

立法會

Legislative Council

立法會CMI/94/10-11號文件

檔 號：CB(3)/C/2

議員個人利益監察委員會 2011年5月20日會議的文件

加拿大就議員個人利益登記及披露 和使用議員津貼的投訴進行調查的機制

引言

本文件旨在提供進一步資料，闡釋加拿大眾議院就議員個人利益登記及披露和使用議員津貼的投訴進行調查的機制。

背景

2. 為提供參考資料，協助議員個人利益監察委員會(下稱"監察委員會")考慮改善現行議員個人利益登記及披露制度的未來路向，立法會秘書處早前曾進行資料研究，探討選定海外立法機關的議員個人利益登記和披露規定及相關安排。
3. 在2011年1月7日監察委員會會議上，委員聽取秘書處簡介上述研究的報告(立法會RP02/10-11號文件)。報告闡述英國、澳洲、加拿大、新西蘭及新加坡國會議員登記和披露個人利益的規定及相關安排，並說明如何處理涉及此類事件的投訴。委員察悉，在英國，針對議員個人利益登記及披露和使用議員津貼的投訴由獨立人員處理，而在加拿大，針對議員個人利益登記及披露的投訴亦由獨立人員處理，分別為國會標準事務專員(Parliamentary Commissioner for Standards)及利益衝突和操守標準事務專員(Conflict of Interest and Ethics Commissioner)。委員要求秘書處提供該兩位專員工作的進一步資料。
4. 有關加拿大利益衝突和操守標準事務專員(下稱"專員")工作的資料載於本文，而有關英國國會標準事務專員工作的資料則另文闡述(立法會CMI/93/10-11號文件)。

《眾議院議員利益衝突守則》及《利益衝突法》

5. 《眾議院議員利益衝突守則》(Conflict of Interest Code for Members of the House of Commons)(下稱"《守則》")(附錄I)載於眾議院《會議常規》(Standing Orders)的附錄。《守則》載列關於議員利益衝突的規則、向專員以保密方式披露個人資料的程序、公開議員資料的程序、專員的角色，以及就議員被指違規進行調查的程序。

6. 根據《會議常規》，程序及內政事務常務委員會(Standing Committee on Procedure and Home Affairs)負責檢討及匯報所有與《守則》有關的事宜，以及載於專員年報內關乎專員處理與受《守則》監管的議員行為有關的事宜所履行的職責。此外，專員有責任每5年全面檢討《守則》的條文及施行情況。

7. 《利益衝突法》(Conflict of Interest Act)適用於公職人員，包括部長、國會事務秘書及其他政府任命的人員。由於部長及國會事務秘書均為眾議院議員，因此，當專員調查此等人員被指涉及利益衝突的事件時，《利益衝突法》與《守則》同時適用。¹

利益衝突和操守標準事務專員的主要職責

8. 目前的專員一職是在《利益衝突法》(該法案於2008年7月生效)於2006年取代《公職人員利益衝突和離任後受僱規限的守則》(Conflict of Interest and Post-Employment Code for Public Officer Holders)後設立。國會於2004年5月採納《守則》時曾委任操守標準事務專員(Ethics Commissioner)，但在設立專員一職後，舊有的專員職位便被取代。

9. 在專員獲委任前，須諮詢眾議院各個獲確認政黨的黨魁，並藉眾議院決議通過，才可由總督會同樞密院(Governor in Council)任命。²專員的任期為7年，可以連任。³

¹ 《利益衝突法》條文適用於內閣部長、國會事務秘書及其他高級公職人員，例如部長的政治幕僚及大部分總督會同樞密院任命的人員。《守則》只適用於議員。

² 總督會同樞密院的任命由總督根據內閣的意見而作出。職位空缺的廣告通常刊登於政府網站、獵頭公司、報章及專業期刊。甄選過程由樞密院代表總理辦公室統籌。

³ 《加拿大國會法》(Parliament of Canada Act)，第82(1)條

10. 根據《利益衝突法》，專員必須為以下人士：加拿大高級法院或省級法院的前法官；或聯邦或省級委員會、公署或審裁機關的前成員，並在利益衝突、財務安排、專業規管，以及紀律或操守方面，具備最少其中一項實際的專門知識；或前參議院操守標準事務主任(Senate Ethics Officer)或前操守標準事務專員。⁴

11. 專員是國會人員，直接向國會匯報。專員須根據《利益衝突法》發表年報，並須根據《守則》向眾議院議長提交另一份年報，再由議長提交眾議院。

12. 專員透過以下途徑執行《利益衝突法》及《守則》：

- (a) 以保密方式向公職人員及當選議員提供有關如何遵守《利益衝突法》及《守則》的意見；
- (b) 審閱公職人員及當選議員有關資產、負債及活動等事宜的保密報告；
- (c) 公開有關資料；
- (d) 調查可能違規的事項；及
- (e) 向國會匯報。

投訴調查程序

13. 《利益衝突法》及《守則》分別賦權專員調查可能違反利益衝突規定的事項。⁵

14. 根據《利益衝突法》進行的調查稱為"審查"，藉此程序，專員可調查現任或前任公職人員有否履行《利益衝突法》所訂的責任。根據《守則》，調查議員有否違反利益衝突規則的程序稱為"研訊"。⁶

15. 根據《利益衝突法》及《守則》，專員只要有合理理由相信曾發生違規事項，便可酌情決定展開審查或研訊程序。根

⁴ 《加拿大國會法》，第81(2)條

⁵ 第7段詳述《利益衝突法》及《守則》的有關應用範圍。根據《利益衝突法》及《守則》的相關條文，兩者在調查及發表報告方面的程序均有不同。

⁶ 請參閱專員的網頁(<http://ciec-ccie.gc.ca/>)，瞭解有關審查或研訊程序的資料。

據《守則》，眾議院亦可藉決議指示專員展開研訊。公眾作出的投訴會被專員視為參考資料，供其考慮會否展開審查或研訊。

16. 如專員斷定某項根據《利益衝突法》所提出的審查要求純屬瑣屑無聊、無理纏擾或並非真誠地提出，專員可拒絕調查，但仍須發表報告。根據《守則》，在類似情況下，專員如拒絕研訊要求，必須述明原因，並可建議考慮向提出要求的議員採取行動。

