Office of the Conflict of Interest and Ethics Commissioner

Commissariat aux conflits d’intérêts et à l’éthique

The 2009-2010 ANNUAL REPORT

in respect of the

CONFLICT OF INTEREST ACT

June 16, 2010

Mary Dawson
Conflict of Interest and
Ethics Commissioner

The 2009-2010 Annual Report

in respect of the
CONFLICT OF INTEREST ACT

For additional printed copies of this publication, please contact:

Office of the Conflict of Interest and Ethics Commissioner
Parliament of Canada
66 Slater Street, 22nd Floor
Ottawa, Ontario K1A 0A6

Telephone: (613) 995-0721
Fax: (613) 995-7308
Email: ciec-ccie@parl.gc.ca

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Commissariat aux conflits d'intérêts et à l'éthique
Office of the Conflict of Interest and Ethics Commissioner

66, rue Slater Street
22nd Floor / 22e étage
OTTAWA, ONTARIO
CANADA
K1A 0A6

June 16, 2010

The Honourable Noël A. Kinsella
Speaker of the Senate
Room 280-F, Centre Block
Parliament of Canada
Ottawa, Ontario
K1A 0A6

Dear Mr. Speaker:

I am pleased to submit to you my report on the performance of my duties and functions under the *Conflict of Interest Act* in relation to public office holders for the fiscal year ending March 31, 2010.

This fulfills my obligations under paragraph 90(1)(*b*) of the *Parliament of Canada Act*.

Sincerely,

Mary Dawson
Conflict of Interest and Ethics Commissioner

Commissariat aux conflits d'intérêts et à l'éthique
Office of the Conflict of Interest and Ethics Commissioner

66, rue Slater Street
22nd Floor / 22e étage
OTTAWA, ONTARIO
CANADA
K1A 0A6

June 16, 2010

The Honourable Peter Milliken, M.P.
Speaker of the House of Commons
House of Commons
Room 224-N, Centre Block
Ottawa, Ontario
K1A 0A6

Dear Mr. Speaker:

I am pleased to submit to you my report on the performance of my duties and functions under the *Conflict of Interest Act* in relation to public office holders for the fiscal year ending March 31, 2010.

This fulfills my obligations under paragraph 90(1)(*b*) of the *Parliament of Canada Act*.

Sincerely,

Mary Dawson
Conflict of Interest and Ethics Commissioner

PREFACE

This Annual Report is made in fulfillment of the requirements of paragraph 90(1)(b) of the *Parliament of Canada Act*. It reports on activities of the Conflict of Interest and Ethics Commissioner under the *Conflict of Interest Act* in respect of public office holders for the 2009-2010 fiscal year ending March 31, 2010.

A separate annual report is made in fulfillment of the requirements of paragraph 90(1)(a) of the *Parliament of Canada Act*. It reports on the Commissioner's activities under the *Conflict of Interest Code for Members of the House of Commons* for the same fiscal year.

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I. INTRODUCTION

This is one of two annual reports issued by my Office. This report is made under the *Conflict of Interest Act* (Act) and the other report is made under the *Conflict of Interest Code for Members of the House of Commons* (Code).

The Conflict of Interest and Ethics Commissioner administers the Act and the Code. These two regimes seek to ensure that public officials, whether appointed as public office holders or elected as Members, are not in a conflict of interest. The Commissioner is also mandated to provide confidential advice to the Prime Minister about conflict of interest and ethics issues.

The Act, which came into force in July 2007, applies to public office holders, including ministers, parliamentary secretaries, ministerial staff, ministerial advisers, deputy ministers and most full- and part-time Governor in Council appointees. There are approximately 2,800 public office holders subject to the Act, more than half of whom are part-time.

The Code is included as an appendix to the *Standing Orders of the House of Commons*. It applies to all 308 Members of the House of Commons. The Code was adopted by the House of Commons in 2004 and was amended in 2007, 2008 and 2009.

The overall objective of the Act and the Code is to enhance confidence and trust in government by establishing clear conflict of interest rules for public office holders and Members. These rules hold them to standards that place the public interest above their private interests when the two come into conflict. The Act also contains a number of post-employment rules. The focus of both the Act and the Code is on prevention. Rules and procedures set out in each aim to minimize the possibility of conflicts arising between public and private interests.

The main responsibilities of the Office are to:

- advise public office holders and Members on their obligations under the Act and the Code;
- receive and review confidential reports of assets, liabilities, income and activities of public office holders and Members in order to advise on and establish appropriate compliance measures;
- maintain confidential files of required disclosures;
- maintain public registries of publicly declarable information; and
- conduct examinations and inquiries into alleged contraventions of the Act and the Code.

II. HITTING OUR STRIDE AND MOVING FORWARD

This Annual Report will be tabled close to the third anniversary of my appointment as Conflict of Interest and Ethics Commissioner. I believe that my Office hit its stride as we continued to administer the two conflict of interest regimes: the *Conflict of Interest Act* (Act) and the *Conflict of Interest Code for Members of the House of Commons* (Code). The accomplishments of our first two years in building the organization and understanding the Act and the Code enabled us to meet new challenges in applying these similar, but distinct ethics regimes.

Our primary mandate is to help public office holders comply with the Act and Members comply with the Code; the Office's advisory role is fundamental to helping them meet their obligations. My staff and I communicate and meet regularly with individual public office holders and Members to address their questions and concerns. Our work in this respect has been greatly advanced over the past year as a result of the continued dedication of existing staff and the completion of staffing of virtually all positions.

This year, my Office has implemented a number of process improvements, including a system of reminders that notify public office holders and Members of approaching disclosure and compliance deadlines. This has significantly reduced missed deadlines under both the Act and the Code. Advisors are also working with an improved electronic case management system that enables them to provide more timely advice to public office holders and Members.

We continued to undertake educational activities for public office holders and Members, including briefings, presentations and direct written communications to explain their obligations under the Act and the Code and to respond to their questions.

We undertook a number of major investigations over the year. For the first time, it was necessary in several instances to conduct investigations in relation to the same matter simultaneously under both the Act and Code. The individuals under investigation in these cases were Members subject to the Code who were also ministers or parliamentary secretaries subject to the Act. While both regimes are based on many of the same underlying principles, the slight differences in detail between the two resulted in the need to conduct distinct analyses under each.

I have had occasion this year to consider carefully some of the fundamental aspects of my mandate. In particular, I considered the limits of the concept of private interest. This concept is central to both regimes, each of which aims to ensure the public interest is placed ahead of private interests. I also had occasion to consider the extent to which I have a general ethics mandate that extends beyond conflict of interest. I discuss both of these issues in more detail in Section V of this report.

In this Annual Report, as in previous ones, I set out areas of the Act that have presented certain challenges and the approaches we have taken to address them. I have continued to work with the House of Commons Standing Committee on Procedure and House Affairs to suggest improvements to the Code based on our experiences over the past years.

I appeared before the Standing Committee and its subcommittee on gifts and informed them about some of the concerns I had with the Code's provisions relating to gifts and other benefits. I suggested several amendments to those provisions. I was very pleased to see most of these suggestions reflected in amendments to the Code approved by the House of Commons on June 4, 2009.

Last fall, I had another opportunity to meet with the Standing Committee, this time to share my concerns about the Code's provisions relating to disclosures and inquiries. At the request of the Committee, I submitted proposals to it for amendments in these areas.

I was asked to testify on two separate occasions before the Oliphant Commission, the Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings between Karlheinz Schreiber and the Right Honourable Brian Mulroney. In June, I commented on post-employment rules and in July, on outreach activities for ministers and ministerial staff in relation to post-employment obligations.

Last year we took a number of opportunities to exchange information with representatives of provincial, territorial and international jurisdictions. This has helped us to understand how our ethics regimes compare with others.

In the past year I attended and gave a presentation at the Ethics in Democracy II Conference in El Salvador, an international event organized by the Canadian government and attended by a number of Canadian academics. The conference focused primarily on Mesoamerica but was attended by representatives of a much broader range of countries.

My Office has engaged with the Organisation for Economic Cooperation and Development (OECD) several times over the past year. The Office is also member of the Council on Governmental Ethics Laws (COGEL) and is represented at its conference every year.

