Members, who are representatives of the people, to function and carry out their duties and responsibilities. It also refers to the powers that legislatures possess to protect themselves and their Members from undue interference in the fulfillment of their functions. However, “privileges” are not for personal gain or advantage. As stated, in 1967, by a Select Committee of the British House of Commons, parliamentary privileges “are not the prerogative of Members in their personal capacities, (...) they are claimed and enjoyed by the House in its corporate capacity and by its Members on behalf of the citizens whom they represent.”² Electors have indeed the right to expect that the representatives they have chosen be protected from any kind of improper pressure.

The long and hard-fought battle for the independence of the House of Commons and the rights

¹The statutory authority relating to Canadian parliamentary privilege can be found in Section 18 of the Constitution of Canada and Section 4 of the Parliament of Canada Act.

²United Kingdom, House of Commons, Select Committee on Parliamentary Privilege, 1967, Report, (reprinted 1971), p. vii, para. 12.

necessary for its proper functioning continues still today each time there is an attempt by an outside body to usurp even a fraction of the rights and immunities of a legislature. Parliamentary privileges for itself and its Members are to be decided by the legislature and not by any outside body or court. For this reason, the House must always assume fully its role to serve, through its Speaker, as the guardian of the rights, immunities and privileges of its Members. When raised on the floor of the House, a disregard for or an attack on any of these rights and immunities, by any individual or authority, is called a “breach of privilege” and is punishable as contempt. The legislative body is the only one competent to find that a contempt or a breach of privilege has occurred. On the other hand, it is also possible for a legislative body to decide formally by resolution not to claim or apply privileges which have previously been claimed, but doing so is always at some grave peril.³

As confirmed by the history of parliamentary government, the Speaker of the House of Commons carries the enormous responsibility to act as the guardian of the rights and privileges of Members and the legislative body as an institution. At the opening of a new House the Speaker, chosen by his peers, claims from the Governor General the traditional rights and privileges of the assembly. The Speaker is also the authority to decide whether or not any set of facts amount *prima facie* (at first glance), to a breach of privilege, before it is submitted to the House to decide whether a contempt or a breach of privilege has occurred.

Right to Regulate Own Internal Affairs

Among the rights and powers of the House of Commons as a collectivity is the fundamental right of the legislative body to regulate its internal affairs, free from interference from the Crown, the executive, the courts and the public. This is probably the most fundamental right for the House, after freedom of speech enjoyed by its Members. Regulating its own internal affairs is a widely recognized right, “one without which the legislative body could not uphold its dignity and efficiency”⁴; “one of the most significant attributes of an independent legislative institution”⁵; “a basic rule of an elected assembly”⁶. In that sense, the jurisdiction of a legislative institution, like that of a court, is not subject to appeal.

In delivering the majority opinion in the decision of the Supreme Court of Canada in *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker (Donahoe) of the House of Assembly)*, McLachlin J. had this to say in regard to the independence of the legislative body, and to the rights necessary to the functioning of that body:

“Our democratic government consists of several branches: the Crown, as represented by the Governor General and the provincial counterparts of that office; the legislative body; the executive; and the courts. It is fundamental to the working of government as a whole that all these parts play their proper role. It is equally fundamental that no one of them overstep its bounds, that each show proper deference for the legitimate sphere of activity of the other.”⁷

³*House of Commons Procedure and Practice*, edited by Robert Marleau and Camille Montpetit, House of Commons, Ottawa; Chenelière/McGraw-Hill, Montréal-Toronto, 2000, pp. 54-6.

⁴*Parliamentary Privilege in Canada*, 2nd ed., Maingot, J. P. Joseph, House of Commons and McGill-Queen's University Press, 1997 p. 293.

⁵*Parliamentary Privilege in Canada*, 2nd ed., Maingot, J. P. Joseph, House of Commons and McGill-Queen's University Press, 1997 p.183.

⁶*Parliamentary Privilege in Canada*, 2nd ed., Maingot, J. P. Joseph, House of Commons and McGill-Queen's University Press, 1997 p. 316.

⁷*Parliamentary Privilege in Canada*, 2nd ed., Maingot, J. P. Joseph, House of Commons and McGill-Queen's University Press, 1997 p. 319.