《利益衝突法》

初步階段：提出要求

17. 如參議員或眾議院議員有合理理由相信某議員曾違反《利益衝突法》，可要求專員展開調查。有關要求必須符合以下條件，方屬有效：以書面提出；由提出要求者簽署；說明所違反的《利益衝突法》條文的情況為何；以及述明提出要求者相信曾發生違規事項所依據的合理理由。

第二階段：審查

18. 若專員接獲有效的要求，並且認為有關要求並非瑣屑無聊、無理纏擾或不真誠地提出，必須立即展開審查，並須讓公職人員有合理機會陳述意見。專員亦有權傳召證人及要求他們提交書面證據或經宣誓以口頭作證，並有權要求他們出示文件。專員可在任何時間終止審查，但若審查的要求是由參議員或眾議員提出，專員必須發表報告。

最後階段：報告

19. 專員須在審查程序結束後發表報告，當中須述明與審查有關的事實、專員的結論及分析。報告會交予總理⁷、要求展開審查的人和被審查的人，並會公開發表。⁸

《守則》

初步階段：提出要求

20. 任何議員如有合理理由相信某議員曾違反《守則》，可要求專員展開調查。有關要求必須符合以下條件，方屬有效：

⁷ 《利益衝突法》，第45(3)條

⁸ 《利益衝突法》，第45(4)條

以書面提出；由提出要求者簽署；說明被指不遵從《守則》的情況為何；以及述明提出要求者相信曾發生違規事項所依據的合理理由。

第二階段：跟進

21. 當專員接獲有效的要求後，必須立即將有關要求交予被點名的議員，並給予該議員30天時間回應。在接到回應後，專員必須展開初步研究，決定是否值得展開研訊。專員亦須在接到回應的15天內通知提出要求者及被點名的議員是否展開研訊。

第三階段：研訊

22. 接受研訊的議員必須合作，而專員亦須給予他們陳述意見的機會。所有研訊均閉門進行。

最後階段：報告

23. 專員須在研訊程序結束後發表報告。如發現有關議員不遵從《守則》，專員可建議施行適當的處分。專員亦可就《守則》的詮釋及修訂作出建議。報告會提交議長，再由議長提交眾議院，亦會公開發表。⁹

24. 當報告提交眾議院後，被投訴的議員有權就報告向眾議院發言。議員可動議贊同報告的議案，並就議案進行辯論。倘若在提交報告後第30次眾議院會議舉行前，仍未動議或處置議案，贊同報告的議案會被視作已經動議，議長須向眾議院提出處理議案的待決議題。眾議院可把報告發回專員作進一步考慮，並可連同或不連同指示。

法律代表

25. 現任專員Mary Dawson在《利益衝突法》及《守則》規定發表的2009-2010年度報告中表示，據她觀察所得，越來越多接受調查的公職人員及議員和被傳召的證人由律司代表，她對這種情況提出關注。該報告指出，在調查過程中由律司代表的權利被視為一項基本權利，不過，在法庭上，一般民事訴訟中預期採用和行之有效的訟辯模式，用於專員的調查卻令其"成效

⁹ 《眾議院議員利益衝突守則》，第28條

不彰”。¹⁰報告亦指出，專員辦事處“並非法庭”，調查程序只屬查問而非對抗性質，更談不上是審訊。專員會制訂與法律代表有關的指引，以改善調查程序的效率。

處分

26. 專員可透過3類行動執行《利益衝突法》：施加行政罰款¹¹；發出遵行令¹²；以及進行審查，並提出相應建議。此等處分並無在《守則》內訂明。

27. 《利益衝突法》容許專員就公職人員不符合若干匯報規定而施加最高500加元行政罰款。此等匯報規定包括：公職人員須在履新後的60天內提交披露個人資料的保密報告，並在履新後的120天內完成與保密報告有關的公開申報程序。如在若干情況下，議員沒有在指定限期內作出申報，可被施加罰則。此等情況包括在保密報告的內容有重大改變時沒有作出申報；接受饋贈或其他利益；提供或接受外間工作及作出婉拒。罰則制度的摘要載於**附錄II**。

28. 在2009-2010年度，專員曾發出6項違規通知，並曾就有關通知處以5項行政罰款。當中3項通知涉及議員未能在60天內提交披露個人資料的初步保密報告，兩項涉及議員未能在保密報告中初步披露所需的資料，一項涉及議員在個人資料有重大改變時，未能在30天內報告。¹³

29. 《利益衝突法》賦權專員可公開發出遵行令。實際上，遵行令是公開聲明，旨在表述專員相信公職人員不遵從《利益衝突法》。

專員的調查活動

30. 在2009-2010年度，專員根據《利益衝突法》進行了5次審查，並須為其中3次發出報告，其餘兩宗個案則終止審查。關於根據《守則》展開研訊的個案，專員接獲63項獨立提出的要求，共有60位議員被指違反《利益衝突法》及《守則》。同期，專員亦匯報分別根據《利益衝突法》及《守則》處理另外5宗及

¹⁰ 2009-2010年度年報，關於《眾議院議員利益衝突守則》，第16頁

¹¹ 《利益衝突法》，第52條

¹² 同上，第53條

¹³ 2009-2010年度年報，關於《議員利益衝突法》的部分

8宗個案；專員基於此等個案缺乏理據而沒有展開審查或研訊。

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專員的財政預算

31. 專員辦事處聘有46名職員，他們具備各種專長，包括合規、調查、法律服務、傳訊、國會關係及企業管理等方面。辦事處的組織圖載於**附錄III**。在2009-2010年度，辦事處的開支為5,528,000加元，另加951,000加元，後者是辦事處在執行職務時獲提供免費服務的成本。由2008-2009年度起，辦事處的預算維持在710萬加元的水平，當中74%用作支付薪金，而餘下的款項則用作支付其他運作成本。¹⁵

