Oliphant Commission

The Report consists of three volumes: 1 *Executive Summary*; 2 *Factual Inquiry*; and 3 *Policy and Consolidated Findings and Recommendations*. The table of contents in each volume is complete for that volume and abbreviated for the other two volumes. The Consolidated Findings and Recommendations are also included in Volume 1. In addition, three independent research studies prepared for the Commission have been published separately in a volume entitled *Public Policy Issues and the Oliphant Commission*.

Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney

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Report

Volume 3
Policy
and
Consolidated Findings and Recommendations

The Honourable Jeffrey J. Oliphant
Commissioner

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Abbreviations and Acronyms

ACBA	Advisory Committee on Business Appointments
ACOA	Atlantic Canada Opportunities Agency
ADM	Archer Daniels Midland
AMPMQ	Association des membres de la police montée du Québec
AG	Attorney General of Canada
BHI	Bear Head Industries
CBC	Canadian Broadcasting Corporation
CBSA	Canada Border Services Agency
CCRA	Canada Customs and Revenue Agency
CIA	*Conflict of Interest Act*
CIMS	Correspondence and Issues Management System
CISD	Corporate Information Services Division
CITIC	China International Trust and Investment Company
COCOM	Coordinating Committee on Multilateral Export Controls
CPAC	Cable Public Affairs Channel
CRA	Canada Revenue Agency
DDGM	(or GMDD) General Motors Diesel Division
DFAIT	Department of Foreign Affairs and International Trade
DND	Department of National Defence
DRIE	Department of Regional Industrial Expansion
ECS	Executive Correspondence Services
ECU	Executive Correspondence Unit
FAA	*Federal Accountability Act*
FC	Federal Court
FCA	Federal Court of Appeal
FCTD	Federal Court Trial Division
FDCI	Fred Doucet Consulting International
FORD–Q	Federal Office of Regional Development – Quebec
GCI	Government Consultants International
GM	General Motors
GMDD	(or DDGM) General Motors Diesel Division

IAG	International Assistance Group (Department of Justice)
IAGFPS	International Assistance Group Federal Prosecution Services
IAL	International Aircraft Leasing
ISTC	Industry, Science and Trade Canada
LAV	light armoured vehicle
LOR	letter of request
MBAV	multi-purpose base armoured vehicle
MBB	Messerschmitt-Bolkow-BlohmGmbH
MBM	Martin Brian Mulroney
MOU	memorandum of understanding
MP	member of parliament
MP Code	Conflict of Interest Code for Members of the House of Commons
MRCV	multi-role combat vehicle
NATO	North Atlantic Treaty Organization
OECD	Organisation for Economic Co-operation and Development
PC	Progressive Conservative
PCO	Privy Council Office
PMC	Prime Minister's Correspondence Unit
PMO	Prime Minister's Office
POH Code	Conflict of Interest and Post-Employment Code for Public Office Holders
RSC	Revised Statutes of Canada
RCMP	Royal Canadian Mounted Police
SBC	Swiss Bank Corporation
T-form	transmittal form
UIP	understanding in principle
UN	United Nations
USD	US dollars
WebCIMS	Web Correspondence and Issues Management System

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Correspondence

Questions 15 to 17 of the Commission's Terms of Reference read:

> ***15. What steps were taken in processing Mr. Schreiber's correspondence to Prime Minister Harper of March 29, 2007?***
>
> ***16. Why was the correspondence not passed on to Prime Minister Harper?***
>
> ***17. Should the Privy Council Office have adopted any different procedures in this case?***

In the period between June 2006 and September 2007, Mr. Schreiber sent 16 letters to Prime Minister Stephen Harper. Questions 15 and 16 of the Terms of Reference direct me to consider the steps that were taken in processing one of these letters, that of March 29, 2007, and why it was not passed on to Prime Minister Harper. In order to understand what happened to this particular letter, I need to consider how correspondence addressed to the prime minister is handled generally and how Mr. Schreiber's correspondence as a whole was handled.

