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Paper for Committee on Members' Interests meeting on 20 May 2011

Mechanism for investigation of complaints relating to registration and disclosure of Members' interests and use of Members' allowance in Canada

Purpose

This paper provides further information on the mechanism in the House of Commons of the Canadian Parliament for investigating complaints in relation to the registration and disclosure of Members' interests and use of Members' allowance.

Background

2. To provide reference for the Committee on Members' Interests ("CMI") in considering the way forward in improving the current system on registration and disclosure of interest by Members, the Legislative Council Secretariat earlier conducted a research study on the requirements and related arrangements for the registration and disclosure of Members' interests in selected overseas legislatures.

3. At the CMI meeting on 7 January 2011, members were briefed on the research report on the requirements and related arrangements for the registration and disclosure of interest of Members of Parliaments in the United Kingdom ("UK"), Australia, Canada, New Zealand and Singapore and how complaints on such matters are dealt with (RP2/10-11). Members noted that in UK, complaints against registration and disclosure of interests as well as use of Members' allowance and in the case of Canada, the registration and disclosure of interests, are handled by an independent officer, i.e. the Parliamentary Commissioner for Standards and the Conflict of Interest and Ethics

Commissioner respectively. Members requested the Secretariat to provide further information about the work of the two Commissioners.

4. Information about the work of the Canadian Conflict of Interest and Ethics Commissioner (“CIEC”) is set out in this paper, while that of the Parliamentary Commissioner for Standards is set out in a separate paper (LC Paper No. CMI 93/10-11).

Conflict of Interest Code for Members of the House of Commons and Conflict of Interest Act

5. The Conflict of Interest Code for Members of the House of Commons (“the Code”)(**Appendix I**) is an appendix to the Standing Orders of the House. It sets out the rules on conflict of interest for Members, process for the confidential disclosure of personal information to CIEC, procedures for making Members’ information public, roles of CIEC, and process for the conduct of inquiries for alleged contraventions of rules of Members.

6. Pursuant to the Standing Orders, the Standing Committee on Procedure and Home Affairs has the mandate to review and report on all matters relating to the Code and the annual report of CIEC with respect to his or her responsibilities for issues related to Members’ conduct governed by the Code. In addition, the Committee is charged with the responsibility for undertaking a comprehensive review of the Code’s provisions and operations every five years.

7. The Conflict of Interest Act (“the Act”), which applies to public office holders including ministers and parliamentary secretaries and other government appointees, overlaps with the Code when CIEC investigates alleged conflict of interest cases since ministers and parliamentary secretaries are also Members of the House.¹

Key responsibilities of the Conflict of Interest and Ethics Commissioner

8. The current CIEC was created after the Act, which came into effect on July 2008, replaced the Conflict of Interest and Post-Employment Code for Public Officer Holders in 2006. With the

¹ The provisions of the Act apply to Cabinet ministers, parliamentary secretaries and other senior public office holders such as political staff of ministers and most Governor in Council appointees. The Code applies to Members only.

creation of the office of CIEC, the previous position of Ethics Commissioner, which was appointed in May 2004 when the Code was adopted, was replaced.

9. CIEC is appointed by the Governor in Council, after consultation with the leader of every recognized party in the House and after approval of the appointment by resolution of the House.² He or she holds office for a renewable seven-year term.³

10. Under the Act, CIEC must be a former judge of a superior court in Canada or of a provincial court; or a former member of a federal or provincial board, commission or tribunal who has demonstrated expertise in at least one of the follow area: conflict of interest, financial arrangements, professional regulation and discipline or ethics; or a former Senate Ethics Officer or former Ethics Commissioner⁴.

11. As an officer of the parliament, CIEC reports directly to Parliament. He or she is required to publish an annual report under the Act and to submit a separate annual report under the Code to the Speaker of the House, who tables the report in the House.

12. The CIEC administers the Act and the Code in the following ways:

- (a) providing confidential advice to public office holders and elected members about how to comply with the Act and the Code;
- (b) reviewing their confidential reports on matters such as assets, liabilities and activities;
- (c) making information available to the public;
- (d) investigating possible contraventions; and
- (e) reporting to Parliament.