The legislative institution's right to regulate its own internal affairs includes the right, in terms of its membership, to set down rules and regulations affecting the conduct and responsibilities of its Members. The jurisdiction over its Members is "absolute and exclusive."⁸

Power to Discipline

The House of Commons's right to regulate its own internal affairs also includes the right and power to discipline its own Members and to punish those Members guilty of disgraceful conduct. The punishment can range from a reprimand, to suspension for disregarding the authority of the Chair, to expulsion. In fact, the House may exclude, suspend or expel a Member for any reason, because, in the final analysis, it is an internal matter. The power to expel is not confined to offences committed by a Member as Member or during a session of Parliament, but extends to all cases where the offence is such as, in the judgment of the House, to render the Member unfit for parliamentary duties. [...] ...it (the House of Commons) retains its right to decide upon the qualifications of any of its Members to sit and vote in the House."⁹

OPINION

Each allegation made by Ms Ablonczy is reviewed separately against the criteria listed in the opening paragraph.

Allegation no. 3

"3. My Legislative assistant, Jason Valentin, on November 17th, received a telephone call from the Minister's Director of Parliamentary Affairs, Marc Khouri. In that conversation an implied threat was made that the Minister would not look favourably on any future requests that I might make on behalf of constituents. Attached is Mr Valentin's memo which was written the same day setting out his best recollection of this conversation. I would point out that the one request that I have made of the Minister in the past was directly referred to in the call and has been raised by the Minister in the House and in media interviews on several occasions. My colleague M.P. Pat martin, the Member for Winnipeg Centre, has also stated that he received a similar call and that he believes that a "thinly veiled" threat was made to him also."

- a) Is allegation no.3 related to a matter of privilege and should be dealt with either exclusively or otherwise by the House of Commons, a Parliamentary Committee or the Speaker?

Yes. The allegation implies that the Member's office was phoned as a consequence of questions raised in Question Period and resulted in some form of intimidation of because of the manner in which the Member was discharging her duties in the House. This allegation falls into the category of rights, immunities and privileges called contempts of the House, more specifically the intimidation of Members.

There are potentially two privilege matters in this allegation. The alleged actions of the Minister's

⁸*Parliamentary Privilege in Canada*, 2nd ed., Maingot, J. P. Joseph, House of Commons and McGill-Queen's University Press, 1997 p. 181

⁹*Parliamentary Privilege in Canada*, 2nd ed., Maingot, J. P. Joseph, House of Commons and McGill-Queen's University Press, 1997 p. 211

Director of Parliamentary Affairs, who could be found in contempt for intimidation of a member and the conduct of the Minister if her Director of Parliamentary Affairs was acting on her behalf and with her knowledge.

In 1984 Speaker Francis ruled on similar point:

“A threat emanating from any government department or public corporation to withhold information or cooperation from a Member of Parliament would undoubtedly hinder that Member in the fulfillment of his or her Parliamentary duties and therefore would constitute a breach of privilege... It is therefore the view of the Chair that an act which amounts to a form of intimidation does not need to be directed at the Member in person in order to constitute an offence in terms of privilege”¹⁰

- b) Does allegation no.3 fall within the jurisdiction (exclusive or otherwise) of the House of Commons, a Parliamentary Committee, or Speaker, indicating the basis upon it falls within their jurisdiction?

Yes. Like a Court only the House of Commons has jurisdiction in determining what offences offends its dignity or authority.

“There are however other affronts against the dignity and authority of Parliament, which may not fall within one of the specifically defined privileges. Thus the House also claims the right to punish, as a contempt, any action which, though not a breach of a specific privilege tends to obstruct or impedes any Member or Officer of the House in the discharge of their duties”.¹¹

Speaker Sauvé in a 1980 ruling made the following comment:

“... while our privileges are defined, contempt of the house has no limits. When new ways are found to interfere with our proceedings, so too will the House, in appropriate cases, be able to find that a contempt of the House has occurred.”¹²

- c) Is there a separate House of Commons practice, procedure or convention (exclusive or otherwise) for the handling of allegation no. 3?