專員面對的挑戰

32. 現任專員因在若干情況下作出不跟進某些個案的決定而引來議員關注。

33. 專員作出有關決定後，傳媒報道公眾擔心專員的法律背景可能導致她採用狹窄及技術性的觀點進行調查。¹⁶現任專員於2010年4月向眾議院一個委員會作供時表示，專員辦事處面對的最大挑戰，是回應外界對辦事處工作的質疑。她表示："最大的挑戰之一，是令人信納我們確實正在調查應該調查的事情，令人信納我們克盡厥職，努力不懈。"¹⁷她其後詳細解釋為何公眾以為她"沒有認真處理要求"，或在提交國會的報告中"偏袒某人或某政黨"¹⁸。她指出，問題的癥結所在，是她無法透露為何在初步評估調查要求後不繼續處理個案。

34. 根據《守則》，專員不能公開發表與初步研究或研訊有關的言論，只能確認接獲要求或有否展開初步研究或研訊。《利益衝突法》並無明確訂明這方面的規定，但當中載有條文要求專員在發表報告前須以保密方式進行審查。

¹⁴ 2009-2010年度年報，關於《議員利益衝突法》的部分

¹⁵ 2009-2010年度年報，關於《眾議院議員利益衝突守則》的部分

¹⁶ *Ethics czar Mary Dawson stands by cautious approach*, Globe and Mail, 2006年4月26日

¹⁷ 2010年4月22日的證供，公開資料常務委員會(Standing Committee on Access to Information), Privacy and Ethics。

¹⁸ 2009-2010年度年報，關於《議員利益衝突法》，第21頁

專員辦事處成立的經過

35. 過去10年，加拿大國會在設立處理利益衝突制度的過程中，曾遇到種種挑戰。首位操守標準事務專員Bernard Shapiro是一位學者，他在2004年聯邦選舉前獲委任此職。當時，他須擬備各式表格及籌備新設的辦事處，以便在下一個會期處理議員的事務。在其後兩年，操守標準事務專員曾處理4宗研訊個案，但其中兩宗個案的涉案議員證實清白。該專員在處理另一宗投訴時，涉案的議員提出特權議題。程序及內政事務常務委員會其後裁定操守標準事務專員藐視眾議院，因為他沒有依循正確的程序進行《守則》所訂的研訊，包括在調查進行期間向傳媒發表與個案有關的言論。¹⁹

36. 程序及內政事務常務委員會批評操守標準事務專員並未充分瞭解《守則》的條文，而其辦事處亦沒有悉心確保遵從條文的文義及精神。在此之後，操守標準事務專員在任內曾與議員及政府發生若干衝突。他曾於2006年3月調查加拿大總理Stephen Harper被指涉及利益衝突一事，其後總理的傳訊主任發表以下聲明："總理不願意與決定能力曾受質疑和被指藐視眾議院的人合作。"²⁰ 外界亦關注到，在操守標準事務專員進行調查期間，程序及內政事務常務委員會究竟獲悉多少資料。²¹

37. 加拿大國會於2007年全面改革有關制度，最後成立了專員辦事處。

內部經濟委員會

38. 《守則》第6條具體訂明，凡納入內部經濟委員會(Board of Internal Economy)(下稱"委員會")職權範圍的事項，一律豁除在該條的規定之外。²² 實際上，這表示儘管專員有權處理利益衝突的事宜，但他與英國國會標準事務專員不同，無權處理有關議員不當使用津貼或國會設施的事項。

¹⁹ 程序及內政事務常務委員會第五十一份報告，2005年11月

²⁰ *Harper "loath" to co-operate with ethics commissioner*, 加拿大廣播公司，2006年3月3日

²¹ 程序及內政事務常務委員會第五十一份報告，2005年11月

²² 第6條述明："本《守則》不影響眾議院內部經濟委員會在決定議員是否適當使用可供其用的資金、貨品、服務或處所以履行其國會職務及職能方面的職權範圍"。

委員會的職能

39. 根據《加拿大國會法》(Parliament of Canada Act)，委員會獲授專屬的管轄權，可決定議員過往、現時或建議使用向其提供的資金、貨品、服務或處所以履行其國會職能是否恰當，²³ 以及使用的情況是否符合委員會所訂的附例、政策及指引。

40. 委員會是眾議院的監管組織，負責就眾議院有關處所、服務、職員及議員的財政及行政事務作決定，並就此等事務提供指引。

41. 委員會成員包括議長(出任主席)、兩名樞密院成員(由政府委任加入委員會)、反對黨黨魁或其代表，以及其他議員。在成員組合方面，必須確保政府與反對黨代表的人數達致整體平衡(不計議長)。眾議院秘書負責向議長匯報，亦是委員會秘書。

42. 委員會以不分黨派為基礎作出決定。所有獲確認政黨(即在眾議院持有最少12個席位的政黨)均可委派代表加入委員會。

就使用資金及服務向議員提供意見

43. 根據《加拿大國會法》第52.6(2)條，議員可向委員會申請就該議員為履行國會職能而使用向其提供的資金、貨品、服務或處所提供意見。

調查

44. 執法機關有權調查議員可能不當使用提供予他們的資金及相關服務的個案。在調查時，執法人員可要求委員會提供意見，協助他們瞭解有關用途是否恰當。委員會在回應時，可詮釋現行附例或規例，倘若沒有相關的附例或規例，委員會亦可研究個案。同樣地，委員會可主動向執法人員提供意見。²⁴ 執法人員如在聽取委員會的意見後申請展開刑事程序(例如向法庭申請手令蒐集證據)，他們有責任向省級法院法官出示該等意見。²⁵