Question 17 directs me to consider whether the Privy Council Office (PCO) should have adopted any different procedures in dealing with Mr. Schreiber's correspondence to Prime Minister Harper. This policy question is tied to the factual matters raised in Questions 15 and 16. Because the correspondence issues, both factual and policy-based, are separate and distinct from the other issues raised in the factual inquiry and the ethics policy matters, in this chapter I consider both the correspondence-

related factual matters raised by Questions 15 and 16, and the policy issues raised by Question 17.

Correspondence-Handling Practices in PCO and PMO

Reports and Testimony

In response to a request from Commission counsel, the PCO provided a report, Report on the Privy Council Office's Executive Correspondence Procedures and the Handling of Letters from Karlheinz Schreiber to Prime Minister Stephen Harper, June 2006 to September 2007 (PCO Report),[1] describing its correspondence-handling procedures. Also in response to a request by Commission counsel, the Prime Minister's Office (PMO) provided a description of its correspondence-handling procedures in its report, Report on the Prime Minister's Correspondence Unit Procedures and the Handling of Letters from Karlheinz Schreiber to Prime Minister Stephen Harper, June 2006 to September 2007 (PMO Report).[2]

The PCO and PMO Reports were filed as exhibits during the Factual Inquiry hearings.

Much of the description of the PCO correspondence function that follows is based on the PCO and PMO Reports, supplemented by the testimony of representatives from the PCO and the PMO. The Commission heard from Sheila Powell, the director of the Corporate Information Services Division (CISD) within the PCO, and Donald Smith, senior editor in the PCO's Executive Correspondence Unit (ECU). The ECU is part of the division directed by Ms. Powell. Mr. Smith was the acting manager of the ECU from the end of September 2007 to the end of January 2008 and senior editor during the period when the 16 letters to the prime minister were received from Mr. Schreiber. The Commission also heard from Salpie Stepanian, manager in the PMO of the Prime Minister's Correspondence Unit (PMC).

PCO Correspondence Function

Prime Minister's Correspondence

As noted by Dr. Paul Thomas in his independent study for the Commission, "Who Is Getting the Message? Communications at the Centre of Government" (Thomas study), the PCO is the organization most responsible for the quality and completeness of the information and advice that flow to the prime minister and cabinet.[3] The Corporate Information Services Division oversees the Executive Correspondence Services (ECS).[4] The ECS consists of the ECU, which processes mail addressed to the prime minister; and the Departmental Correspondence Unit (DCU), which handles mail addressed to the minister of intergovernmental affairs, the leader of the government in the House

of Commons, and the minister of state (democratic reform) in their roles as ministers of the Crown.[5] In my Report, I am concerned only with the processes and functions of the ECU.

Between 2001 and 2008, the ECU received a yearly average of approximately 1.4 million pieces of correspondence directed to the prime minister.[6] In 2006–07, the ECU handled 1,701,846 items of correspondence.[7] The corresponding figure for 2007–08 was 1,121,171. Correspondence includes letters, emails, post cards, petitions, greeting requests (for birthdays, anniversaries, and military retirements), and telephone calls addressed to the prime minister. Only a small portion of this correspondence is sent by the ECU to the PMO.

The PCO dedicates 35 employees in the ECU to management of correspondence addressed to the prime minister. The ECU has two senior editors: a senior English editor and a senior French editor. At the time of the factual hearing, Mr. Smith held the position of senior English editor. Six writers work under the senior editors. There are 11 correspondence analysts in the ECU Correspondence and Greeting Analysts Unit and eight mailroom clerks in the ECU Mailroom and Production Unit.