Yes. A member of the House, who believes there has been a breach of privilege or an offence against the dignity of the House, may raise such a matter after giving due notice to the Speaker.¹³ If the Speaker rules that there is prima facie evidence of a breach of privilege, the matter will take precedence over all other business. A debate normally ensues immediately on the member’s motion until the House decides on the matter. Usually the member’ motion calls for an inquiry by the Standing Committee on Procedure and House Administration. That Committee will then hold its inquiry, hear witnesses, and make a finding that it will report to the House with or without recommendations. The report of the Committee

¹⁰Canada, Parliament, House of Commons, *House of Commons Debates: Official Report*, February 20, 1984, p.1560

¹¹*House of Commons Procedure and Practice*, edited by Robert Marleau and Camille Montpetit, House of Commons, Ottawa; Chenelière/McGraw-Hill, Montréal-Toronto, 2000, p. 67

¹²Canada, Parliament, House of Commons, *House of Commons Debates: Official Report*, October 29 1980, p.4214

¹³*Standing Orders of the House of Commons*, 2004, S.O. 48

may then be debated in the House and if the recommendations are adopted, they become Orders of the House. Ultimately only the House decides what action is to be taken.¹⁴

Alternatively, the member may choose to file notice of a substantive motion on the Notice Paper under Private Member Business.¹⁵ This is complex procedure for getting the matter before the House and can be resorted to even if the Speaker might rule against a particular alleged breach of privilege. Members rarely choose this procedure, as most questions of privilege are deemed matters of priority and must be raised at the first opportunity.

Allegation no.5

5. On December 8th, The Honourable Stephen Harper, Leader of the Opposition and Member for Calgary Southwest, requested the following information: “The Immigration Minister told her Liberal colleagues that she would not issue ministerial permits during the election and then she turned around, went behind their backs and handed out at least a dozen permits to her own political donors and campaign workers. This is my question for the Prime Minister. Does he know how many ministerial permits handed out to her riding and supporters during the election campaign?” (Hansard, November 19, 2004)

The Minister said earlier in the House: “Mr Speaker I was going to bring a book with me, which is thick, full of all the requests I get from all members of the House, lots of them being from the Leader of the Opposition, from the House leader and from the opposition critic. I get requests every day, yesterday included. When I leave this House and go back to the lobby, there is usually somebody from the member’s side waiting there.” (Hansard November 19, 2004)

In the document tabled by the Minister in response to questions about how many temporary residents permits (TRPs) she has personally issued, recommended or concurred in the decision to issue, the Minister told the House there was no record of TRPs issued by riding. This is contradicted by the fact that she appears to know of requests made by individual members and at one point she referred to a Ministerial binder of such requests. Keeping complete records of TRPs personally issued by the Minister, and which could be broken down by riding or in any other way, surely would be an expected and standard business practice. I would ask that you inquire and specifically advise me on this issue.

- a) Is allegation no. 5 related to a matter of privilege and should be dealt with either exclusively or otherwise by the House of Commons, a Parliamentary Committee or the Speaker?

Yes and No. This allegation is somewhat vague. It points to an apparent contradiction between an answer given in Questions Period and the content of a document tabled in the House. It also refers to what the member claims should be a standard business practice and asks the Ethics Commissioner to advise her on this ‘issue’.

If the member is asking the Commissioner to inquire into the business practices of the Minister’s Office or Department, then no comment is offered as to whether that is appropriate or within the jurisdiction of the Ethics Commissioner.

¹⁴*House of Commons Procedure and Practice*, edited by Robert Marleau and Camille Montpetit, House of Commons, Ottawa; Chenelière/McGraw-Hill, Montréal-Toronto, 2000, p. 121-138

¹⁵Standing Orders of the House of Commons, 2004, S.O. 86.

If the request is for the Commissioner to advise Ms Ablonczy on an apparent contradiction between an answer given by the Minister in Question Period and the content of a document tabled in the House of Commons, then the issue could involve the privileges of the House.

Both the answering of a question in Question Period and the tabling of a document are proceedings of the House. Therefore, the House should deal exclusively with any alleged misconduct or offence related thereto, after a ruling by the Speaker.