In March 2010, my Office accepted a coordination role in the Canadian Conflict of Interest Network (CCOIN), which includes federal, provincial and territorial commissioners. We are now responsible for gathering and disseminating within this network information and materials acquired or developed in the various jurisdictions within Canada.

In the following sections of this Annual Report, I provide greater details on the matters touched on briefly in this summary of the highlights of the year. In reviewing what has been a busy and productive 12 months I remain grateful for the contributions of my staff and the goodwill of public office holders and Members of the House of Commons.

III. APPLYING THE ACT

The *Conflict of Interest Act* (Act) applies to a range of government officials who are referred to in the Act as "public office holders". This group of about 2,800 individuals includes ministers, ministerial staff and parliamentary secretaries, as well as Governor in Council appointees such as deputy ministers, heads of Crown corporations and members of federal boards, commissions and tribunals.

All public office holders must comply with a number of basic rules. They must arrange their private affairs to avoid conflicts of interest. They cannot use their influence as public officials for private ends, extend preferential treatment or accept gifts or other advantages that could reasonably be seen to have been given to influence them. They must recuse themselves when faced with a potential conflict of interest.

Certain public office holders, referred to in the Act as "reporting public office holders", are subject not only to all rules that apply broadly to all public office holders, but also to a number of other requirements. They must, for example, make a detailed disclosure of private interests to my Office, divest certain assets, make public declarations and abide by post-employment rules after they leave office. There are a number of additional provisions that apply only to certain classes of reporting public office holders such as ministers and parliamentary secretaries.

At the end of this reporting period, there were 1,115 reporting public office holders. This group included 27 ministers of the Crown, 11 ministers of state and 27 parliamentary secretaries. The rest are almost evenly divided between full-time ministerial staff and Governor in Council appointees.

During the 2009-2010 fiscal year, about 800 individuals became public office holders, including some 550 reporting public office holders. During the same period, 730 public office holders left office, of whom 390 were reporting public office holders.

In this section, I report on the activities undertaken by my Office to help reporting public office holders meet the requirements of the Act. In the following section, Matters of Note, I provide further details on our dealings with other public office holders.

Disclosure Requirements of Reporting Public Office Holders

Disclosure requirements for initial compliance with the Act

It is the responsibility of each reporting public office holder to make a full confidential disclosure of his or her assets, liabilities, income, outside activities and other personal information within 60 days after taking office and to update that disclosure on an annual basis.

Information provided to my Office is reviewed by advisors who, in consultation with reporting public office holders, determine specific compliance arrangements. In many cases, these arrangements are straightforward. In other cases, they can be quite complex and may involve establishing compliance measures that go beyond those specifically set out in the Act. Some reporting public office holders, for example, may hold significant financial or business

interests, may be engaged in various outside activities or may have a close relative who has business dealings with the government. All of these situations require careful attention.

Within 120 days after appointment, each reporting public office holder must sign a summary statement that is prepared by my Office. The statement contains the information required under the Act and includes a description of the methods used to divest any controlled assets. Once signed, the statement is made public.

Within the same 120-day period after appointment, reporting public office holders must make public declarations of certain other assets and any directorships or positions of office with outside organizations that are permitted under the Act. In most circumstances, reporting public office holders are not permitted to hold directorships or positions of office in corporations or other organizations unless they are of a philanthropic, charitable or non-commercial character. In some cases, public declarations are also made to reflect special compliance measures such as conflict of interest screens.

While not as detailed as the information received by my Office, the summary statement and public declarations provide a degree of transparency. They are available for examination by the public on our website.

Annual review of compliance arrangements

The Act requires that the compliance arrangements of reporting public office holders be reviewed annually. Accordingly, over the past year my Office contacted 635 reporting public office holders to review their confidential reports. This is an ongoing process. By March 31, we had received responses from 557 of them. These responses have been reviewed and, where necessary, compliance measures have been updated. A reporting public office holder does not have to sign new public declarations if the changes reported do not modify the information that has already been publicly disclosed.

Other disclosure requirements

The annual review is not the only mechanism by which reporting public office holders' compliance arrangements are reviewed and amended. The Act requires that reporting public office holders inform my Office within 30 days of material changes to any information included in their confidential reports. These disclosures are reviewed as they are received and compliance arrangements are updated as necessary.

Contrary to the requirements of the Act, in some cases changes to reporting public office holders' information that should have been disclosed as material changes within 30 days after their occurrence only come to our attention during the annual review process. There is no definition of material change in the Act, so this may be a source of some confusion. However, in some cases the changes are very significant and have, on occasion, involved contraventions of the Act. More will be said about this in the next section of this report.

There are other ongoing disclosure requirements relating to gifts and other advantages, the receipt and acceptance of firm offers of outside employment, and recusals. These and other disclosure requirements are outlined in the table set out in Appendix A.

A self-reporting regime

Advisors in my Office guide reporting public office holders through the initial compliance and annual review processes and provide ongoing advice as needed. The Act is based on self-reporting. The guidance and advice we provide is therefore largely dependent on the information that reporting public office holders submit to my Office. My Office will solicit additional information as needed and will consult public documents such as corporate registries or company websites where appropriate. We also take note of any media or other public information that may be relevant to the compliance requirements of reporting public office holders.

At the same time, it is the responsibility of the reporting public office holders themselves to provide complete and accurate information to us. I have found the overwhelming majority of reporting public office holders to be cooperative and responsive when my Office requires additional information from them. In a few cases where we have become aware of a failure to report information that should have been disclosed to my Office within required deadlines, we have administered monetary penalties.

Improved compliance processes

My Office continues to find ways to improve our compliance processes in order to help public office holders and Members of the House of Commons comply with the Act or the *Conflict of Interest Code for Members of the House of Commons*.

In my Annual Report for the Act last year, I reported on the implementation of a series of reminders relating to the 60-day deadline for filing confidential disclosures, and to the 120-day deadline for completing compliance arrangements. I am happy to report that the reminders have proven very effective in ensuring that these deadlines are met. Of the 550 new reporting public office holders in the past year, 50 failed to meet the 60-day deadline and 45 failed to meet the 120-day deadline, including 12 who failed to meet both deadlines. These are significant reductions from last year, when 69 failed to meet the 60-day deadline, and 126 failed to meet the 120-day deadline.

Of the 50 individuals who failed to meet the 60-day deadline this past year, 29 filed within one week after their deadline. The remaining 21 missed their deadlines for a variety of reasons, including delays on the part of their employers in notifying my Office of their appointments and delivery problems. Notices of violation were issued to three individuals who missed the 60-day deadline. Penalties were applied in the case of two of these individuals. I elaborate on the penalty scheme later in this section.

There will always be a small number of instances where deadlines cannot be met, particularly the 120-day deadline, because of the need to resolve complex issues, usually relating to controlled assets or outside activities. I take these difficulties into account when determining whether to apply a penalty.

I note that, of the 45 who did not meet the 120-day deadline, 12 had missed their 60-day deadline for reasons that I accepted as being beyond their control. This made it difficult, and in some cases impossible, for them to meet their 120-day deadline. Of the remaining 33, seven completed their arrangements within one week after the deadline. The others missed the deadline

for a variety of reasons. Many needed more time to make arrangements to deal with their controlled assets or outside activities. In other cases, there were mitigating circumstances, such as being on extended sick leave or travel status. These reporting public office holders were generally cooperative with my Office throughout the process, and for this reason an administrative monetary penalty was not warranted.

In this reporting period, there was an increase in the number of gift disclosures made by reporting public office holders. I believe that this is due, in part, to more proactive communications measures explaining to reporting public office holders their obligations related to gifts, as well as the introduction of new forms and administrative procedures to assist reporting public office holders who regularly receive gifts to make regular reports. In this reporting period, we received 78 public declarations of gifts from 26 reporting public office holders. In the 2008-2009 fiscal year, there were 59 public declarations.

Improved case management system

Our electronic case management system, which maintains relevant information on public office holders and Members, has undergone a significant upgrade. While no additional information is being collected from reporting public office holders, the information that they disclose to the Office is now stored in a more user-friendly format that provides advisors with instant access to recent correspondence.