The mailroom clerks sort and classify incoming correspondence and send it on to the appropriate person in the ECU. According to the PCO Report, incoming correspondence is classified into the following categories:

- general mail
- priority mail
- political and personal mail
- requests for special messages from the prime minister, such as messages to participants in conferences to appear in conference programs
- requests for greetings for significant wedding anniversaries, significant birthdays, and military retirements
- write-in campaigns on specific issues, arriving in the form of post cards, form letters, and petitions

With the exception of mail that the clerks have classified as priority mail, all correspondence is forwarded directly to the correspondence analysts, who are responsible for entering mail into WebCIMS, the electronic correspondence-tracking system.* In the case of priority mail, the mailroom first sends it to a senior editor, who verifies whether it actually is priority mail and then forwards it to the correspondence analysts, to be entered into WebCIMS.

Correspondence analysts are each expected to handle between 80 and 100 emails, and between 25 and 40 letters, a day. In his testimony, Mr. Smith agreed that, given the daily volume of work an analyst is expected to accomplish, the reading of emails and letters tends to be quick and cursory. It is apparent that the correspondence analysts

* Exhibit P-17, tab 30, p. 78. PCO Report (Exhibit P-15), pp. 3–4. CIMS is the acronym for Correspondence and Issues Management System.

play a key role in processing the massive amount of incoming correspondence addressed to the prime minister. Analyst positions are classified at the AS-01 level, which is the lowest classification in the administrative support category.[8] Ms. Powell said that this level was appropriate for what is expected of analysts: identifying the sender, being able to read through the correspondence and identify whether it includes any threats, making sure that correspondence is sent to the correct departments, and identifying what is political in nature. Analysts receive on-the-job training from the supervisor in their unit. There are written procedures, supplemented by verbal procedures. Analysts also receive coaching from their more experienced colleagues.

Given the nature of Mr. Schreiber's correspondence, the procedures for handling requests for special messages, requests for greetings, and write-in campaigns are not relevant to the issues before the Commission. The remaining three categories of mail (general mail, priority mail, and political / personal mail) are relevant to the Commission's mandate and are described below.

General Mail

Correspondence categorized as "general" is, for the most part, mail from the public, including private citizens not representing any particular business or organization.[9] Upon receipt in the mailroom, general mail is given a tracking number and then forwarded to the analysts.[10] General mail does not receive the paper-routing form referred to as a transmittal form (T-form) and goes directly to the ECU correspondence analysts for action.

The issues raised in general mail usually fall under the mandate of a particular government department. If this is the case, a standard acknowledgement is sent by ECU staff to the sender, advising that the mail has been forwarded to a particular line department for information and action. The correspondence analyst will choose a standard reply from the standards library (an electronic library of standardized responses). If a standard reply is not appropriate, the letter will be assigned to a writer, who will draft a reply. Once the reply is decided upon and this information is entered into WebCIMS, a paper version of the reply is produced and then signed by the coordinator of the Correspondence and Greeting Analysts Unit. Copies of both the incoming and outgoing correspondence are emailed from WebCIMS to the appropriate department. As is apparent from this description, the handling of general mail is automated to some extent.

As outlined in the PCO Report, general emails that require a reply may receive a standard reply from the library of email standards. In cases where a standard is not appropriate, the email will be assigned to a writer and treated in the same way as general postal mail.

Not all correspondence falling within the general category receives a response. The PCO has a list of 15 reasons why a particular piece of correspondence will be directed

to file without a response. These reasons, which were set out in Appendix 6 to the PCO Report, are reproduced as Appendix 10-1 at the end of this chapter. They are headed:

- Obscure
- Religious
- Prolific
- Does not address PM
- Overtaken by events
- Illegible
- Incomplete [addressing] information
- Previous reply
- Inappropriate language
- Comments [without expectation of reply]
- Write-ins
- Thank you letters
- Inmates in penitentiary
- Legal case [before the courts]
- Irreverent [as in frivolous]

If general correspondence is judged to fall within one of these 15 categories of reasons, the correspondence will be directed to file without a reply. The decision to file without reply is made by the writer, in consultation with the ECU analyst and/or the senior editor.