- b) Does allegation no.5 fall within the jurisdiction (exclusive or otherwise) of the House of Commons, a Parliamentary Committee, or Speaker, indicating the basis upon it falls within their jurisdiction?

Anyone may analyse the contents of answers and of documents tabled in the House and come to conclusions as to whether, they are coherent, consistent, or contradictory. That they may be in fact contradictory does not imply by itself that there has been a contempt committed, and there could be many reasons and explanations for any perceived or real contradictions.

Privilege would only be involved if it were demonstrated at least on a prima facie basis, that there was a deliberate attempt to deceive the House. If that were the case, the issue of privilege would pertain and only the House could act, on the initiative of a member of the House, following a ruling by the Speaker

However, if some outside body or person were to accuse a member of some wrongful conduct, the aggrieved member/Minister could raise their own question of privilege, appealing to the House to uphold their rights and immunities. If the charge were disproved then the outside person and/or body could find themselves facing a charge of contempt of the House of Commons.

- c) Is there a separate House of Commons practice, procedure or convention (exclusive or otherwise) for the handling of allegation no. 5?

Should it be established by someone that a deliberate attempt to misinform the House, then only a member of the House can raise the matter in the House pursuant to Standing order 48 for determination by the Speaker or under Standing Order 86 governing Private Members Business, (See answer to allegation no.3 above for description of the procedure.)

Allegation no. 7

7. On numerous occasions the Minister has both directly stated and clearly implied that she requested a full inquiry by your office of all allegations relating to questionable activities by herself and her staff. This is contradicted by your Office, which has stated that the Minister's request was only for private advice regarding her issuing of a Minister's permit to Alina Balaican. It therefore appears that the Minister has misled the House and the Canadian public on the true nature and extent of your Office's involvement in this matter at the request of the Minister. I would ask that your Office review the Ministers statements in this

regard and provide an opinion as to whether they have been misleading to the House and the public and therefore have violate section 3 (1) of the code.

- a) Is allegation no.7 related to a matter of privilege and should be dealt with either exclusively or otherwise by the House of Commons, a Parliamentary Committee or the Speaker?

Ms Ablonczy is asking the Ethics Commissioner to provide an opinion as to whether the Minister, by making apparently contradictory statements in the House, has misled the House and the Canadian Public.

No comment is offered as to whether the Ethics Commissioner is competent or authorized to provide an opinion on statements made by ministers, which may mislead the Canadian public. That is for someone else to determine. There is no issue of parliamentary privilege.

The matter of Ministers making misleading statements to the House however, could well fall into the category of contempt of the House described above. Ministers may inadvertently mislead the House by providing information or answers that they believe are accurate at the time they make statements in the House. It is common for Ministers to rise on points of order at a later date to correct such misstatements. Such occurrences are not issues of privilege or contempt but form part of a debate that evolves over time as issues and information becomes known.

Privilege or contempt would be involved if it were alleged that a Minister deliberately set out to mislead the House. That would then be an issue of dishonourable conduct by a member of the House.

- b) Does allegation no.7 fall within the jurisdiction (exclusive or otherwise) of the House of Commons, a Parliamentary Committee, or Speaker, indicating the basis upon it falls within their jurisdiction?

If the allegation is that the minister deliberately mislead the House, then only the House of Commons is competent to express an opinion, to make a finding and determine any disciplinary measures to be taken against the Minister.

In a ruling on a question of privilege, John A. Fraser, Speaker of the House of Commons of Canada, noted on November 1, 1990: "Only the House can examine the conduct of its Members and only the House can take action if it decides action is required. Should the House decide that an honourable Member has in some way committed a contempt, then it is for the House to take the appropriate steps."¹⁶

- c) Is there a separate House of Commons practice, procedure or convention (exclusive or otherwise) for the handling of allegations of this nature?

Yes. The conduct of a member of the House of Commons can be raised by way of a Question of Privilege pursuant to Standing Orders 48 or by way of notice of a substantive motion pursuant to Standing Order 86. (See response to allegation no. 3 for details on these procedures)

¹⁶Canada, Parliament, House of Commons, *House of Commons Debates: Official Report*, November 1, 1990, pp. 14969-70.