The upgraded system continues to be supported by the infrastructure necessary to protect the security of the information that the Office collects and processes. At the same time, it allows our advisors to deal more efficiently with public office holders' ongoing issues when they call the Office and generally to better manage public office holders' files on a day-to-day basis.

Divestment of Controlled Assets

Sections 17 and 27 of the Act relate to divestment of controlled assets. The first prohibits a reporting public office holder from holding controlled assets and the second spells out the allowable means of divesting them.

Controlled assets include securities traded on a stock exchange or the over-the-counter market as well as other speculative investments. The requirement to divest these assets applies to all reporting public office holders. The only exceptions are in cases where a reporting public office holder's controlled assets are either of minimal value and pose no risk of conflict of interest or were given as security to a lending institution.

Over the past year, many reporting public office holders have asked whether they may purchase exchange-traded funds. Although these funds are similar to mutual funds, they are traded on an exchange. This makes them publicly traded securities and, therefore, controlled assets. They cannot be purchased by reporting public office holders.

In last year's Annual Report for the Act, I highlighted and discussed in some detail my concerns that the provisions in the Act that prohibit reporting public office holders from holding controlled assets were overly broad. My main concern is that the prohibition applies regardless

of whether or not the controlled assets in question could place the public office holder in a conflict of interest arising from his or her official duties. This goes beyond what is required to minimize the risk of conflict of interest and runs counter to the intent of two of the five purposes of the Act, namely encouraging experienced and competent people to seek and accept public office and facilitating interchange between the private and public sectors. We are not aware of any other jurisdiction with such a rule requiring the divestment of all publicly traded securities and other speculative investments by such a broad range of public officials.

During the 2009-2010 fiscal year, some 29 reporting public office holders divested controlled assets, 17 by sale and the rest by blind trust.

We reviewed the divestments made by all current reporting public office holders, whether in this reporting period or earlier, to determine whether the divestments might have prevented a conflict of interest. We can confirm that in the vast majority of cases there would have been no conflict of interest. Divestments made by ministers, parliamentary secretaries and deputy ministers were excluded from this review because their participation in collective decision-making and horizontal policy initiatives increases the potential that a conflict of interest could arise.

Reimbursement of costs of divestments

The requirement to divest comes at a cost to the Crown. Under the Act, reporting public office holders are entitled to be reimbursed for reasonable costs relating to divestments that they are required to make. My Office does not reimburse these claims directly, but I am authorized to order a reimbursement from the appropriate department or agency once I have reviewed the claims and verified that they are within the guidelines we have established. Reimbursement is not ordered for any divestment not required under the Act.

During the 2009-2010 fiscal year, reimbursements relating to divestments totalled $369,326. This figure includes reimbursements related to selling assets and to setting up new blind trusts and administering or dismantling existing ones. Most of these reimbursements – $315,865 – were for the administration of existing blind trusts.

Outside Activities

Section 15 prohibits reporting public office holders from engaging in outside activities, including employment or the practice of a profession, managing or operating a business, being a director or officer in a corporation or an organization, holding office in a union or professional association, serving as a paid consultant or being an active partner in a partnership.

As was mentioned in my first Annual Report under the Act (2007-2008), there is very little scope for exceptions to this prohibition, even where there is no potential for conflict of interest or other incompatibility with public duties. Even students who accept employment during the summer in a minister's office become subject to the Act and, as a result, may not continue to hold a part-time job, even in a coffee shop or retail store. Any ministerial staff member working on average 15 hours a week or more in a minister's office is a reporting public office holder and is subject to section 15.

If the Act is amended in the future, consideration should be given to providing the Commissioner with discretion to waive a prohibition contained in section 15 of the Act if he or she is satisfied that there is no conflict of interest and that the outside activities in question are not incompatible with the duties of the public office holder concerned. The predecessor *Conflict of Interest and Post-Employment Code for Public Office Holders* provided such discretion.

Administrative Monetary Penalties

The Act sets out an administrative monetary penalty scheme that gives the Commissioner discretion to impose penalties on reporting public office holders. The scheme only covers failures to report certain matters, generally within established deadlines. As mentioned above, a full list of reporting requirements is set out in Appendix A.

I have continued my emphasis on prevention by seeking opportunities to educate reporting public office holders on their obligations under the Act and by improving administrative processes and working tools within my Office.

The Privy Council Office and ministers' offices normally inform my Office immediately of new appointments and departures. While frequent changes of staff, particularly in ministers' offices, can make meeting this requirement a challenge, timely notification of appointments allows my Office to issue the appropriate reminders to ensure that reporting public office holders submit their confidential reports within the required 60 days after appointment. My staff has also given a number of presentations to ministerial staff to remind them of the importance of their specific obligations under the Act and to underline the importance of timely notification of appointments and departures.

The maximum penalty for a contravention is $500. The Act recognizes that the purpose of these penalties is to encourage compliance rather than to punish. In setting the amount of the penalty, I must take into account the public office holder's history of prior violations. When a penalty is imposed, the nature of the violation, the name of the public office holder in question and the amount of the penalty are published on the Office's website.

During this reporting period, I issued six notices of violation, resulting in five administrative monetary penalties. Three of these notices of violation 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 days.

It is important to recognize that the administrative monetary penalty regime does not cover contraventions of the substantive conflict of interest rules set out in Part 1 of the Act. There have been a few cases where a reporting public office holder has contravened a substantive rule and, in doing so, has also contravened a reporting rule. For example, one reporting public office holder failed to step down from a directorship that had not been disclosed to my Office in the first place. While I can apply a penalty in cases such as this one for a failure to disclose, there is no summary action I can take to deal with contraventions of the substantive provisions of the Act. I could initiate an examination in these cases, but this may not always be warranted, for example where the infraction is minor or the public office holder acknowledges that there has been a contravention.

Post-employment

As noted in my 2008-2009 Annual Report, the Act contains a number of provisions regulating post-employment activities. While my Office received 51 requests for post-employment advice during the 2009-2010 fiscal year, there is no requirement in the Act for former public office holders to report their post-employment activities to my Office or to seek advice. The only exception is where they are engaged in certain activities referred to in specific sections of the *Lobbying Act*.

While we take care to remind all public office holders of their post-employment obligations when we are notified of their departure from public office, ensuring compliance with the Act's post-employment provisions remains a challenge. We do follow up by contacting reporting public office holders when we become aware of facts that suggest they could be in contravention of the post-employment rules. To date, none of the cases we have looked into have warranted an examination under the Act.

I was invited to appear twice – on June 17 and July 28, 2009 – before the Oliphant Commission on a number of matters, including post-employment policy issues in particular. I note that Justice Oliphant, in his report, suggests that there be a requirement to disclose to my Office the nature of any proposed employment during the one- or two-year cooling-off period established under section 36 of the Act. This would be in addition to the existing provisions under the Act requiring a reporting public office holder to disclose to my Office any firm offers of outside employment or their acceptance while still in office. I believe this recommendation warrants serious consideration.

IV. MATTERS OF NOTE

This year, as in previous years, I have identified areas where my Office has encountered challenges in applying the Act. I discuss these, and the approaches we have taken to address them, in this section.

Material Changes

Reporting public office holders must inform my Office of any material changes to the information that they were required to disclose in their initial confidential report. This must be done within 30 days of the change occurring. Failure to do so may result in an administrative monetary penalty of up to $500.

The Act does not define "material change". Whether a change to information provided in a confidential report is material often depends on the circumstances and the official duties and responsibilities of the reporting public office holder. Generally speaking, a material change is one that might require a modification to one's compliance arrangements or that might affect one's obligations under the Act. A change that would require a public declaration or a modification to an existing public declaration would always be a material change.

Ministers and parliamentary secretaries have additional obligations, such as the public disclosure of liabilities over $10,000 and the obligation to provide information about spouses and dependent children. A change in marital status, involving a spouse or common-law partner, would, therefore, in most circumstances be a material change for ministers and parliamentary secretaries. For other reporting public office holders, a change in marital status could be material depending, for example, on whether or not the spouse or common-law partner has any dealings with federal government entities.

Other examples of material changes would be the acquisition of an ownership interest in a business, or a friend or relative initiating business dealings with one's department or organization.