45. 過往，委員會曾向被發現不當使用津貼的議員發出命令，指示他們向聯邦政府退還有關款項。

²³ 《加拿大國會法》，第52.6(1)條

²⁴ 《加拿大國會法》，第52.7(1)條

²⁵ 同上，第52.7(2)至52.7(4)條

專員與委員會的關係

46. 雖然《守則》規定專員不能調查議員可能不當使用資金及服務的個案，但現任專員過往曾駁回一位接受研訊的議員據此根據《守則》提出的反對。專員特別指出，由於她在進行研訊時採用"概括的方式"，故此，"內部經濟委員會會否根據其職權範圍阻止專員辦事處調查引起利益衝突問題的事宜，值得懷疑。"²⁶

徵詢意見

47. 謹請委員察悉上述資料。

立法會秘書處
議會事務部
2011年5月18日

²⁶ 《有關支票的報告：在聯邦政府籌款公布中，在儀式支票上採用政黨或個人標誌或其他工具》(The Cheques Report: The use of partisan or personal identifiers on ceremonial cheques or other props for federal funding announcements)，2010年4月29日，第12頁

APPENDIX

**CONFLICT OF INTEREST CODE
FOR MEMBERS OF
THE HOUSE OF COMMONS**

Purposes

- 1. The purposes of this Code are to
 - (a) maintain and enhance public confidence and trust in the integrity of Members as well as the respect and confidence that society places in the House of Commons as an institution;
 - (b) demonstrate to the public that Members are held to standards that place the public interest ahead of their private interests and to provide a transparent system by which the public may judge this to be the case;
 - (c) provide for greater certainty and guidance for Members in how to reconcile their private interests with their public duties and functions; and
 - (d) foster consensus among Members by establishing common standards and by providing the means by which questions relating to proper conduct may be answered by an independent, non-partisan adviser.

Principles

- 2. Given that service in Parliament is a public trust, the House of Commons recognizes and declares that Members are expected
 - (a) to serve the public interest and represent constituents to the best of their abilities;
 - (b) to fulfill their public duties with honesty and uphold the highest standards so as to avoid real or apparent conflicts of interests, and maintain and enhance public confidence and trust in the integrity of each Member and in the House of Commons;
 - (c) to perform their official duties and functions and arrange their private affairs in a manner that bears the closest public scrutiny, an obligation that may not be fully discharged by simply acting within the law;
 - (d) to arrange their private affairs so that foreseeable real or apparent conflicts of interest may be prevented from arising, but if such a conflict does arise, to resolve it in a way that protects the public interest; and
 - (e) not to accept any gift or benefit connected with their position that might reasonably be seen to compromise their personal judgment or integrity except in accordance with the provisions of this Code.

[Sect.2.]

Interpretation

Definitions.

"all-party caucus"
« caucus multipartite »
"benefit"
« avantage ».

3. (1) The following definitions apply in this Code.

"all-party caucus" means a caucus open to all political parties.

"benefit" means

(a) an amount of money if there is no obligation to repay it; and

(b) a service or property, or the use of property or money that is provided without charge or at less than its commercial value, other than a service provided by a volunteer working on behalf of a Member;

but does not include a benefit received from a riding association or a political party.

"Commissioner"
« commissaire »

"Commissioner" means the Conflict of Interest and Ethics Commissioner appointed under section 81 of the *Parliament of Canada Act*.

"common-law partner"
« conjoint de fait ».

"common-law partner", with respect to a Member, means a person who is cohabiting with the Member in a conjugal relationship, having so cohabited for a period of at least one year.

"spouse"
« époux ».

"spouse", with respect to a Member, does not include a person from whom the Member is separated where all support obligations and family property have been dealt with by a separation agreement or by a court order.

Furthering private interests.

(2) Subject to subsection (3), a Member is considered to further a person's private interests, including his or her own private interests, when the Member's actions result, directly or indirectly, in any of the following

(a) an increase in, or the preservation of, the value of the person's assets;

(b) the extinguishment, or reduction in the amount, of the person's liabilities;

(c) the acquisition of a financial interest by the person;

(d) an increase in the person's income from a source referred to in subsection 21(2);

(e) the person becoming a director or officer in a corporation, association or trade union; and

(f) the person becoming a partner in a partnership.

Not furthering private interests.

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

(a) is of general application;

[Sect. 3.(3)]

(b) affects the Member or the other person as one of a broad class of the public;

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

(c) concerns the remuneration or benefits of the Member as provided under an Act of Parliament.

Family members.

(4) The following are the members of a Member's family for the purposes of this Code:

(a) the Member's spouse or common-law partner; and

(b) a son or daughter of the Member, or a son or daughter of the Member's spouse or common-law partner, who has not reached the age of 18 years or who has reached that age but is primarily dependent on the Member or the Member's spouse or common-law partner for financial support.

Interpretation: purposes and principles.

3.1 In interpreting and applying Members' obligations under this Code, the Commissioner may have regard to the purposes and principles in sections 1 and 2.

Application

Application to Members.

4. The provisions of this Code apply to conflicts of interest of all Members of the House of Commons when carrying out the duties and functions of their office as Members of the House, including Members who are ministers of the Crown or parliamentary secretaries.

Assisting constituents.

5. A Member does not breach this Code if the Member's activity is one in which Members normally and properly engage on behalf of constituents.

Jurisdiction of the Board of Internal Economy.

6. Nothing in this Code affects the jurisdiction of the Board of Internal Economy of the House of Commons to determine the propriety of the use of any funds, goods, services or premises made available to Members for carrying out their parliamentary duties and functions.

Activities outside Parliament.

7. Nothing in this Code prevents Members who are not ministers of the Crown or parliamentary secretaries from any of the following, as long as they are able to fulfill their obligations under this Code:

(a) engaging in employment or in the practice of a profession;

(b) carrying on a business;

(c) being a director or officer in a corporation, association, trade union or non-profit organization; and

(d) being a partner in a partnership.

Rules of Conduct

Furthering private interests.

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

Using influence.