APPENDIX V

No.	NAME AND TITLE	SUBPOENA DUCES TECUM INTERVIEW	SUBPOENA DUCES TECUM DOCUMENTS
1	Abbott, Katherine (4) Special Assistant for Ontario Human Resources and Skills Development Canada	X	
2	Alldrige, Graham Acting Director Case Management, Case Review Citizenship and Immigration Canada		X
3	Allin, Byron Special Assistant - Ontario Revenue Canada Agency	X	
4	Arnott, Anne Director General Citizenship and Immigration Canada	X	
5	Balaican, Alina	X	
6	Beauchamp, H�el�ene Ministerial Advisor Citizenship and Immigration Canada	X	
7	Belisle, Guy Director General, Administration and Security Citizenship and Immigration Canada		X
8	Bilich, Anna Immigration Counsellor Citizenship and Immigration Canada	X	
9	Bureau, France Press Secretary Canadian International Development Agency	X	
10	Couture, Andr�e Director, Accounting Operations Citizenship and Immigration Canada		X
11	Cronin, Niall Policy and Program Advisor Citizenship and Immigration Canada Assistant Deputy Minister, Operations	X	
12	DeJager, Antoinette Constituency Assistant	X	
13	Diogo, Brigitte Senior Advisor to the Deputy Minister Citizenship and Immigration Canada Office of the Deputy Minister	X	

No.	NAME AND TITLE	SUBPOENA DUCES TECUM INTERVIEW	SUBPOENA DUCES TECUM DOCUMENTS
14	Down, Louise Ministerial Advisor, Case Review Citizenship and Immigration Canada	X	
15	Fernandez, Michael	X	
16	Ganim, Wayne Director General, Finance Citizenship and Immigration Canada		X
17	Gomes, Melissa Analyst, Immigration Cases Citizenship and Immigration Canada	X	
18	Gravel, Louise (2) Director General, Human Resources Citizenship and Immigration Canada		X
19	Gravelle, Paul Richard (2) Family Law Representative, Justice Canada Family Law and Agreements Enforcement Assistance Unit	X	
20	Hodgson, Derik Director, Public Environment Citizenship and Immigration Canada	X	
21	Hooper, Jenny Personal Assistant, Minister's Office Citizenship and Immigration Canada	X	
22	Jonas, Dexter Immigration Counsellor Citizenship and Immigration Canada	X	
23	Koumoudouros, Terry House of Lancaster	X	
24	Laird, Ian (2)	X	
25	Lampert, Leigh A. (2) Special Advisor Office of Honourable Irwin Cotler, P.C., M.P. Minister of Justice and Attorney General of Canada	X	
26	Lanouette, Robert Director, Corporate Security Citizenship and Immigration Canada		X
27	Levasseur, Caroline	X	
28	Lovekins, Hugh	X	
29	Lustig, Ernie Campaign Manager	X	
30	MacAndrew, Simone Spokesperson Public Safety and Emergency Preparedness Canada	X	

No.	NAME AND TITLE	SUBPOENA DUCES TECUM INTERVIEW	SUBPOENA DUCES TECUM DOCUMENTS
31	Marangoni, Emily Constituency Office Manager	X	
32	McFarland, Lynn	X	
33	Mulholland, Howard	X	
34	Ouellette, René Senior Advisor, Case Management Citizenship and Immigration Canada	X	
35	Pena, Rossanna	X	
36	Pineault, Francine Clerk Citizenship and Immigration Canada	X	
37	Poole, Steven (2) Chief Information Officer and Director General Citizenship and Immigration Canada		X
38	Psihogios, Peter	X	
39	Reid, Scott Deputy Chief of Staff, Operations Prime Minister's Office	X	
40	Rocheleau, Marjolaine	X	
41	Robert, Yves-Cyrville	X	
42	Schmeing, Claudia	X	
43	Schmidt, Suzanne	X	
44	Sgro, Judy Minister of Citizenship and Immigration Canada	X	
45	Singh, Harjit (2)	X	
46	Smith, Geoff (2) Office of Don Bell, M.P., North Vancouver	X	
47	Wons, Ihor (2)	X	