Erroneous or outdated information may affect the correctness or thoroughness of the advice my Office provides. When in doubt as to whether a change is material or not, reporting public office holders are encouraged to seek advice from my Office. We will then advise them of any new steps that may be required to ensure compliance with the Act.

As noted earlier, my Office is often not apprised of changes to information previously disclosed until the annual review process. While in most cases these changes are not material changes, when they are I will determine whether a penalty should be imposed as a result of the failure to report a material change earlier.

Discretionary Compliance Measures

All public office holders are required by section 5 of the Act to arrange their private affairs in a way that will avoid conflicts of interest. That section is followed by a number of specific rules and compliance measures. There are situations, however, where the Act cannot easily be

applied for practical reasons. The Act gives me the authority to determine appropriate compliance measures to deal with these situations.

The broad general requirement in section 5 is supported by paragraph 22(2)(g), which requires reporting public office holders to provide the Commissioner with any information the Commissioner considers necessary to ensure compliance with the Act. It is also supported by sections 29 and 30, which allow for special compliance measures that go beyond the specific rules and compliance procedures set out in the Act.

Section 29 requires that the Commissioner try to achieve agreement with the public office holder in determining the appropriate measures to meet his or her obligations under the Act. Under section 30 the Commissioner may, in respect of any matter, order that a public office holder take any compliance measure that the Commissioner determines to be necessary to comply with the Act.

Section 29 allows me some discretion in finding appropriate measures by which public office holders can comply with the Act. That section allows me to find solutions to unique situations that are not explicitly covered, such as those involving reporting public office holders who are executors of estates, or public office holders who wish to establish conflict of interest screens. I am increasingly making use of section 29.

Usually I am able to find a mutually satisfactory way to deal with these situations under section 29. While I have the power under section 30 to order any compliance measure, it has not yet been necessary to do so. In my experience, most public office holders are more than willing to comply with the recommendations made by my Office.

Executorships and estate planning

Section 17 of the Act prohibits reporting public office holders from holding controlled assets. Section 27 requires that they divest those assets within 120 days after their appointment. As I noted in my 2008-2009 Annual Report under the Act, these provisions extend to reporting public office holders who hold controlled assets as executors of estates or through joint accounts. Requiring reporting public office holders in these circumstances to divest within 120 days is not always realistic and may cause unnecessary hardship.

We ask a reporting public office holder to resign from an executorship where the estate for which he or she is executor includes controlled assets. This may take more than 120 days. Extensions are granted where circumstances warrant. In some cases, where an estate is liquidated before a reporting public office holder can realistically resign the executorship, no resignation is required. I note that I do not have the power to order any reimbursement for the sometimes significant costs a reporting public office holder may incur in order to resign as the executor of an estate. I take this into consideration when determining the appropriate measures in these cases.

In cases involving joint ownership of publicly traded securities by a parent as an estate planning measure, I typically require the reporting public office holder to sign an undertaking or non-disclosure agreement to the effect that he or she is not to provide advice or participate in the decision-making process relating to investments in the publicly traded securities concerned.

Recusals and conflict of interest screens

Under the Act, public office holders must recuse themselves from any discussion, decision, debate or vote on a matter where they would be in a conflict of interest. The Act requires that all recusals by reporting public office holders be made public. The term "recusal" refers to a situation in which a public office holder removes himself or herself from involvement in a specific matter that is, or is about to come, before the public office holder.

Currently, our public registry contains no recusal declarations under the Act. This does not mean, however, that reporting public office holders are involving themselves in matters where they are in a conflict of interest. On the contrary, the Office has been working with reporting public office holders to establish conflict of interest screens that remove potential conflicts of interest that could otherwise require a recusal. This involves making formal arrangements, before any conflict of interest situation arises, in order to avoid situations that might come up through the reporting public office holder's official duties that could pose a real or potential conflict of interest, such as being faced with making a decision that could have a direct or targeted impact on a family member's business. Should such a situation arise, another person with the necessary authority would deal with the matter.

If a reporting public office holder has a conflict of interest screen in place, matters that could involve a conflict of interest are not brought to the reporting public office holder's attention and therefore no recusal will be required. This is a practice that was expressly contemplated in the former *Conflict of Interest and Post-Employment Code for Public Office Holders*, which the Act replaced. While the Act did not carry forward a similar express provision, I believe that this approach is in keeping with the Act's emphasis on prevention.

Typically, conflict of interest screens have been set up under section 29 of the Act, which, as mentioned above, allows me to determine appropriate compliance measures in consultation with reporting public office holders before they are finalized. In the past year, seven conflict of interest screens were set up under that section.

The advantage of using section 29 is that the process is collaborative rather than confrontational. Orders under section 30 and recusals must both be made public. Arrangements under section 29 need not be made public. However, because the conflict of interest screens have reduced the need for both the orders and the recusals, I have, in order to increase transparency, begun to use my discretion under paragraph 51(1)(e) to post these arrangements on the public registry when I consider it appropriate to do so. In exercising this discretion I do bear in mind that in certain cases there are legitimate privacy concerns that make this disclosure inadvisable.

Issues Relating to Part-Time Public Office Holders

The Act covers both full-time and part-time public office holders. All of these individuals are covered by a core set of conflict of interest and post-employment rules. Generally speaking, those who exercise their duties on a full-time basis are designated as reporting public office holders. They are subject to the Act's reporting and public disclosure provisions, as well as prohibitions against outside activities and holding controlled assets. In most cases, those who exercise their duties on a part-time basis are not designated as reporting public office holders and therefore are not subject to these additional requirements.

In my previous annual reports I discussed a number of cases where employment status had implications for the application of the Act. This Annual Report is no exception. In this Annual Report, my focus is on part-time public office holders.

Interactions with public office holders who are not reporting public office holders

More than half of the public office holders subject to the Act are not reporting public office holders. This group is primarily made up of part-time members of federal boards, commissions or tribunals, as well as some part-time ministerial staff. They are subject to most of the rules of conduct under the Act and some of the post-employment restrictions, but they are not subject to reporting requirements, divestment requirements or the prohibition against engaging in outside activities. They do not submit confidential disclosures to my Office and are not required to make any public declarations. For this reason, my Office has little contact with most part-time public office holders, although a few do consult my Office before accepting an appointment to understand what their obligations would be if appointed.

Part-time public office holders are advised of their obligations under the Act when they assume their duties and at the end of their term of office but, out of approximately 1,700 part-time public office holders, only a handful have ever sought personal advice from my Office once they have taken office. This makes it more difficult to determine the kinds of compliance issues these individuals may be faced with.

In the first years of my mandate I have not focused specifically on part-time public office holders and I have not been made aware of any significant conflict of interest issues relating to them, but I have some concern that there may be in this group a lack of awareness of what constitutes potential conflict of interest situations. I expect that many part-time public office holders are engaged in private sector employment or other activities outside of their public duties, as they are permitted to do under the Act. While they are not required to submit disclosure statements to my Office, they are nevertheless obliged to make arrangements to avoid conflicts of interest.

I note that a number of boards, commissions and tribunals have their own conflict of interest rules that may go some way to address these issues and some of these organizations consult our office when they develop those rules.

I am not aware of any similar rules in ministerial offices that would cover part-time ministerial staff.

While the gift prohibition rules apply to part-time public office holders, the Act does not require that they disclose gifts to my Office. Consequently they rarely, if ever, seek advice from my Office with respect to the appropriateness of accepting gifts. Reporting public office holders, on the other hand, often request advice with respect to gifts and the advice is, at times, that the gifts in question should not be accepted. It is likely that some unacceptable gifts are offered to public office holders who hold part-time positions as well. In light of the fact that many of these public office holders come from the private sector where corporate gifts appear to be an accepted part of the culture, it may be that, when an individual receives a gift in his or her capacity as public office holder, he or she might not always think to question whether the gift could create a conflict of interest.

In the next year I will take additional steps to remind these part-time public office holders of their obligations under the Act beyond the letters I send to them on appointment and on the completion of their terms in office. These measures might include organizing briefing sessions, but the sheer size of this group of public office holders and the fact they are located across the country would make it difficult to do so at a practical level. As a first step I have decided that I will begin sending an annual letter to all part-time public office holders reminding them of their obligations under the Act and inviting them to contact my Office with any specific concerns. I will do this in the coming months.