Depending on its subject matter, general mail may also be classified by the ECU as political in nature. If such is the case, the mail will be forwarded to the Prime Minister's Correspondence Unit (PMC), which will decide on the action to be taken. Mr. Smith testified that the analysts and writers assess general mail. If analysts have questions or concerns about general mail that could be considered political in nature, normally they would consult first with their supervisor or with the writer who has responsibility for that departmental area. Mr. Smith also testified that analysts may consult a senior editor if they have questions about how to treat general mail.

Priority Mail

Mail to the prime minister from prominent individuals such as heads of state, premiers, and ministers is treated as priority mail and may receive a reply signed by the prime minister. When considering whether to classify mail as priority mail, the decisive factor is the position of the writer. Mr. Smith testified that mail may be classified as both priority and political mail if a VIP is writing about an explosive, controversial, or politically sensitive issue.[11]

Priority postal mail is given a tracking number and brought to the coordinator of the Mailroom and Production Unit, who prepares a transmittal form.[12] Priority emails are printed and given a tracking number, then scanned into WebCIMS and treated the same way as priority postal mail.

The transmittal form for priority mail contains the name of the correspondent, tracking number, date of the letter, and date received, as well as boxes for checking off action taken and information copies. The transmittal form is used by PCO secretariats and the Office of the Clerk of the Privy Council to add notes, comments, and directives for action to be taken.

Mail that the mailroom clerks determine to be priority is then forwarded by the Mailroom and Production Unit to the ECU's English or French senior editor. The senior editor assesses whether the correspondence is truly priority mail or should be downgraded to general or "urgent general." (Urgent general mail is treated the same way as general mail but has a shorter reply deadline.) The senior editor checks off the boxes on the transmittal form for action or information and assigns a distribution list. Priority mail is then forwarded to the correspondence analysts, who enter it into WebCIMS.

Letters from heads of state and government, provincial premiers, and cabinet ministers are normally assigned to the Office of the Clerk of the Privy Council for information and/or reply. Replies are prepared by PCO secretariats for signature by the prime minister. After the prime minister has signed a letter, a copy of the signed reply is returned to the ECU for scanning into WebCIMS.

Priority mail from other individuals, such as heads of non-government organizations, is generally replied to by the ECU, rather than prepared for the prime minister's signature.

Political / Personal Mail

All mail categorized by the ECU as political / personal mail is sent to the Prime Minister's Correspondence Unit.

Personal mail concerns the private life and personal interests of the prime minister. The ECU treats personal and political mail identically. However, for the purposes of my Report, I will not deal with personal mail since none of the mail sent by Mr. Schreiber to Prime Minister Harper concerned matters personal to the prime minister and none was classified as personal mail.

Political mail is defined as mail that relates to the prime minister's constituency business, to the prime minister's role as a member of parliament, and to party political matters (such as party leadership, party organization, and caucus affairs). As noted in both the PCO and the PMO Reports, the Prime Minister's Correspondence Unit may also identify particular issues that it wishes to handle, either because the prime minister knows the individual or because the issue is of particular interest to the prime minister or his or her staff.[13] If mail received by the ECU touches on any of these specifically identified issues, it is treated as political mail and forwarded to the PMC, as is all political mail.[14]

The Commission had before it two documents setting out procedures for dealing with mail: Procedures for Mail Processing Unit,[15] and Training Manual for the Executive Correspondence Unit Analyst Section.[16] Neither of these two documents appears to set out a substantive policy or procedure for treatment of political correspondence. As noted, the Commission heard from Sheila Powell, the director of corporate information services, whose areas of responsibility include the ECU. Ms. Powell testified that she does not believe there is a separate policy for dealing with political correspondence. In practice, mail is processed when it arrives, on a letter-by-letter basis. If general mail appears to the analyst to be political or personal in nature, according to his or her understanding of the definition, the analyst will flag the correspondence at the first level of "triage"[17] as something that should be sent to the PMC.