² Governor in Council appointments are made by the Governor General, on the advice of the Cabinet. Vacancies of the positions are usually advertised in the government website, headhunting firms, newspapers and professional journals. The selection process is coordinated by the Privy Council Office on behalf of the Prime Minister's Office.

³ Parliament of Canada Act, section 82(1)

⁴ Ibid, section 81(2)

Complaints investigation process

13. The Act and the Code separately empower CIEC to investigate possible conflict of interest contraventions.⁵

14. Investigations under the Act are called examinations, through which CIEC looks into whether current or former public office holders have complied with their obligations under the Act. Under the Code, investigations into whether Members have contravened conflict of interest rules are called inquiries.⁶

15. Under the Act and the Code, the CIEC has the discretion to initiate an examination or inquiry provided that he or she has reasonable grounds to believe that a contravention took place. Under the Code, the House can also by resolution direct CIEC to conduct an inquiry. Complaints made by members of the public are treated by CIEC as information when he or she considers whether to initiate an examination or inquiry.

16. If CIEC determines that a request for an examination under the Act was frivolous, vexatious or not made in good faith, CIEC may decline to investigate but must still issue a report. In similar circumstances under the Code, he or she must state the reasons when dismissing the request for inquiry, and may recommend that action be considered against the Member who made the request.

The Act

Initial stage: Request

17. A Senator or Member of the House who has reasonable grounds to believe the Act has been contravened may ask CIEC to investigate. To be valid, a request must be made in writing; be signed by the person making it; identify the provisions of the Act contravened; and set out the reasonable grounds for the requester's belief that a contravention has occurred.

⁵ See paragraph 7 on the relevant applications of the Act and the Code. The procedures for investigations and the publication of the relevant reports are different, in accordance with the relevant provisions in the Act and the Code.

⁶ Information on the procedures of an examination or an inquiry can be found in CIEC's website, <http://ciec-ccie.gc.ca/>

Second stage: Examination

18. When CIEC receives a valid request that was not found to be frivolous, vexatious or made in bad faith, he or she must immediately proceed with an examination. CIEC must provide the public officer holder with a reasonable opportunity to present his or her views. CIEC also has the power to summon witnesses and require them to provide written or oral evidence under oath, and to produce documents. CIEC may discontinue her examination at any time, but if it was requested by a Senator or Member, CIEC must issue a report.

Final Stage: Report

19. CIEC issues a report at the conclusion of an examination. The report sets out the facts relevant to the examination, and includes CIEC's conclusions and analysis. The report is provided to the Prime Minister⁷ as well as the person who requested the examination and the person examined. The report is also made public.⁸

The Code

Initial stage: Request

20. Any Member, who has reasonable grounds to believe the Code has been contravened may ask CIEC to investigate. To be valid, a request must be made in writing; be signed by the person making it; identify the circumstances of the alleged non-compliance of the Code; and set out the reasonable grounds for the requester's belief that a contravention has occurred.

Second stage: Follow-up

21. When CIEC receives a valid request, he or she must immediately forward the request to the Member named in it and give him or her 30 days to respond. After receiving the response, CIEC must conduct a preliminary review to determine if an inquiry is warranted. Within 15 working days of receiving the response, CIEC must notify the originator of the request and the Member named whether or not an inquiry will be conducted.

⁷ Conflict of Interest Act, Section 45(3)

⁸ Conflict of Interest Act, Section 45(4)

Third stage: Inquiry

22. Members subject to an inquiry are required to cooperate, and CIEC must give them an opportunity to be heard. All inquiries are conducted in confidence.

Final Stage: Report

23. CIEC issues a report at the conclusion of an inquiry. If the Member in question was found to have failed in complying with the Code, CIEC may recommend appropriate sanctions. CIEC may also make recommendations concerning interpretations and revisions of the Code. The report is provided to the Speaker for tabling, and is also made public.⁹

24. After tabling the report in the House, the Member under complaint has a right to make a statement regarding the report to the House. A motion to concur the report may be moved and debated. If no motion is moved and disposed of prior to the 30th sitting day after the day on which the report is presented, the motion to concur will be deemed moved and the Speaker will put the question to dispose of the motion to the House. The House can refer the report back to CIEC for further consideration, with or without instruction.