9. A Member shall not use his or her position as a Member to influence a decision of another person so as to further the Member's private interests or those of a member of his or her family, or to improperly further another person's or entity's private interests.

Insider information.

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

Information not to be communicated.

(2) A Member shall not communicate information referred to in subsection (1) to another person if the Member knows, or reasonably ought to know, that the information may be used to further the Member's private interests or those of a member of his or her family, or to improperly further another person's or entity's private interests.

Attempts.

11. A Member shall not attempt to engage in any of the activities prohibited under sections 8 to 10.

Disclosure of a private interest: House and committee.

12. (1) A Member who has a private interest that might be affected by a matter that is before the House of Commons or a committee of which the Member is a member shall, if present during consideration of the matter, disclose orally or in writing the general nature of the private interest at the first opportunity. The general nature of the private interest shall be disclosed forthwith in writing to the Clerk of the House.

Subsequent disclosure.

(2) If a Member becomes aware at a later date of a private interest that should have been disclosed in the circumstances of subsection (1), the Member shall make the required disclosure forthwith.

Disclosure recorded.

(3) The Clerk of the House shall cause the disclosure to be recorded in the *Journals* and shall send the disclosure to the Commissioner, who shall file it with the Member's public disclosure documents.

Disclosure of a private interest: other circumstances.

(4) In any circumstances other than those in subsection (1) that involve the Member's parliamentary duties and functions, a Member who has a private interest that might be affected shall disclose orally or in writing the general nature of the private interest at the first opportunity to the party concerned. The Member shall also file a notice in writing concerning the private interest with the Commissioner, who shall file it with the Member's public disclosure documents.

Debate and voting. **13.** A Member shall not participate in debate or vote on a question in which he or she has a private interest.

Private interest. **13.1** For the purpose of sections 12 and 13, "private interest" means those interests that can be furthered in subsection 3(2), but does not include the matters listed in subsection 3(3).

Prohibition: gifts and other benefits. **14.** (1) Neither a Member nor any member of a Member's family shall accept, directly or indirectly, any gift or other benefit, except compensation authorized by law, that might reasonably be seen to have been given to influence the Member in the exercise of a duty or function of his or her office.

(1.1) For greater certainty, subsection (1) applies to gifts or other benefits:

(a) related to attendance at a charitable or political event; and

(b) received from an all-party caucus established in relation to a particular subject or interest.

Exception. (2) Despite subsection (1), a Member or a member of a Member's family may accept gifts or other benefits received as a normal expression of courtesy or protocol, or within the customary standards of hospitality that normally accompany the Member's position.

Statement: gift or other benefit. (3) If gifts or other benefits that are related to the Member's position are accepted under this section and have a value of \$500 or more, or if the total value of all such gifts or benefits received from one source in a 12-month period is \$500 or more, the Member shall, within 60 days after receiving the gifts or other benefits, or after that total value is exceeded, file with the Commissioner a statement disclosing the nature of the gifts or other benefits, their source and the circumstances under which they were given.

Exception. (4) Any disclosure made pursuant to the requirements of section 15 does not need to be disclosed as a gift or other benefit under subsection (3).

Sponsored travel. **15.** (0.1) Despite subsection 14(1), a Member may accept, for the Member and guests of the Member, sponsored travel that arises from or relates to his or her position.

Statement: sponsored travel. (1) If travel costs exceed \$500 and those costs are not wholly or substantially paid from the Consolidated Revenue Fund or by the Member personally, his or her political party or any interparliamentary association or friendship group recognized by the House, the Member shall, within 60 days after the end of the trip, file a statement with the Commissioner disclosing the trip.

Content of statement. (2) The statement shall disclose the name of the person or organization paying the travel costs, the name of any person accompanying the Member, the destination or destinations, the purpose and length of the trip, the nature of the benefits received and the value, including supporting documents for transportation and accommodation.

Publication. (3) By March 31 of each year, the Commissioner shall prepare a list of all sponsored travel for the previous calendar year, including the details set out in subsection (2), and the Speaker shall lay the list upon the Table when the House next sits.

Government contracts. **16.** (1) A Member shall not knowingly be a party, directly or through a subcontract, to a contract with the Government of Canada or any federal agency or body under which the Member receives a benefit unless the Commissioner is of the opinion that the contract is unlikely to affect the Member's obligations under this Code.

Clarification. (2) A Member may participate in a program operated or funded, in whole or in part, by the Government of Canada under which the Member receives a benefit if

(a) the Member meets the eligibility requirements of the program;

(b) the Member does not receive any preferential treatment with respect to his or her participation; and

(c) the Member does not receive any special benefit not available to other participants.

Public corporations. **17.** (1) A Member is not prohibited from owning securities in a public corporation that contracts with the Government of Canada unless the Commissioner is of the opinion that the size of the holdings is so significant that it is likely to affect the Member's obligations under this Code.

Trust. (2) If the Commissioner is of the opinion that the Member's obligations under this Code are likely to be affected under the circumstances of subsection (1), the Member may comply with the Code by placing the securities in a trust under such terms established in section 19 as the Commissioner considers appropriate.

Partnerships and private corporations. **18.** A Member shall not have an interest in a partnership or in a private corporation that is a party, directly or through a subcontract, to a contract with the Government of Canada under which the partnership or corporation receives a benefit unless the Commissioner is of the opinion that the interest is unlikely to affect the Member's obligations under this Code.

Pre-existing contracts. **19.** (1) Sections 16 and 18 do not apply to a contract that existed before the Member's election to the House of Commons, but they do apply to its renewal or extension.

Trust.