As noted in the previous section of this chapter, some priority mail may also be classified as political mail if it is from a writer of high stature or public office who is writing about matters that are explosive, controversial, or politically sensitive. Priority mail that is also classified as political is, like all priority mail, given a transmittal form directing it to a distribution list of individuals as specified by the senior editor. The mail is then processed by the analyst before being sent on to the distribution list.

Political mail is given a tracking number by a clerk in the ECU Mailroom and Production Unit. It is scanned into WebCIMS (by correspondence analysts), and the original is forwarded by the ECU to the PMC.[18] After transfer of the original correspondence to the PMC, the ECU does not keep a copy, nor does it track or otherwise follow up on personal and political mail.[19] Nor can the ECU view the copy of the correspondence that has been scanned into WebCIMS. Thereafter, permission for viewing the scanned letters on WebCIMS is determined by the PMC.[20]

Identification of Issues by PMO

The Prime Minister's Correspondence Unit may identify particular issues that it wishes to handle.[21] Ms. Stepanian testified that senior staff members in the Prime Minister's Office let her know when an issue is to be handled by the PMO, and she in turn advises the manager of the ECU. If mail concerns an issue that has been flagged as one that the PMC wants to handle itself,[22] it is categorized by the ECU as political mail, to indicate it is to be sent to the PMC.[23]

The Privy Council Office representatives testified that the PCO does not itself flag any issues to be brought to the attention of the PMO to ask if, or suggest that, a letter should be considered as political mail. Ms. Powell testified that the PCO would not presume to flag issues for the PMC, since this kind of proactive action is not part of its role.

Ms. Powell noted that, when correspondence dealing with a previously flagged issue is no longer to be handled by the PMO, this information is conveyed by the manager of the PMC to the manager of the ECU. She also testified that no formal

records are kept of issues flagged by the PMC that would enable the PCO to track such issues over time.

From time to time, the ECU may send correspondence to the PMC to give it the opportunity to determine if the PMC wishes to reply, even though no specific instructions have been issued.[24] This situation may arise where, for example, a specific matter receives increased media coverage.[25] The manager of the ECU may contact the manager of the PMC by telephone or email to make inquiries; or the correspondence file may be transferred to the PMC, for that unit to handle.[26] As I will discuss below, the latter occurrence is what happened with four letters from Mr. Schreiber. Mr. Schreiber's mail did not concern the prime minister's constituency business, his role as a member of parliament, or party political matters. It did not therefore fall within the formal definition of political mail. The PMO had not identified Mr. Schreiber as a correspondent whose letters were to be handled by the PMO, nor had it identified the issues he was writing about as ones it wished to handle. Nonetheless, four letters from him were classified within the ECU as general political mail and sent to the PMC.[27]

PMO Correspondence Function

The Commission's Terms of Reference ask whether the PCO should have adopted different procedures in the handling of Mr. Schreiber's correspondence to Prime Minister Harper. The Commission is not asked to opine on the PMO's procedures. However, in order for me to determine whether the PCO should have adopted different procedures, it is important for me to understand the PMO's role in the correspondence-handling process and to put the PCO's functions and procedures into their proper context.

The PMO employs six to eight individuals in the PMC to manage the prime minister's personal and political mail. As of February 5, 2009, the date of the PMO Report, these staff members included a manager (Ms. Stepanian), a senior editor / writer, four writers, one correspondence analyst, and one administrative assistant.[28] Collectively, the members of the PMC handled approximately 30,000 items of correspondence in 2006–07 and 37,000 in 2007–08.[29] The volume of correspondence received by the PMC is far less than that received by the ECU. Ms. Stepanian thought that, given that fact, the PMC spent more time than the ECU did on each piece of correspondence.