Legal representation

25. Concerns had been raised by the incumbent CIEC Mary Dawson in her 2009-10 reports under the Act and the Code over what she observed as an increasing trend for public officials and Members being investigated, and witnesses called, to be represented by legal counsel. The report pointed out that while the right to legal representation during the investigation process was considered a fundamental right, the style of advocacy that was both expected and effective in the context of conventional civil litigation before the courts could be “counter-productive” in the context of investigations conducted by CIEC¹⁰. The report said the CIEC office was “not a court” and the investigation process, rather than adversarial in nature, was inquisitorial and does not amount to a trial. CIEC would develop guidance in relations to legal counsel in order to improve efficiency of the process.

⁹ CONFLICT OF INTEREST CODE FOR MEMBERS OF THE HOUSE OF COMMONS, section 28

¹⁰ The 2009-2010 Annual Report, in respect of the Conflict of Interest Code for Members, p.16

Sanctions

26. There are three types of action available to assist the CIEC in enforcing the Act: imposing administrative monetary penalties¹¹; issuing compliance orders¹²; and conducting examinations with consequential recommendations. These sanctions are not options under the Code.

27. The Act allows CIEC to impose administrative monetary penalties of up to \$500 for public office holders' failures to meet a number of reporting requirements. These include submitting a confidential report within 60 days after taking office, and completing a public declaration relating to their confidential report within 120 days after taking office. There are other cases in which a penalty may be imposed if a declaration is not made within specified deadlines. They include declarations of material changes to the contents of their confidential report, receipt of gifts or other benefits, offers or acceptance of outside employment and recusals. A summary of the penalties regime is in **Appendix II**.

28. In the year 2009-10, CIEC issued six notices of violations, resulting in five administrative monetary penalties. Three of these notices were for failures to submit an initial confidential report within 60 days. Two were for failures to disclose the required information initially in the confidential report and one was for a failure to report a material change within 30 days¹³.

29. The Act empowers CIEC to issue compliance orders, which are made public. In effect, a compliance order is a public statement that CIEC believes a public office holder was not in compliance with the Act.

Investigation activities of CIEC

30. In the year of 2009-10, CIEC conducted five examinations under the Act, three of which resulted in reports issued, while the rest were discontinued. In one inquiry under the Code, CIEC received 63 separate requests naming a total of 60 Members who were alleged to have breached both the Act and the Code. During the same period, CIEC also

¹¹ Conflict of Interest Act, section 52

¹² Ibid, section 53

¹³ The 2009-10 Annual Report of CIEC, in respect of the Conflict of Interest Act

reported the handling of five other cases under the Act and eight cases under the Code, where examinations or inquiries did not start due to reasons such as a lack of grounds¹⁴.

Budget of CIEC

31. The Office of CIEC employs 46 people in a range of specialities, including compliance, investigations, legal services, communications, parliamentary relations and corporate management. The organisation chart of the office is in **Appendix III**. In 2009-10, the office spent a total of CAN\$5.528 million plus CAN\$951,000 in cost of service received without charge in carrying out its duties. Since 2008-09, the budget for the office remained at CAN\$7.1 million, of which 74% was dedicated to salaries while the remaining other operation cost¹⁵.

Challenges faced by CIEC

32. The incumbent CIEC had on occasions attracted concerns from Members over her decisions in not pursuing certain cases.

33. Such decisions resulted in concerns reported by the media that the legal background of the CIEC might have resulted in narrow and technical views taken during investigations.¹⁶ In giving evidence to a committee of the House in April 2010, the incumbent CIEC said the biggest challenge her office faced was responding to questions about what her office was doing. “One of the biggest challenges is satisfying people that we really are investigating what we ought to be investigating; that we are doing a good job and working hard.”¹⁷ She later elaborated in detail her reasons for what she admitted as a public perception that “I do not take request seriously” or that “I am favouring an individual or a party” in a report to Parliament¹⁸. The crux of the problem, she said, was her inability to reveal reasons for not proceeding with cases beyond initial assessment of a request for investigation.