(2) Section 18 does not apply if the Member has entrusted his or her interest in a partnership or in a private corporation that is a party to a contract with the Government of Canada under which the partnership or corporation receives a benefit to one or more trustees on all of the following terms:

- (a) the provisions of the trust have been approved by the Commissioner;
- (b) the trustees are at arm's length from the Member and have been approved by the Commissioner;
- (c) the trustees may not consult with the Member with respect to managing the trust, but they may consult with the Commissioner;
- (d) the trustees may, however, consult with the Member, with the approval of the Commissioner and in his or her presence if an extraordinary event is likely to materially affect the trust property;
- (e) in the case of an interest in a corporation, the Member shall resign any position of director or officer in the corporation;
- (f) the trustees shall provide the Commissioner with a written annual report at the same time as the Member files his or her annual disclosure statement setting out the nature of the trust property, the value of that property, the trust's net income for the preceding year and the trustees' fees, if any; and
- (g) the trustees shall give the Member sufficient information to permit the Member to submit returns as required by the *Income Tax Act* and give the same information to the Canada Customs and Revenue Agency.

(3) Sections 16 to 18 do not apply to an interest acquired by inheritance until the first anniversary date of the acquisition.

20. (1) A Member shall, within 60 days after the notice of his or her election to the House of Commons is published in the *Canada Gazette*, and annually on or before a date established by the Commissioner, file with the Commissioner a full statement disclosing the Member's private interests and the private interests of the members of the Member's family.

(2) Information relating to the private interests of the members of the Member's family shall be to the best of the Member's knowledge, information and belief. The Member shall make reasonable efforts to determine such information.

(3) The Commissioner shall keep the statement confidential.

21. (1) The statement shall

- (a) identify and state the value of each asset or liability of the Member and the members of the Member's family that;

(i) in the case of a credit card balance, exceeds \$10,000 and has been outstanding for more than six months;

(ii) in all other cases, exceeds \$10,000;

(b) state the amount and indicate the source of any income greater than \$1,000 that the Member and the members of the Member's family have received during the preceding 12 months and are entitled to receive during the next 12 months;

(b.1) Notwithstanding paragraph (b), every Member shall disclose to the Commissioner every trust known to the Member from which he or she could, currently or in the future, either directly or indirectly, derive a benefit or income;

(c) state all benefits that the Member and the members of the Member's family, and any private corporation in which the Member or a member of the Member's family has an interest, have received during the preceding 12 months, and those that the Member and the members of the Member's family or corporation are entitled to receive during the next 12 months, as a result of being a party, directly or through a subcontract, to a contract with the Government of Canada, and describe the subject-matter and nature of each such contract or subcontract;

(c.1) For the purpose of paragraph (1)(c), benefits include compensation resulting from expropriation by the Government of Canada;

(d) if the statement mentions a private corporation,

(i) include any information about the corporation's activities and sources of income that the Member is able to obtain by making reasonable inquiries,

(ii) state the names of any other corporations with which that corporation is affiliated, and

(iii) list the names and addresses of all persons who have an interest in the corporation;

(iv) list the real property or immovables owned by the private corporation.

(e) list the directorships or offices in a corporation, trade or professional association or trade union held by the Member or a member of the Member's family and list all partnerships in which he or she or a member of his or her family is a partner; and

(f) include any other information that the Commissioner may require.

(2) For the purposes of paragraph (1)(b), a source of income is

Source of income.

Statement: material change.	<p>(a) in the case of income from employment, the employer;</p> <p>(b) in the case of income from a contract, the party with whom the contract is made; and</p> <p>(c) in the case of income arising from a business or profession, that business or profession.</p>	Items not to be disclosed.	(3) The following shall not be set out in the summary:
Meeting with the Commissioner.	<p>(3) The Member shall file a statement reporting any material change to the information required under subsection (1) to the Commissioner within 60 days after the change.</p>		(a) an asset or liability with a value of less than \$10,000;
Disclosure summary.	<p>22. After reviewing a Member's statement filed under section 20 or subsection 21(3), the Commissioner may require that the Member meet with the Commissioner, and may request the attendance of any of the members of the Member's family, if available, to ensure that adequate disclosure has been made and to discuss the Member's obligations under this Code.</p>		(b) a source of income of less than \$10,000 during the 12 months before the relevant date;
Public inspection.	<p>23. (1) The Commissioner shall prepare a disclosure summary based on each Member's statement filed under section 21 and submit it to the Member for review.</p>		(c) real property or immovables that the Member uses as a principal residence or uses principally for recreational purposes;
Content of disclosure summary.	<p>(2) Each summary is to be placed on file at the office of the Commissioner and made available for public inspection during normal business hours, and posted on the website of the Commissioner. Each summary shall also be available to the public, on request, by fax or mail.</p>		(d) personal property or movable property that the Member uses primarily for transportation, household, educational, recreational, social or aesthetic purposes;
Categorization of interests.	<p>24. (1) The summary shall</p> <p>(a) subject to subsection (3), set out the source and nature, but not the value, of the income, assets and liabilities referred to in the Member's statement filed under section 20;</p> <p>(b) identify any contracts or subcontracts referred to in paragraph 21(1)(c) and describe their subject-matter and nature;</p> <p>(c) list the names of any affiliated corporations referred to in that statement;</p> <p>(d) include a copy of any statements of disclosure filed by the Member under subsections 14(3), 15(1) and 21(3);</p> <p>(e) list the positions and corporations, trade or professional associations and trade unions disclosed under paragraph 21(1)(e); and</p> <p>(f) list any trusts disclosed under paragraph 21(1)(b.1).</p> <p>(2) An interest in a partnership or corporation may be qualified in the summary by the word "nominal", "significant" or "controlling" if, in the opinion of the Commissioner, it is in the public interest to do so.</p>	Evasion.	(e) cash on hand or on deposit with a financial institution that is entitled to accept deposits;
			(f) fixed-value securities issued or guaranteed by a government or by a government agency;
			(g) a registered retirement savings plan that is not self-administered or self-directed;
			(h) investments in a registered retirement savings plan that is self-administered or self-directed that would not be publicly disclosed under this section if held outside the plan;
			(i) an interest in a pension plan, employee benefit plan, annuity or life insurance policy;
			(j) an investment in an open-ended mutual fund;
			(k) a guaranteed investment certificate or similar financial instrument;
			(k.1) any information relating to the place or manner of employment of a son or daughter of the Member, or a son or daughter of the Member's spouse or common-law partner; and
			(l) any other asset, liability or source of income that the Commissioner determines should not be disclosed because
			(i) the information is not relevant to the purposes of this Code, or
			(ii) a departure from the general principle of public disclosure is justified in the circumstances.
			25. A Member shall not take any action that has as its purpose the circumvention of the Member's obligations under this Code.