As I noted earlier, all correspondence received by the ECU that is categorized as political or personal is forwarded by the ECU to the PMC. This correspondence will include items concerning any issues that have been flagged by the PMO as ones it wants to handle. In addition, correspondence may be sent directly to the PMC without ever going through the ECU. In its report to the Commission, the PMO noted, "In addition to the letters, e-mails and faxes forwarded to PMC by the

… [ECU], the PMC receives numerous requests for letters, special messages, and courtesy notes from PMO personnel, Ministers, Senators, Members of Parliament, and party officials."[30]

Correspondence is assigned to the appropriate PMO employee or PMC writer for review, prioritization, and, if required, response.[31] Ms. Stepanian testified that, in determining whether a response should be sent, the PMC would base its decision on the same list that the ECU uses for types of letters that do not receive a response.[32]

PMC Treatment of Mail Designated as Political

In her testimony before the Commission, Ms. Stepanian confirmed that political / personal mail is any kind of correspondence dealing with party-related political matters, caucus-related issues, any personal interests of the prime minister, and the prime minister's role as a member of parliament. She confirmed that the PMC sometimes identifies particular issues that the PMO wishes to deal with directly. Senior staff in the PMO – for example, someone in issues management or in the chief of staff's office – identify such issues and let her know what they are. She in turn advises the manager of the ECU by telephone or email.

Ms. Stepanian testified that the converse does not happen: the PMO does not identify correspondents who, or issues that, it expressly does not want to handle.

Once political mail arrives in the PMC, the administrative assistant or analyst sorts the letters according to the issue portfolios assigned to the writers. Ms. Stepanian stated that she typically takes a quick look over the sorted letters, which are then returned to the administrative assistant or analyst to be entered into WebCIMS.

Postal mail received by the PMC is sorted daily – by subject – by the correspondence analyst or administrative assistant in the PMC.[33] The correspondence manager reviews the sorted letters and is also responsible for identifying letters in the personal and political mail that could be of interest to the prime minister.[34] Personal and political emails that are transferred to the PMC from the ECU are printed. If appropriate, responses are prepared and sent out electronically through the prime minister's email account.[35]

Communications Between PCO and PMO on Correspondence Issues

The representatives from the Privy Council Office and the Prime Minister's Office testified that regular, informal communication takes place between the manager of the Executive Correspondence Unit and the correspondence manager of the Prime Minister's Correspondence Unit. The communications tend to be by telephone or email.

Ms. Powell testified that the manager of the ECU interacts with the manager of the PMC on a "fairly regular basis throughout the course of a week as an issue arises."[36]

She said that these interactions would take place every second day or so. The PMC manager would advise the ECU manager if the PMC had identified an issue that should be handled by the PMC. Ms. Powell testified that the PMC would not become involved in identifying "priority mail,"[37] since such mail is classified as priority based on set guidelines.

Mr. Smith, the senior editor in the PCO's Executive Correspondence Unit, testified that, after the original correspondence is transferred to the PMC, the ECU is not told whether the PMC has replied to the item. As Mr. Smith observed, the PMC "[does] not have to account for [its] actions to us in any way. … "[B]y virtue of the fact that it's political, we never hear about it again."[38]

Nonetheless, Mr. Smith said, it could be helpful to know how the PMC dealt with a particular item in the event that future correspondence is received from the same writer.

Mr. Schreiber's Correspondence to Prime Minister Harper

Overview

The 16 letters Mr. Schreiber sent to Prime Minister Harper between June 2006 and September 2007 were contained in 15 separate mailings.* These letters were received before Mr. Schreiber swore his November 7, 2007, affidavit containing allegations concerning Mr. Mulroney.[39] According to Ms. Powell and Mr. Smith, the PMO never flagged correspondence from Mr. Schreiber or the issues he wrote about as issues the PMO wanted to deal with itself.

The PCO Report describes in general terms how the PCO dealt with these letters. Testimony by Ms. Powell and Mr. Smith, both of the PCO, and by Ms. Stepanian, of the PMO, helped provide an understanding of how the ECU and the PMC handled Mr. Schreiber's mail.