34. Under the Code, CIEC was prevented from making any public comment relating to a preliminary review or an inquiry, other than to

¹⁴ The 2009-10 Annual Report, in respect of the Conflict of Interest Code for Members

¹⁵ The 2009-10 Annual Report, in respect of the Conflict of Interest Code for Members

¹⁶ *Ethics czar Mary Dawson stands by cautious approach*, Globe and Mail, 26 April 2010

¹⁷ Evidence, 22 April 2010, Standing Committee on Access to Information, Privacy and Ethics.

¹⁸ The 2009-10 Annual Report, in respect of the Conflict of Interest Act, p 21

confirm that a request has been received or whether or not a preliminary review or an inquiry has commenced. The Act is less explicit, but does include provisions requiring CIEC to conduct examinations in confidence until the release of a report.

Developments leading to the setting up of the Office of CIEC

35. The developments of the system dealing with conflict of interest issues had seen a number of challenges over the past decade. When the first Ethics Commissioner (“EC”) Bernard Shapiro, who was an academic, was appointed just before the 2004 federal election, he had to draft forms and prepare his newly created office for the return of Members in the new session. Over the next two years, EC had dealt with four inquiries but in two of those cases the Members concerned were exonerated. The handling of another complaint concerning a Member resulted in the Member raising a question of privilege. The Standing Committee on Procedure and House Affairs later found that EC was in contempt of the House because he had not followed the proper processes for conducting an inquiry under the Code, including speaking to the media in relations to the case during investigation¹⁹.

36. After being criticised by the Committee for not being sufficiently familiar with the provisions of the Code and his office was not meticulous in ensuring the provisions were observed in both letter and spirit, EC experienced a number of conflicts with Members and the Government during his tenure. His investigation into alleged conflict of interest by Prime Minister Stephen Harper in March 2006 resulted in the Prime Minister’s director of communications making a statement, saying “the Prime Minister is loath to co-operate with an individual whose decision-making ability has been questioned, moreover who has been found in contempt of the House.”²⁰ Concerns had also been raised on how much the Committee was to be kept informed while investigations by EC were in progress²¹.

37. A revamp of the system was conducted in 2007, leading to the creation of the office of CIEC.

¹⁹ 51st report, Standing Committee on Procedure and House Affairs, November 2005

²⁰ *Harper “loath” to co-operate with ethics commissioner*, CBC News, 3 March 2006

²¹ 51st report, Standing Committee on Procedure and House Affairs, November 2005

The Board of the Internal Economy

38. Section 6 of the Code specifically excludes anything falling within the jurisdiction of the Board of Internal Economy (the Board)²². In practice, this means while CIEC has the power to deal with conflict of interest issues, CIEC has no power similar to the Parliamentary Commissioner for Standards in the UK in dealing with matters regarding the misuse of allowance or parliamentary facilities by Members.

Function of the Board

39. Under the Parliament of Canada Act, the Board has exclusive authority to determine whether any previous, current or proposed use by a Member of any funds, goods, services or premises made available to that Member for the carrying out of parliamentary function is or was proper²³, and whether they are in accordance with the by-laws, policies and guidelines it has established.

40. As the governing body of the House, the Board makes decisions and provides direction on financial and administrative matters of the House concerning its premises, its services, its staff and Members.

41. The Board consists of the Speaker, who acts as Chair, two members of the Privy Council (appointed to the Board by the Government), the Leader of the Opposition or his or her representative, and additional Members appointed in numbers so that the total results in an overall equality of government and opposition representatives (apart from the Speaker). The Clerk of the House of Commons, who reports to the Speaker, serves as Secretary to the Board.

42. Decisions of the Board of are made on a non-partisan basis. All recognized parties (i.e. those holding at least 12 seats in the House) are given representation on the Board.

Advice to Members over the use of funds and services

43. Under section 52.6(2) of the Parliament of Canada Act, any Member may apply to the Board for an opinion with respect to any use by that Member of funds, goods, services or premises made available to him

²² Section 6 reads: “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”.

²³ Parliament of Canada Act, section 52.6 (1)

or her for the carrying out of parliamentary functions.