(#): Number of subpoenas issued

APPENDIX VI**INVESTIGATION EXPENSE REPORT**

FACT FINDING	AMOUNT
Borden Ladner Gervais LLP	\$ 120,500.00
TOTAL	\$ 120,500.00

LEGAL INTERPRETATIONS	AMOUNT
Borden Ladner Gervais LLP	\$ 11,660.00
Goodmans LLP	\$ 14,875.00
RDM Consulting	\$ 5,040.00
Stikeman Elliott LLB	\$ 10,750.00
TOTAL	\$ 42,325.00

COURT REPORTING	AMOUNT
Cornell Catana	\$ 2,001.40
Gillespie	\$ 95.50
TOTAL	\$ 2,096.90

ADMINISTRATION & PRINT SERVICES	AMOUNT
UPS Courier	\$ 54.79
Translation (Parliamentary Translation Bureau)	**
Digital Printing (HoC Information Services)	\$ 5,770.70
TOTAL	\$ 5,825.49

GRAND TOTAL	\$ 170,747.39
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**Covered through Parliamentary envelope

APPENDIX VII

HOUSE OF COMMONS DEBATES, ANALYSIS OF ISSUES RAISED DURING QUESTION PERIOD, NOVEMBER 15 TO DECEMBER 14, 2004

COMMENTS – KEY POINTS <i>This analysis follows only the evolution of the various issues raised in the House of Commons Question Period and the line of responses.</i>	DEBATES <i>Dates and page numbers refer to the dates of quotations in the Debates</i>
<u>Only issue:</u> Issuance of Temporary Residence Permit (TRP) to Ms Balaican	
Minister's Parliamentary Secretary announces in the House that the Minister "has asked the [Ethics Commissioner (EC)] to look at this matter."	Nov. 15, p. 1333
Minister confirms her own initiative using the same words used by her Parliamentary Secretary.	Nov. 17, pp. 1478-1479
Opposition Deputy Leader twice uses the term 'investigation' in a question. This term was repeated several times by Opposition members.	Nov. 17, p. 1479
PM repeats that it is the Minister who has referred the matter to the EC and uses the term 'inquiry' in response to Leader of Official Opposition.	Nov. 18, pp. 1545-1546
Response: Minister asked the EC to review the matter.	Nov. 18, pp. 1547-1549; Nov. 19, pp. 1595-1598; Nov. 19, p. 1603
<u>New Issues:</u> Staff conducting Immigration Department business in Minister's campaign office Response: "...I personally asked the EC to review the whole process." Failure to report presence of an illegal immigrant Response: "The EC will review this matter (Deputy PM)." Involvement of Minister's staff on leave in immigration files Response: "I have asked that independent EC to review all the aspects of this case..."	Nov. 22, p. 1648

<p>Minister's staff travel expenses</p> <p>Response: "...let me assure members that the EC will be looking at all the issues that have been raised."</p>	Nov. 22, p. 1651
<p><u>New issue:</u> Directing staff to divulge confidential information on immigration to MP's offices</p> <p>Response: The Deputy PM also answered, "...this matter has been referred to the EC."</p>	Nov. 23, pp. 1725-1726
<p>Responses: "As I have clearly indicated, I, not them, have asked the EC to see if there were any improprieties or any breach of ethics on any of the issues that have been raised here." and "to seek the advice of the Ethics Commissioner."</p>	Nov. 24, pp. 1811, 1813
<p><u>New issue:</u> Political assistant to personally meet with strip club owners in strip clubs</p> <p>Response: "...I have referred these matters to the EC."</p>	Nov. 25, p. 1918
<p><u>New issue:</u> Distribution of immigration permits per riding <i>(Note: Report tabled on December 1st)</i></p>	Nov. 29, p. 2033
<p>On the general issue of preferential treatment to campaign workers</p> <p>Response: "We have referred the report to the EC. We will await a response."</p>	Nov. 30, p. 2105
<p><u>Issue:</u> Separating couples in relation to Temporary Residence Permit (TRP)</p> <p>Response: "The issue to which the member refers I referred to the Ethics Commissioner."</p>	Dec. 01, p. 2128
<p><u>Issue:</u> Immigration applications from women with professional qualifications and experience</p> <p>Response: "We have an independent Ethics Commissioner and I have asked him to review the file and report back."</p>	Dec. 01, p. 2130