The letters sent between June 2006 and September 2007 covered a number of subjects. All 16 letters were addressed to Prime Minister Harper. They dealt with Mr. Schreiber's extradition proceedings, a claim by Mr. Schreiber of a "political justice scandal," claims of a vendetta and witch hunt, and further claims of a political justice scandal and the "Airbus Affair." Some letters were of a rambling nature. Some consisted of a very short cover letter with enclosed documents about these matters. Many appended various pieces of correspondence that Mr. Schreiber had sent to various government officials over the years, as well as newspaper articles or court documents. The correspondence is reproduced in its entirety in the PCO Report.

* The letters of April 8, 2007, and April 10, 2007, were sent by Mr. Schreiber in one mailing, in one package, together with a number of enclosures. The letter of April 8, 2007, was treated as an enclosure to the April 10, 2007, letter. PCO Report (Exhibit P-15), pp. 5–6.

Twelve letters were handled within the ECU (2006: July 31, August 4, August 30, September 26, October 27, November 30, and December 13; 2007: January 16, January 24, March 29, April 8, and April 10). The November 30, 2006, letter was classified as priority mail. The letter of January 16, 2007, was forwarded to the minister of justice for information, and Mr. Schreiber was sent a letter advising him of this fact. The files for the remaining 10 letters, which were handled entirely by the ECU (including the letter of March 29, 2007), were directed to file within the ECU without an acknowledgement of receipt or response to Mr. Schreiber.

Four letters (the letters dated June 16, 2006, August 23, 2006, May 3, 2007, and September 26, 2007) were classified by the ECU as political mail and forwarded to the PMC to be dealt with by the PMO. As discussed in greater detail below, the PMC directed all four letters to file without sending Mr. Schreiber an acknowledgement of receipt or other response.

For convenience, summaries related to Mr. Schreiber's correspondence appear in appendices at the end of this chapter. Appendix 10-2 provides a description of the 12 letters received from Mr. Schreiber that were not sent to the PMC and the enclosures sent with each. Appendix 10-3 provides a description of the four letters and enclosures that were sent by the ECU to the PMC. The next two appendices are tables: Appendix 10-4 sets out the classification by the ECU of the 16 letters; and Appendix 10-5 lists the 12 letters that were handled by the ECU. The notes from WebCIMS, set out in the right-hand column of this final table, explain why the letters were treated as they were.

The 12 Letters Handled Within ECU

Ten Letters – File Closed with No Further Action

Mr. Smith testified that, whenever a decision is made to close a file without a reply, the analysts are supposed to indicate in WebCIMS the reason for doing so. In the 10 files that were handled entirely within the ECU, the reasons for closing the files, as described by the analysts in WebCIMS, were:[40]

- personal legal case (three letters);
- overtaken by event (two letters);
- personal justice case … overtaken by event (one letter);
- personal case – many previous – overtaken by event (one letter);
- Airbus scandal – many previous (one letter – March 29, 2007);
- regarding Afghanistan vehicles (one letter);
- no notation (one letter); and
- several previous letters direct to file sent pm copies of letters to ministers (one letter).

Mr. Smith testified that, in accordance with the practice of the ECU, Mr. Schreiber's correspondence was not handled by a single analyst but by a number of analysts. He said that any time an analyst enters an item into the WebCIMS database, the procedure calls for him or her to check the database for

previous mail from the same correspondent. He was not sure whether the system forces the analyst to take this step, but it is an established procedure that should be followed. Previous correspondence and the actions taken are listed in the database. Mr. Smith explained that an analyst should not close a file without checking first with an ECU writer, sometimes with advice from one of the editors. He noted that even when a correspondent has been deemed to be a prolific writer, each letter is considered on its own merits to determine what action should be taken. For example, if a person writes about one topic month after month and then switches topic, his or her correspondence about the new topic might merit a response.