Investigations

44. The law-enforcement authorities have the power to investigate any possible misuse of funds and related services provided to Members by Parliament. In any investigation, law-enforcement officers may request the Board's opinion whether such use was proper. The Board can respond by interpreting an existing by-law or regulation, or if none exists by examining the issue. Similarly, the Board may provide the officer with an opinion on its own initiative²⁴. A law-enforcement officer who receives an opinion and then makes an application for a criminal process, such as seeking a warrant from a court to gather evidence, is under an obligation to place the opinion before a provincial court judge²⁵.

45. On past occasions, the Board had made orders for Members found to have misused their allowances to pay back the amount to the Federal Government.

Relations between CIEC and the Board

46. Although the Code prevents CIEC to investigate possible misuse of funds and services by Members, on a past occasion the incumbent CIEC had dismissed an objection by a Member under inquiry in accordance with the Code based on this reason. In particular, CIEC said since she had taken a "broad approach" while conducting her inquiry, it was "questionable whether the jurisdiction of the Board of Internal Economy would prevent my Office from investigating matters raising conflict of interest issues."²⁶.

²⁴ Parliament of Canada Act, section 52.7(1)

²⁵ Ibid, sections 52.7(2) to 52.7(4)

²⁶ The Cheques Report: The use of partisan or personal identifiers on ceremonial cheques or other props for federal funding announcements, 29 April 2010, p.12

Advice sought

47. Members are invited to note the above information.

Council Business Division 3
Legislative Council Secretariat
18 May 2011

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.

Definitions.

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

Interpretation**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;

	(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	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.
	(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:	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.
	(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.	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.
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.	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.
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.	Attempts.	11. A Member shall not attempt to engage in any of the activities prohibited under sections 8 to 10.
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.	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.
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.	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.
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:	Disclosure recorded.	(3) The Clerk of the House shall cause the disclosure to be recorded in the <i>Journals</i> and shall send the disclosure to the Commissioner, who shall file it with the Member's public disclosure documents.
	(a) engaging in employment or in the practice of a profession;		
	(b) carrying on a business;	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.
	(c) being a director or officer in a corporation, association, trade union or non-profit organization; and		
	(d) being a partner in a partnership.		

Debate and voting.

13. A Member shall not participate in debate on 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.

Interest acquired by inheritance.

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

Disclosure statement.

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.

Reasonable efforts.

(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.

Confidentiality.

(3) The Commissioner shall keep the statement confidential.

Content of disclosure statement.

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.

	<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.	<p>(3) The following shall not be set out in the summary:</p> <p>(a) an asset or liability with a value of less than \$10,000;</p> <p>(b) a source of income of less than \$10,000 during the 12 months before the relevant date;</p> <p>(c) real property or immovables that the Member uses as a principal residence or uses principally for recreational purposes;</p> <p>(d) personal property or movable property that the Member uses primarily for transportation, household, educational, recreational, social or aesthetic purposes;</p> <p>(e) cash on hand or on deposit with a financial institution that is entitled to accept deposits;</p> <p>(f) fixed-value securities issued or guaranteed by a government or by a government agency;</p> <p>(g) a registered retirement savings plan that is not self-administered or self-directed;</p> <p>(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;</p> <p>(i) an interest in a pension plan, employee benefit plan, annuity or life insurance policy;</p> <p>(j) an investment in an open-ended mutual fund;</p> <p>(k) a guaranteed investment certificate or similar financial instrument;</p> <p>(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</p> <p>(l) any other asset, liability or source of income that the Commissioner determines should not be disclosed because</p> <p>(i) the information is not relevant to the purposes of this Code, or</p> <p>(ii) a departure from the general principle of public disclosure is justified in the circumstances.</p>
Statement: material change.	<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>		
Meeting with the Commissioner.	<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>		
Disclosure summary.	<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>		
Public inspection.	<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>		
Content of disclosure summary.	<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>		
Categorization of interests.	<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.	<p>25. A Member shall not take any action that has as its purpose the circumvention of the Member's obligations under this Code.</p>

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: <p>(a) conduct a preliminary review of the request and the response to determine if an inquiry is warranted; and</p> <p>(b) notify in writing both Members of the Commissioner's decision within 15 working days of receiving the response.</p>

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.

Miscellaneous

Guidelines and forms. 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.

Tabling. (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.

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

Retention of documents. 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.

Confidentiality. 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.

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

Committee review. 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.

Part of the Standing Orders. 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 Act 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 Act	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