Opinions

Request for opinion. 26. (1) In response to a request in writing from a Member on any matter respecting the Member's obligations under this Code, the Commissioner shall provide the Member with a written opinion containing any recommendations that the Commissioner considers appropriate.

Confidentiality. (2) The opinion is confidential and may be made public only by the Member, with his or her written consent or if the Member has made the opinion public.

Opinion binding. (3) An opinion given by the Commissioner to a Member is binding on the Commissioner in relation to any subsequent consideration of the subject-matter of the opinion so long as all the relevant facts that were known to the Member were disclosed to the Commissioner.

Publication. (4) Nothing in this section prevents the Commissioner from publishing opinions for the guidance of Members, provided that no details are included that could identify the Member.

Timely response. (5) In this section and in any other situation in which a Member seeks an opinion from the Commissioner, the Commissioner shall provide the opinion in a timely manner.

Inquiries

Request for an inquiry. 27. (1) A Member who has reasonable grounds to believe that another Member has not complied with his or her obligations under this Code may request that the Commissioner conduct an inquiry into the matter.

Form of request. (2) The request shall be in writing, signed, and shall identify the alleged non-compliance and set out the reasonable grounds for that belief.

Direction by the House. (3) The House may, by way of resolution, direct the Commissioner to conduct an inquiry to determine whether a Member has complied with his or her obligations under this Code.

Notice. (3.1) The Commissioner shall forward without delay the request for an inquiry to the Member who is the subject of the request and afford the Member 30 days to respond.

Preliminary review. (3.2) The Commissioner shall:

(a) conduct a preliminary review of the request and the response to determine if an inquiry is warranted; and

(b) notify in writing both Members of the Commissioner's decision within 15 working days of receiving the response.

Initiative of Commissioner. (4) If, after giving the Member concerned written notice and 30 days to respond to the Commissioner's concerns, the Commissioner has reasonable grounds to believe that a Member has not complied with his or her obligations under this Code, the Commissioner may, on his or her own initiative, conduct an inquiry to determine whether the Member has complied with his or her obligations under this Code.

Public comments. (5.1) Other than to confirm that a request for an inquiry has been received, or that a preliminary review or inquiry has commenced, or been completed, the Commissioner shall make no public comments relating to any preliminary review or inquiry.

Non-meritorious requests. (6) If the Commissioner is of the opinion that a request for an inquiry was frivolous or vexatious or was not made in good faith, the Commissioner shall so state in dismissing the request in a report under section 28(6) and may recommend that further action be considered against the Member who made the request.

Inquiry to be private. (7) The Commissioner shall conduct an inquiry in private and with due dispatch, provided that at all appropriate stages throughout the inquiry the Commissioner shall give the Member reasonable opportunity to be present and to make representations to the Commissioner in writing or in person by counsel or by any other representative.

Cooperation. (8) Members shall cooperate with the Commissioner with respect to any inquiry.

Report to the House. 28. (1) Forthwith following an inquiry, the Commissioner shall report to the Speaker, who shall present the report to the House when it next sits.

Report to be public. (2) The report of the Commissioner shall be made available to the public upon tabling in the House, or, during a period of adjournment or prorogation, upon its receipt by the Speaker.

Report after dissolution. (3) During the period following a dissolution of Parliament, the Commissioner shall make the report public.

No contravention. (4) If the Commissioner concludes that there was no contravention of this Code, the Commissioner shall so state in the report.

Mitigated contravention. (5) If the Commissioner concludes that a Member has not complied with an obligation under this Code but that the Member took all reasonable measures to prevent the non-compliance, or that the non-compliance was trivial or occurred through inadvertence or an error in judgment made in good faith, the Commissioner shall so state in the report and may recommend that no sanction be imposed.

Sanctions. (6) If the Commissioner concludes that a Member has not complied with an obligation under this Code, and that none of the circumstances in subsection (5) apply, or is of the opinion that a request for an inquiry was frivolous or vexatious or was not made in good faith, the Commissioner shall so state in the report and may recommend appropriate sanctions.

Reasons. (7) The Commissioner shall include in the report reasons for any conclusions and recommendations.

General recommendations. (8) The Commissioner may include in his or her report any recommendations arising from the matter that concern the general interpretation of this Code and any recommendations for revision of this Code that the Commissioner considers relevant to its purpose and spirit.

Right to speak. (9) Within 10 sitting days after the tabling of the report of the Commissioner in the House of Commons, the Member who is the subject of the report shall have a right to make a statement in the House immediately following Question Period, provided that he or she shall not speak for more than 20 minutes.

Deemed concurrence. (10) A motion to concur in a report referred to in subsection (4) or (5) may be moved during Routine Proceedings. If no such motion has been moved and disposed of within 30 sitting days after the day on which the report was tabled, a motion to concur in the report shall be deemed to have been moved and adopted at the expiry of that time.

Report to be considered. (11) A motion respecting a report referred to in subsection (6) may be moved during Routine Proceedings, when it shall be considered for no more than two hours, after which the Speaker shall interrupt any proceedings then before the House and put forthwith and successively, without further debate or amendment, every question necessary to dispose of the motion. During debate on the motion, no Member shall speak more than once or longer than ten minutes.

Vote. (12) If no motion pursuant to subsection (11) has been previously moved and disposed of, a motion to concur in the report shall be deemed to have been moved on the 30th sitting day after the day on which the report was tabled, and the Speaker shall immediately put every question necessary to dispose of the motion.