Ministerial advisers

As noted above, those public office holders who exercise their duties on a part-time basis are generally not designated as reporting public office holders and therefore are not subject to the Act's disclosure, divestment and outside employment provisions. There is, however, an exception in the case of ministerial advisers. In subsection 2(1) of the Act this group is defined as follows:

> *"ministerial adviser" means a person, other than a public servant, who occupies a position in the office of a minister of the Crown or a minister of state and who provides policy, program or financial advice to that person on issues relating to his or her powers, duties and functions as a minister of the Crown or a minister of state, whether or not the advice is provided on a full-time or part-time basis and whether or not the person is entitled to any remuneration or other compensation for the advice.*

Ministerial advisers are reporting public office holders regardless of whether they carry out their duties on a part-time or a full-time basis.

It has been suggested that this category of public office holder was included in the Act to cover members of an incoming government's transition team or unpaid volunteers who are particularly influential with a minister. There is nothing in the definition above, however, that would limit the interpretation in this way. On the face of the definition, "ministerial adviser" would also include a broader range of public officials, including some who work on a part-time basis. The rationale for this category of reporting public office holder would appear to be that influential people in a minister's office who provide policy, program or financial advice to the minister should be reporting public office holders, even if they do not work full-time.

Over the past year, I reviewed the job titles of the small number of ministerial staff who were working on a part-time basis. In cases where their job titles suggested that they might fall within the definition of a ministerial adviser under the Act, additional information was sought. Based on this information I was satisfied that none of these individuals was a ministerial adviser.

I also considered whether some part-time Governor in Council appointees should be considered ministerial advisers, and therefore reporting public office holders. In particular, I noted that section 127.1 of the *Public Service Employment Act* allows the government to appoint individuals to the position of "special adviser to a minister". Because these part-time special advisers are Governor in Council appointees, they come within the definition of "public office

holder”. At issue was whether they also fall within the definition of ministerial adviser under the *Conflict of Interest Act* and should therefore be considered reporting public office holders subject to the full range of obligations that apply to reporting public office holders.

I sought additional information from government officials as to the nature of these appointments. I was told that individuals appointed under section 127.1 of the *Public Service Employment Act* have always been appointed to a government department and that they do not hold a position in the office of a minister. If this is always the case, they would not fall within the definition of ministerial adviser because that definition requires that the position be in the office of a minister.

Typically, appointees under section 127.1 of the *Public Service Employment Act* are high-profile officials who are given a specific task and operate at arm’s length from the government. For example, David Johnston, who helped the Prime Minister establish the terms of reference for the Oliphant Commission, was appointed under that section. In contrast, individuals who work in a minister’s office are typically partisan political allies. They work closely with the minister and can have a significant impact on, and access to privileged information about, a broad range of government policies. It would appear then that those individuals appointed under 127.1 of the *Public Service Employment Act* during the past year should not be considered ministerial advisers.

In the coming year my Office will continue to work with ministers’ offices and government officials to determine whether there are any part-time ministerial staff or part-time Governor in Council appointees who ought to be considered ministerial advisers under the Act.

V. INVESTIGATIONS, EXAMINATIONS AND INQUIRIES

Examinations and Inquiries

My Office administers two separate but overlapping conflict of interest regimes; one is established in an Act of Parliament and the other is a Code set out in an appendix to the *Standing Orders of the House of Commons*. When I formally investigate a matter under the *Conflict of Interest Act* (Act) it is called an examination and when I formally investigate a matter under the *Conflict of Interest Code for Members of the House of Commons* (Code) it is called an inquiry.

This spring I completed and released two sets of reports, each in relation to matters raised at the same time under both the Act and the Code. One of these related to the use of partisan or personal identifiers on ceremonial cheques. The other related to the involvement of lobbyists in political fundraising events. This was the first time I have had to deal simultaneously with the Act and the Code on a particular matter. A third investigation involving an examination under the Act and a parallel inquiry under the Code is ongoing. Reports will be issued on their completion.

Identifiers on ceremonial cheques or other props

I commenced an inquiry under the Code in the fall after receiving 63 separate requests from four Members of the House of Commons, naming a total of 60 other Members who were alleged to have used partisan or personal identifiers on ceremonial cheques or other props in connection with federal funding announcements. A parallel examination was initiated under the Act with respect to 25 of those Members who were also ministers, ministers of state and parliamentary secretaries. Both reports were released on April 29, 2010.

In those reports, I concluded that the practice of using partisan or personal identifiers in announcing government initiatives goes too far and has the potential to diminish public confidence in the integrity of Members and the governing institutions they represent. I found, however, that the interests in question are not covered by the existing conflict of interest regimes. This finding was based on my conclusion that the prohibitions in both the Act and the Code relate to private personal interests and do not extend to partisan political interests, such as raising one's profile or enhancing one's electoral prospects.

There appears to be agreement, both on the part of the government and the House of Commons, that there is a need to address the issue of the politicization of government communications. Following the release of the Cheques reports, Treasury Board President Stockwell Day announced that he had begun discussions on how best to implement my recommendations. As well, after its review of the Economic Action Plan, the House of Commons Standing Committee on Government Operations recommended, in its report presented to the House of Commons on May 6, 2010, that the government establish strict guidelines to ensure that all government advertising is seen to be strictly non-partisan in look, feel and content. The Committee also recommended that the government ensure that government websites not contain links to partisan material.

Political fundraising and lobbyists

The second set of reports under both the Act and the Code related to political fundraising and allegations that the Honourable Lisa Raitt, Member of Parliament for Halton and the former Minister of Natural Resources, had accepted a gift from a lobbyist who volunteered by selling tickets to a political event for her. I commenced an examination under the Act and an inquiry under the Code in the fall of 2009 after receiving separate requests from two Members of the House of Commons. My reports under the Act and Code were both released on May 13, 2010.

I concluded that the contributions and services provided by lobbyists in connection with a political fundraising event were given to Ms. Raitt's riding association and that, as she was not involved in the organization of the event, she could not have breached the gift prohibitions in the Act or the Code. I pointed out, however, the need for effective fundraising guidelines in relation to political fundraising events for Members of Parliament and more particularly for ministers and parliamentary secretaries. I believe this would help to ensure that they are not placed or seen to be placed in situations of actual or potential conflict of interest or in situations involving preferential treatment. Furthermore, I recommended that such guidelines be made public.

Other examinations under the Act

During the past fiscal year I issued a report following the completion of an examination commenced under the Act during the previous fiscal year. That report was in relation to Mr. Colin Watson, a part-time member of the Toronto Port Authority's Board of Directors. I commenced that inquiry in the winter of 2009 on my own initiative after receiving information from another member of the Board of Directors. My examination related to allegations that, by participating in decisions of the Toronto Port Authority Board in relation to a proposal to acquire a new ferry, Mr. Watson may have been in a conflict of interest on the grounds that he had the opportunity to further the private interests of a friend. I issued my report on June 25, 2009.

The word "friend" is not defined in the Act. It is a word that is used in different ways by different people and can be used to apply to a range of relationships. I found that the prohibition was not intended to relate to individuals other than those who have a close bond of friendship, a feeling of affection or a special kinship with the public office holder concerned. It does not include members of a broad social circle or business associates. Mr. Watson was not a friend of the individual in question for the purposes of the Act. I therefore concluded that Mr. Watson was not in a conflict of interest and did not contravene the Act.

I discontinued one examination under the Act this past fiscal year and issued a report explaining my reasons for doing so. That examination had been commenced at the request of Ms. Martha Hall Findlay, Member of Parliament for Willowdale. There was a relationship between this request and the requests for examinations and inquiries on the use of ceremonial cheques or other props referred to above. Ms. Hall Findlay alleged that various ministers and parliamentary secretaries had breached the Act by using their positions to develop an advertising and communications strategy to promote Canada's Economic Action Plan that incorporated "look and feel" aspects of the Conservative Party of Canada in order to improve its electoral prospects.