<p><u>New issue:</u> Request for distribution of immigration permits by riding or at least by postal code</p> <p>Response: “My department does not keep statistics on a riding by riding basis and never has.”</p>	<p>Dec. 02, pp. 2205-2206</p>
<p><u>Issue:</u> Chief of staff conducting business in strip clubs</p> <p>PM’s response: “The Minister has referred this matter to the EC, who is looking into it and will make a full report, at her request.”</p>	<p>Dec. 07, p. 2381</p>
<p><u>New issue:</u> Nature of Ms Sgro’s request to Ethics Commissioner, following ETHI appearance</p> <p>PM’s response: “...the EC is the one to decide on his mandate, on what he will examine.”</p>	<p>Dec. 09, p. 2520 <i>On December 8, Ethics Commissioner appears before ETHI Committee and discusses the process of the Sgro inquiry. See evidence of meeting no. 7: http://www.parl.gc.ca/committee/CommitteePublication.aspx?SourceId=96730</i></p>
<p><u>New issue:</u> Minister’s misleading the House with respect to the scope of the Ethics Commissioner’s investigation</p> <p>Response: “I referred the issue of this individual permit to the EC and I have asked him to report back.”</p>	<p>Dec. 09, p. 2520-2521</p>
<p><u>Issue:</u> Number of ministerial permits issued in the last election, including how many in her own riding</p> <p>Response: “I referred the issue in question to the EC.”</p>	<p>Dec. 09, p. 2522</p>
<p><u>Issue:</u> What the Minister asked of the EC</p> <p>Response: “I have asked the EC to do his work, and I will await his response.”</p>	<p>Dec. 09, p. 2523</p>
<p><u>New issue:</u> Minister’s misleading the House with respect to having referred to the EC the question of the number of ministerial permits issued during the campaign.</p> <p>PS and Deputy PM answered for the Government.</p>	<p>Dec. 10, pp. 2606-2607</p>

APPENDIX VIII

STATISTICS ON MATERIAL EXAMINED

NATURE OF EVIDENCE - DESCRIPTION	No. of documents	No. of pages
Testimonies taken under oath		
A. Transcripts	42	2055
B. Supporting exhibits	4	1010
Papers obtained under subpoena		
C. In relation to H. Singh		5950
D. In relation to S.D. Ri		3768
E. From the office of the Minister and from the Department of Citizenship and Immigration		1650
F. From the Department of Citizenship and Immigration in relation to travel expenses		325
G. E-mails	60,000	
TOTAL	60,046	14,758

APPENDIX IX

May 2, 2005

The Honourable Judy Sgro, MP
House of Commons
Confederation Building, Room 207
Ottawa, Ontario K1A 0A6

Dear Ms Sgro,

I am writing in response to your letter of November 15, 2004 regarding your decision to grant a Temporary Resident Permit (TRP) and work permit to Ms Alina Balaican.

Attached to your letter of November 15, 2004 is a Statement of Facts. I have reviewed this Statement carefully, and I have found it to correspond to my own understanding of the facts in almost all respects. That is, I believe on the basis of my own investigation that you had never met Ms Balaican, that you did not know that Ms Balaican was a volunteer in your campaign office when you decided to issue the TRP and work permit for her, and that the grounds upon which you made this decision were entirely consistent with the criteria that you have been using in your role as Minister.

On the other hand, it is also clear to me that while you were not aware of the volunteer status of Ms Balaican, members of your staff did know of this.

Thus, your staff for whom you bear responsibility did, in fact, place you in a conflict of interest - one which could only have been avoided by not accepting campaign volunteers who were simultaneously seeking your intervention on their behalf or a refusal by both you and your staff to consider requests arising from such individuals. In this case, it appears that you have acted appropriately but that your staff did not.

Cordially,

Bernard J. Shapiro
Ethics Commissioner of Canada