Referral back. (13) At any point before the House has dealt with the report, whether by deemed disposition or otherwise, the House may refer it back to the Commissioner for further consideration, with instruction.

Suspension of inquiry. 29.(1) The Commissioner shall immediately suspend the inquiry into a matter if

(a) there are reasonable grounds to believe that the Member has committed an offence under an Act of Parliament, in which case the Commissioner shall notify the proper authorities of the Commissioner's belief; or

(b) it is discovered that:

(i) the act or omission under investigation is also the subject of an investigation to determine if an offence under an Act of Parliament has been committed, or

(ii) a charge has been laid with respect to that act or omission.

(2) The Commissioner shall not continue his or her inquiry until the other investigation or the charge regarding the act or omission has been finally disposed of.

Inquiry continued.

Guidelines and forms.

Tabling.

Confidential until tabled.

Retention of documents.

Confidentiality.

Educational activities.

Committee review.

Part of the Standing Orders.

Miscellaneous

30.(1) The Commissioner shall submit any proposed procedural and interpretative guidelines and all forms relating to the Code to the Standing Committee on Procedure and House Affairs for approval.

(2) Any guidelines and forms approved by the Committee shall be reported to the House and shall come into effect when the report is concurred in by the House.

(3) Until the guidelines and forms are reported to the House, they shall remain confidential.

31. The Commissioner shall retain all documents relating to a Member for a period of 12 months after he or she ceases to be a Member, after which the documents shall be destroyed unless there is an inquiry in progress under this Code concerning them or a charge has been laid against the Member under an Act of Parliament and the documents may relate to that matter.

31.1 Except as otherwise ordered by the House or a court, or as required for the purposes of this Code, the Commissioner shall keep confidential documents and information received pursuant to this Code, including documents and information received in the course of an inquiry that the Commissioner suspended in accordance to paragraph 29(1)(a) or documents and information referred to in section 31.

32. The Commissioner shall undertake educational activities for Members and the general public regarding this Code and the role of the Commissioner.

33. The Standing Committee on Procedure and House Affairs shall, within every five-year period following the preceding comprehensive review, undertake a comprehensive review of the provisions and operation of this Code, and shall submit a report thereon, including a statement of any changes the Committee recommends.

34. This Code shall form part of the Standing Orders of the House of Commons.

CONFLICT OF INTEREST ACT

SUMMARY OF ADMINISTRATIVE MONETARY PENALTIES REGIME

The Office of the Conflict of Interest and Ethics Commissioner has prepared this summary as a quick reference only; the Act itself is the final authority.

November 2008

Reporting Public Office Holders who fail to comply with certain sections of the *Conflict of Interest Act* may be subject to administrative monetary penalties. These are imposed by the Conflict of Interest and Ethics Commissioner following a process set out in sections 52 to 62 of the Act. The process for the application of an administrative monetary penalty can be initiated up to five years after the Commissioner becomes aware of the alleged violation.

An administrative monetary penalty is not to exceed \$500 and is intended to encourage compliance rather than to punish. The following is a list of all provisions for which penalties could be imposed.

Section	Initial compliance with the <i>Act</i> on appointment	Deadline
	<u>Confidential Disclosures to the Commissioner</u>	
22(1)	Filing of <i>Confidential Report</i>	60 days after appointment
22(2)	Completeness and accuracy of <i>Confidential Report</i>	--
27(7)	Confirmation of divestment	120 days after appointment
	<u>Public declarations</u>	
25(2)	Non-controlled, non-exempt assets	120 days after appointment
25(4)	Outside activities as an officer or director	120 days after appointment
26(1)	Signing of <i>Summary Statement</i>	120 days after appointment
26(2)	Completeness and accuracy of <i>Summary Statement</i>	--
25(3)	Liabilities of \$10,000 or more (<i>Ministers, Ministers of State and Parliamentary Secretaries only</i>)	120 days after appointment
Section	Ongoing compliance with <i>Act</i>	Deadline
	<u>Confidential Disclosures to the Commissioner</u>	
22(5)	Material change to <i>Confidential Report</i>	30 days after change
23	Multiple gifts from one source with a cumulative value of over \$200 in a 12-month period	30 days after the total cumulative value exceeds \$200
24(1)	Firm offers of outside employment	7 days after offer
24(2)	Acceptance of offer of outside employment	7 days after acceptance
	<u>Public declarations</u>	
25(5)	Gifts with a value of over \$200	30 days after receipt
25(1)	Recusals	60 days from recusal
25(6)	Travel on non-commercial chartered or private aircraft (<i>Ministers, Ministers of State, Parliamentary Secretaries and Ministerial staff only</i>)	30 days after acceptance

Process for determining penalties

The Conflict of Interest and Ethics Commissioner reviews the circumstances around the possible violation (subsection 53(1)).

If the Commissioner believes on reasonable grounds that a Reporting Public Office Holder has committed a violation she may issue a *Notice of Violation*, along with a proposed penalty (subsections 53(1) and (2)).

The decision on whether or not to propose a penalty and the amount of the penalty will depend on the nature of the violation, whether there have been prior violations by the Reporting Public Office Holder in the previous five-years and any other relevant matter. The amount of the penalty, which may not exceed \$500, is set with a view to encouraging compliance rather than punishment (subsection 53(3)).

The Reporting Public Office Holder has 30 days in which to pay the penalty or to make written representations to the Commissioner (paragraph 53(2)(d)).

Where representations are made, the Commissioner may determine that the Act has not been violated or may impose, reduce or eliminate any penalty originally proposed. The Commissioner will notify the Reporting Public Office Holder of her decision (section 56).

Where a penalty is imposed, payment is to be made payable to the Receiver General of Canada via certified cheque or money order. The nature of the violation, the name of the Reporting Public Office Holder and the amount of the penalty will be made public by the Commissioner (section 62). This will be done by placing the information on the Conflict of Interest and Ethics Commissioner's Web site.

Organisation Chart of CIEC