I discontinued that examination after ascertaining that the Conservative Party of Canada is not a “person” within the meaning of the Act and therefore was not covered under the terms of the Act.

Other investigative activities

I cannot disclose information that comes to my attention in relation to a request for examination under the Act or an inquiry under the Code unless I do so in a report that is made public under the Act or the Code. However, what follows will provide a general idea of how concerns are raised with my Office and how they are dealt with.

There was one instance where a Member of the House of Commons raised concerns with me about possible contraventions of the Act by several public office holders. In this case the Member did not make a formal request for an examination. I clarified for the Member the specific requirements of the Act in this regard but he did not proceed with a formal request, and I did not have the grounds to proceed with a self-initiated examination.

There were four other cases in relation to which my Office received information, either through media reports or from a member of the public that suggested a possible contravention of the Act. After reviewing each of these cases, I determined that I did not have the grounds to initiate an examination.

There were five instances where Members of the House of Commons raised concerns with me about possible contraventions of the Code by other Members. In one case, I determined that an inquiry was not warranted after conducting a preliminary review. In two cases, the Members decided not to make a formal request for an inquiry. I clarified for them the specific requirements of the Code in this regard but they did not proceed with a formal request, and I did not have the grounds to proceed with a self-initiated inquiry. In the fourth case, the subject matter of the request raised jurisdictional issues with respect to the Board of Internal Economy. I referred that matter to the Board. In the fifth case, an issue raised by a Member about the conduct of another Member did not fall within the scope of the Code. I therefore did not pursue the matter.

There were three additional cases in relation to which my Office received information, either through media reports or from a member of the public that suggested a possible contravention of the Code. After reviewing each of these cases, I determined that I did not have the grounds to initiate an inquiry.

Procedural Requirements for Requesting an Examination or Inquiry

An examination under the Act may be requested by a Member of the House of Commons, or a Senator, who has reasonable grounds to believe that a public office holder has contravened the Act. I can also conduct an examination on my own initiative where I have reason to believe that a contravention has occurred. When a request for an examination that meets the requirements of the Act is received from a Member or a Senator, the examination under the Act begins immediately, provided I do not determine that it is frivolous, vexatious, or made in bad faith. Unlike the Code, there are no provisions for conducting a preliminary review under the Act to determine if an examination is warranted.

Under the Code an inquiry may be requested by a Member of the House of Commons who has reasonable grounds to believe that another Member has not complied with the Code. Inquiries can also be commenced by way of a resolution of the House of Commons, or on my own initiative if I have reasonable grounds to believe that a Member has not complied with his or her obligations under the Code.

Before commencing an inquiry under the Code that is requested by a Member and meets the requirements of the Code, I must give the Member against whom the allegations have been made 30 days to respond to those allegations. Once I receive the response, or after that 30-day period expires if I do not receive a response, I have 15 working days to conduct a preliminary review to determine whether or not an inquiry is warranted. If an inquiry is commenced, I report my findings publicly upon its completion.

When a Member or Senator requests an examination under the Act or when a Member requests an inquiry under the Code, he or she must clearly identify the provisions alleged to have been contravened and set out the reasonable grounds for the belief that the contravention has taken place. Errors and omissions can cause delays in proceeding with an examination.

In order to assist Members and Senators in complying with these requirements, my Office has developed an examination request form for requests under the Act. I hope this will serve to streamline and expedite the examination process. The form is available on the Office website.

A similar form has been developed to assist Members in making requests under the Code. The form has been submitted, as is required under the Code, to the Standing Committee on Procedure and House Affairs for approval. I await the Committee's response on this matter.

Parallel investigations under the Act and Code

As noted above, this year my Office conducted investigations under both the Act and the Code in relation to the same matter for the first time. This situation can arise when allegations of conflict of interest relate to a Member of the House of Commons who is also a minister or a parliamentary secretary. In these cases I must determine whether the allegations touch upon the Member's duties as a Member, the Member's duties as a minister or parliamentary secretary, or both. The answer to that question determines whether the actions should be reviewed under the Act, the Code, or both.

There are different procedural requirements for releasing reports under the Act and the Code. Examination reports under the Act must be delivered to the Prime Minister and inquiry reports under the Code must be tabled in the House of Commons. While nothing is said in either the Act or the Code about parallel investigations, I have concluded that, because of the different procedures for releasing the reports, I must produce two separate reports in these circumstances. I take care to ensure that the two reports are tabled in the House of Commons and delivered to the Prime Minister as closely in time as possible and then immediately afterwards released to the public.

Confidentiality of Inquiries and Examinations

As noted in both my annual reports last year, the Code prevents me from making any public comment relating to a preliminary review or an inquiry, other than to 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 me to conduct examinations in confidence until I release my public report.

While I understand and appreciate the need for confidentiality, this has created some difficulties and should be balanced against the desirability of transparency in certain cases, in particular where information about a request already exists in the public domain. I believe the Act and Code go too far in preventing me from commenting on my investigative work.

Where I decide not to proceed to an examination or an inquiry, I can make no public statement to explain the circumstances. Nothing can become public unless the Member requesting the examination or inquiry or the Member against whom allegations have been made decides to release my final letters to them, explaining the reasons why an examination or inquiry is not warranted. This has rarely occurred to date. Where I do not proceed beyond an initial assessment of a request or of a concern raised, I cannot make known my reasons for not proceeding and cannot counter any false information that is made public by others in this regard.

This situation may sometimes lead the public and Members to surmise that I do not take requests seriously, or that I am favouring an individual or a party. Of greater concern, perhaps, where a request has been made public, the allegations can unfairly damage the reputation of the Member against whom they are made. There are instances where it would be in the interest of Members and of the public for me to be able to communicate the reasons why I have not proceeded to an examination or inquiry.

In the past year, I have had the opportunity to address this issue before the Standing Committee on Procedure and House Affairs in relation to the Code. The Code is easier to amend than the Act and I have asked the Committee to consider amending it to allow me to be more transparent in situations where I do not proceed to an inquiry requested by a Member. I have proposed that, if I receive a request and determine that an inquiry is not warranted, I be permitted to make public my reasons for not proceeding if the matter is already in the public domain. I am hopeful that the Committee will address the matter.

The Act, unlike the Code, does not include a preliminary review stage prior to the examination process. In cases where allegations of a contravention of the Act have been made, and a request meeting the basic requirements set out in the Act has been received, the only way for my Office to look into the facts relating to the allegations is to begin an examination under the Act, and then to discontinue it if I do not have sufficient information to proceed or if I conclude that the Act does not apply.

As was the case with the request received from Ms. Hall Findlay, referred to earlier, when a request that meets the requirements of the Act is received from a Member of the House of Commons or a Senator I am required to begin an examination and issue a report outlining my analysis and conclusions, even where the examination is discontinued. However, when a request

for examination does not meet the basic requirements and is therefore not accepted, I am not permitted to publicly discuss the reasons for declining it. For those cases, I would suggest that an amendment to the Act similar to that proposed for the Code would be desirable.

Role of Counsel in Investigations

I have observed that the public officials subject to examinations under the Act and inquiries under the Code, as well as the witnesses who are called upon to provide my Office with relevant information, are increasingly represented by legal counsel.

The right to legal representation is a fundamental right and the reflex to retain legal counsel is both understandable and legitimate. At the same time, the style of advocacy that is both expected and effective in the context of conventional civil litigation before the courts can be counter-productive in the context of investigations conducted by my Office.

In this connection, it is worth underscoring the important differences between the investigative process under both the Act and the Code and that under conventional judicial proceedings. My Office is not a court. The process of conducting an investigation, which is inquisitorial rather than adversarial in nature, does not amount to a trial. As Conflict of Interest and Ethics Commissioner, I am not a judge; nor am I entitled to make findings of either civil or criminal liability. In conducting investigations, I am responsible for making findings of fact and, where appropriate, conclusions of non-compliance with either or both the Act and the Code. Under the Code, I may also make recommendations to the House of Commons. These may or may not be acted upon.

My Office will give some consideration to what guidance could be developed to assist those under investigation and their counsel in understanding how they might best work with my Office to complete the process as efficiently as possible.

General Observations

Avoiding conflict of interest

The Act and the Code set out rules and procedures for avoiding conflicts of interest. Both regimes have stringent requirements for the disclosure of private interests to my Office. My Office works closely with reporting public office holders and Members to ensure that all required information is disclosed, and that potential conflicts of interest are prevented. Because of this, the potential for a contravention of the conflict of interest provisions of the Act and Code is limited. I have found in general that public officials do seek to comply with the conflict of interest regimes, and are quick to rectify situations that could place them in a conflict of interest.

The requirement for reasonable grounds to investigate

It is important to remember that the threshold for initiating an investigation is high. While parliamentarians and the media are often quick to point to behaviour on the part of public officials that seems suspicious, I cannot examine these matters based solely on appearances and

suspicions. I must be in possession of information establishing reasonable grounds to believe that a contravention has taken place before an examination under the Act or an inquiry under the Code can be commenced.

Private interests and political interests

Both the Cheques reports and the Raitt reports, as well as the Discontinuance Report relating to allegations of partisan advertising in relation to government initiatives, were requests that provided reasonable grounds and were framed in such a way that they met the requirements of the Act and the Code in that they alleged conflicts of interest between the Members' public duties and alleged private interests. As I indicated in last year's Annual Report on the Code:

> *[...] my general view was that I should not involve myself in policy disputes or other political matters unless they also involve a deliberate and focused attempt by a Member to further a private interest. Exactly where to draw the line between a private interest and what might be called a "political" interest will sometimes be difficult to determine and will always depend on the circumstances of the case.*

I found that the interests at issue in these examinations and inquiries were, in fact, political interests or political activities not covered by the Act. As I indicated earlier, Members and public office holders must disclose to my Office their private interests to prevent situations that could lead to conflicts of interest. This goes a long way in preventing contraventions of the Act and the Code and ensuring that public interests are placed ahead of private interests when the two are in conflict. If there is a real desire that my Office look into conflicts of interest in relation to political interests, changes to the Act and the Code would be required to establish this as part of my mandate. It would seem to me, however, that this is ultimately a matter for the electorate to judge.

The ethics mandate

In last year's Annual Report under the Act I noted that, although my title includes the word "ethics", the term "ethics" is not used anywhere in the Act or the Code.

Both the Act and the Code set out very specific conflict of interest rules that I must interpret. Neither addresses the ethical conduct of public officials more generally. There appears, however, to be an expectation, not only among some members of the public but also among some Members of the House of Commons, that I have the mandate to investigate all manner of ethical concerns.

This expectation was perhaps enhanced by an overbroad statement made by the former President of the Treasury Board at the time that my Office was created: "Through the new *Conflict of Interest Act* and the Conflict of Interest and Ethics Commissioner, Canadians can now voice their concerns about unethical behaviour."

This year, I have gone beyond the application of the specific provisions of the Act and the Code to offer some broader observations and recommendations in both of the Cheques reports and in both of the Raitt reports, all discussed earlier in this section. In both sets of reports, while I

found that there were no contraventions of the Act or Code, there were important issues that deserved comment. The activities considered in the Cheques reports had the potential to diminish public confidence in the integrity of elected public officials and the governing institutions they represent. Those considered in the Raitt reports had the potential to place public office holders in situations of actual or perceived conflicts of interest.

Although I have no mandate to review allegations relating to the total range of possible unethical conduct of Members of Parliament and public office holders, I will take the opportunity, when I am investigating alleged contraventions of specific rules in the Act or the Code, to comment more broadly on the matter under review if I believe that it has the potential to diminish public confidence in the integrity of elected public officials and the governing institutions they represent. In this way I can offer observations and recommendations on broader concerns.

VI. OUTREACH AND COMMUNICATIONS

Outreach to Public Office Holders and Members

Over the past year, my staff and I met individually with many public office holders and Members of the House of Commons to discuss their obligations under the Act and Code and to provide them with guidance on conflict of interest issues. We also continued to make presentations to groups of public office holders in a number of departments and agencies.

We met with Members' staff from all caucuses during the spring of 2009. In the fall, I offered an information session on the recent changes to the Code approved last June that was held as part of the Library of Parliament seminar series. Between December 2009 and March 2010 my staff and I made presentations to caucuses of the New Democratic Party, the Bloc Québécois and the Liberal Party. We will be making a presentation to the Conservative Members as well.

We issue communiqués, advisory opinions and information notices to inform public office holders and Members about matters related to the Act and the Code. In the past year, we issued a communiqué on the June 2009 changes to the Code's gift provisions. We also issued two advisory opinions. The first related to offers from Rogers Communications to produce and broadcast, without charge, brief messages from Members to their constituents acknowledging Canada Day, Remembrance Day and the holiday season. The second addressed an invitation from Bell Canada and the Sens Foundation to attend the Bell Sens Soirée.

Connections with Counterparts

I have had several opportunities over the past year to learn from, and exchange ideas with, counterparts in other jurisdictions.

In September I attended the yearly meeting of the Canadian Conflict of Interest Network. The network includes federal, provincial and territorial commissioners and provides an opportunity to exchange views and discuss matters of mutual interest. As noted in Section II of this report, my Office has taken on a coordinating role within the network in years to come. I look forward to exchanging views with my provincial and territorial colleagues again this September during our annual conference.

The Office is a member of the Council on Governmental Ethics Laws (COGEL), a professional organization for government agencies, organizations and individuals with responsibilities or interests in governmental ethics, elections, campaign finance, lobbying laws and freedom of information. COGEL is an international ethics network whose members are primarily from the United States and Canada, but also from Europe, Australia and Latin America. My Office was represented at its annual conference in December 2009.

The Office has also engaged with the Organisation for Economic Cooperation and Development (OECD) several times over the past year, specifically with respect to the work of the Public Governance Committee and its Expert Group on Conflict of Interest. I attended the "Global Forum on Integrity" in Paris in May 2009, and met with the Expert Group at that time.

My Office provided feedback to the Group and the Committee on several initiatives since then. We participate when appropriate and are kept informed of major events, developments and planning.

Appearances and Presentations

The invitations that I receive from parliamentary committees and other governments also provide me with an opportunity to speak about my Office and discuss issues of interest. I was asked to testify on two separate occasions before the Oliphant Commission, the Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings between Karlheinz Schreiber and the Right Honourable Brian Mulroney. In June, I commented on post-employment rules and in July on outreach activities for ministers and ministerial staff in relation to post-employment obligations.

In October 2009 I testified before the Quebec Committee on Institutions during its study of Bill 48, a Code of Ethics and Conduct for Members of the National Assembly.

I was asked to make a presentation at the Ethics in Democracy II Conference in El Salvador, in November 2009. This was an international event organized by the Canadian Government with a focus on Mesoamerica but attended by representatives of a much broader range of countries. I was pleased to have the opportunity to explain the mandate of my Office and share our experience in administering conflict of interest regimes in Canada, and to meet and hear the presentations of a number of Canadian academics in the ethics field.

I also met in Ottawa with a delegation of senior officials from Ukraine and, more recently, my staff met with a delegation from China.

I addressed the annual meeting of the Canadian Political Science Association in May 2009, and the 5th Annual National Forum on Administrative Law and Practice at Osgoode Hall Law School in October 2009. Presentations on the Act and the Code were also made to public service practitioners through the Interdepartmental Network on Values and Ethics, and the Senior Parliamentary Officials Program.

Communications with the Media and the Public

In addition to our work with public office holders and Members of Parliament and our increasing contact with various stakeholders in government ethics, we continue to strive to inform the media and the public about our mandate.

We undertook a variety of communications initiatives this past year, including the creation of a media centre on our website. I make myself available to the media when I find it necessary to clarify specific issues related to my mandate.

My Office received approximately 440 emails and 140 telephone calls from Canadians who brought a wide range of issues to my attention, not all of which were related to my mandate. We try to respond to all these communications, and where appropriate do so in some detail.

Identifying Emerging Issues

Last year I referred to my desire to develop a research agenda to identify and analyze topics of relevance to the work of my Office. It is instructive to have some awareness of the approaches taken to regulate government ethics in other parts of the world. My Office conducted some comparative analyses of provincial, territorial and international jurisdictions and took a number of opportunities to exchange information with representatives of these jurisdictions.

We have found that the governments of most countries, including our own, are increasingly regulating the behaviour of public officials and have developed codes or laws aimed at ensuring that private interests are kept separate from the broader public interest. One area on which there appears to be widespread agreement is the importance of the disclosure of private interests by public officials. The requirement to make such disclosures is a common feature of conflict of interest regimes in many countries.

An emerging concern among Organisation for Economic Cooperation and Development (OECD) member countries relates to post-employment. This was among the issues discussed at the OECD Global Forum on Public Governance (Paris, May 2009), held in cooperation with the Dutch National Integrity Office, which I attended. I was also asked by the Oliphant Commission to address this subject. The OECD acknowledged implementation challenges on the part of member countries with respect to post-employment restrictions, as contraventions are difficult to manage when individuals are no longer in public employment. This is consistent with my own observations, which are discussed in more detail in Section III of this report.

Beyond these broad similarities, however, the measures adopted vary among different jurisdictions. My Office will continue to monitor these and other international developments in order to broaden our knowledge of government ethics in other countries.

VII. ADMINISTRATION

Human Resources

My Office is a parliamentary entity, separate from the core public administration. It has the authority to hire its own employees and to establish its own classification structure and terms and conditions of employment. Although not subject to the *Public Service Employment Act*, the Office has made it a standard practice to apply its principles when making staffing decisions.

From a human resources perspective, the Office has reached stability with all but three of its 49 positions filled as of March 31, 2010. All three vacant positions are expected to be filled within the first few months of the new fiscal year.

Advisors are essential to the smooth functioning of the two conflict of interest regimes that the Office administers. We have on staff a number of long-term, experienced advisors and we have recently implemented a new program for hiring and training new advisors. Employees who meet pre-identified competencies are provided with an opportunity to develop the skills and knowledge necessary to administer both regimes. This strategy has successfully addressed difficulties we have faced in previous years in filling the advisor positions.

This year, as in previous years, the Office has continued to develop internal policies and procedures relating to its employees, including a revised set of terms and conditions of employment that more closely reflects practices adopted in the core public administration over the last few years. A staffing manual for managers was introduced, along with policies and guidelines on staffing-related issues such as probation, acting pay and term employment.

Within the Office, we will continue to develop internal working tools to support our operations. We are already planning to implement a functions-based classification structure for our records and a more comprehensive filing system to support it.

There has also been an increased focus on internal communications, an area identified by employees as needing attention. The launch of a new Intranet created greater internal efficiencies, by consolidating frequently used employee tools through a single access point.

Finance

For the second consecutive year, my Office had an operating budget of $7.1 million, including $5.3 million for salaries and benefits. The same budget has been requested for next year. Given the size of the Office, arrangements have been made with larger organizations for the provision of administrative services. A large portion of our non-salary budget is therefore dedicated to the cost of these arrangements.

A table outlining broadly the financial information for the Office for the 2009-2010 fiscal year is provided in Appendix B. Detailed financial statements can be found on our website at http://ciec-ccie.gc.ca/.

VIII. LOOKING AHEAD

Building on the experiences and successes of 2009-2010, in the year ahead we will maintain and, where possible, strengthen our efforts to provide clear, consistent and common-sense advice to help public office holders and Members of the House of Commons comply with the Act and the Code.

Outreach and communications will be an important focus. Through presentations, discussions and targeted written communications, among other initiatives, we will seek to ensure that public office holders and Members better understand their obligations under the Act and the Code. We will enhance our outreach to part-time public office holders.

We will also continue to improve our website by making it more user-friendly, and by adding more information notices, guidelines and backgrounders to help public office holders and Members understand how we interpret various provisions of the Act and the Code. We will seek to help the general public and our stakeholders gain a better awareness of the role of our Office through more proactive media relations.

We have had a number of requests for examinations and inquiries over the past year, and may well have more in the coming year. In my reports I attempt, whenever possible, to broaden the understanding of the two regimes we administer.

I expect that we will face new challenges in interpreting the Act and the Code and in administering these two conflict of interest regimes. In meeting these challenges, we will continue to have regard to the practices and policies of other jurisdictions.

Drawing on our growing body of experience, we will continue to work with the House of Commons Standing Committee on Procedure and House Affairs on possible amendments to the Code. While seeking amendments to the Act would be more complex, some changes might be considered following the legislative review, which is required by section 67 of the Act to take place by 2012.

I am in a position to increase some of these activities because the Office now has a full and stable complement of employees. I am grateful for the contributions of my staff, and believe that with their continued dedication and support, combined with the goodwill of public office holders and Members of the House of Commons, we will continue to help ensure that the public interest is placed ahead of private interests, and in so doing will enhance the confidence and trust of Canadians in government and its institutions.

APPENDIX A - DISCLOSURE REQUIREMENTS (from page 5)

Disclosure requirements related to initial compliance with the Act on appointment

Confidential disclosures to the Commissioner:

- File a confidential report within 60 days after appointment (subsection 22(1))
- Ensure the completeness and accuracy of the confidential report (subsection 22(2))
- Provide confirmation of all required divestments of controlled assets within 120 days after appointment

Public declarations:

- Declare all non-controlled, non-exempt assets within 120 days after appointment (subsection 25(2))
- Declare any outside activities as an officer or director permitted under the Act within 120 days after appointment (subsection 25(4))
- Sign a summary statement of the methods of compliance used within 120 days after appointment (subsection 26(1))
- Ensure the completeness and accuracy of the summary statement (subsection 26(2))
- Declare liabilities of $10,000 or more (ministers of the Crown, ministers of state and parliamentary secretaries only) within 120 days after appointment (subsection 25(3))

Disclosure requirements related to ongoing compliance with Act

Confidential disclosures to the Commissioner:

- Material change to confidential report within 30 days after the change (subsection 22(5))
- Multiple gifts from one source with a cumulative value of over $200 in a 12-month period within 30 days after the total cumulative value exceeds $200 (section 23)
- Firm offers of outside employment within 7 days after the offer (subsection 24(1))
- Acceptance of an offer of outside employment within 7 days after acceptance (subsection 24(2))

Public declarations:

- Gifts with a value of $200 or more within 30 days after receipt (subsection 25(5))
- Recusals within 60 days after the date of recusal (subsection 25(1))
- Travel on non-commercial chartered or private aircraft (ministers of the Crown, ministers of state, parliamentary secretaries and ministerial staff only) within 30 days after acceptance (subsection 25(6))

APPENDIX B - RESOURCE SUMMARY (from page 28)

(thousands of dollars)					
	2008-09	2009-10			
Program Activity	Actual Spending	Main Estimates	Total Authorities	Actual Spending	Alignment to Government of Canada Outcomes
Administration of the *Conflict of Interest Act* and the *Conflict of Interest Code for Members of the House of Commons*	5,451	7,105	7,105	5,528	Government Affairs
Total Spending	5,451	7,105	7,105	5,528	
Plus: Cost of services received without charge	917	n/a	n/a	951	
Net Cost of Department	6,368	7,105	7,105	6,479	
# of employees	38			46	

The budget process for the Office of the Conflict of Interest and Ethics Commissioner is established in the *Parliament of Canada Act*. The Speaker of the House of Commons considers the estimates for the Office and transmits them to the President of the Treasury Board for inclusion in the estimates of the Government. The Standing Committee on Access to Information, Privacy and Ethics has within its mandate the role to review and report on the effectiveness, management and operations together with the operational and expenditure plans relating to the Office.

Since 2008-09, the budget for the Office has remained at $7.1 million, 74% (or $5.3 million) of which is dedicated to salaries and employee benefits. Of the remaining $1.8 million, approximately $700,000 is used to cover the cost of shared services provided by the House of Commons, the Library of Parliament and Public Works and Government Services Canada in the area of information technology, finance and compensation, respectively.

The Office began its operations on July 9, 2007. It lapsed a portion of its budget each year to date due to vacancies and challenges in finding qualified candidates. As noted earlier in this report, most positions at the Office are now staffed. This should result in a more stable and realistic utilization of budgets, keeping in mind that a reserve is in place to cover the unexpected.

Complete financial statements can be found on our website at http://ciec-ccie.gc.ca/.