The Letter of March 29, 2007

The letter of March 29, 2007, was the 12th letter received from Mr. Schreiber.[41] By the time it was received, one letter (the letter of November 30, 2006) had been classified as priority and forwarded to the PMC and others on a distribution list, and one letter (the letter of January 16, 2007) had been forwarded to the minister of justice. A further two letters (June 16, 2006, and August 23, 2006) had been forwarded to the PMC. As discussed later in this chapter, the PMC never sent any directions back to the ECU about how Mr. Schreiber's mail should be treated, or indeed ever communicated at all with the ECU about Mr. Schreiber's correspondence.

The March 29, 2007, letter was one of the 10 letters that were directed to file without any further action and without a response to Mr. Schreiber. For ease of reference, the March 29, 2007, letter and enclosures are included in their entirety as Appendix 10-6 at the end of this chapter. As I discuss below, the analyst in this case did not follow the procedures normally applied before a file is closed with no reply issued, in that he did not check first with a writer or one of the editors.

The March 29 letter is labelled by Mr. Schreiber as "Personal / For His Eyes Only." I note that many of the letters written to Mr. Harper (nine in total) were labelled in a similar manner.

The letter has the subject line:

> Subject: "Political Justice Scandal" & "The Airbus Affair"
> RCMP & IAG Conspiracy and Coverup Public Inquiry

The letter starts out by saying, "Today I take the liberty to send you a copy of my letter January 29, 2007 to The Right Hon. Brian Mulroney, P.C., L.L.D. for your personal and private information."

The letter then refers to the other letters Mr. Schreiber had sent since June 16, 2006, and alleges that the current government is "using previous Liberal Government tactics" to "[d]elay the Schreiber lawsuit against the Attorney General of Canada, try to involve him [Schreiber] in criminal activities and put him in a jail or extradite him to Germany. Shut him up."

Enclosed with the letter was a copy of a letter from Mr. Schreiber to Mr. Mulroney dated January 29, 2007, and a newspaper article dated November 17, 1997, by Robert Fife of the *Toronto Sun* entitled "Airbus Inquiry Urged; Mulroney Suspects High-Level Coverup in Scandal." Also enclosed was a printout from the RCMP website concerning the International Assistance Group of the Department of Justice (the IAG referred to in the subject line of Mr. Schreiber's letter) and certain procedures relating to extradition.

The enclosed January 29, 2007, letter to Mr. Mulroney is just over four pages. On the first page, Mr. Schreiber refers to himself as a victim of a vendetta by the Department of Justice and the RCMP. "The vendetta caused an extradition case against the victim," he writes.

On the second page of this letter, Mr. Schreiber refers to the extradition case and asks why the "Conservative Minister of Justice wants the Canadian National Karlheinz Schreiber, the victim, out of the country …" The letter continues, at the bottom of page 2, "I never received any support from you despite the fact that I provided support at your request since the late 70s." After referring to the Bear Head Project, the letter to Mr. Mulroney says:

> You never told Elmer MacKay or me that you killed the project and I went on working on it to fulfill your promises to bring jobs to the people in Nova Scotia.
>
> During the summer of 1993 when you were looking for financial help, I was there again. When we met on June 23, 1993 at Harrington Lake, you told me that you believe that Kim Campbell will win the next election. You also told me that you would work in your office in Montreal and that the Bear Head project should be moved to the Province of Quebec, where you could be of great help to me. We agreed to work together and I arranged for some funds for you.
>
> Kim Campbell did not win the election, but we met from time to time.
>
> At the beginning of November 1995 I informed you about the letter of request from the Canadian Department of Justice (the IAG) to the Swiss Department of Justice.
>
> Some days later your wife Mila was extremely concerned about you and told me that you are considering committing suicide. I was shocked and spoke to you for quite a while and you may recall that I told Mila to buy a little lead pipe to cure the disease.
>
> I did not understand what your problem was since the Airbus story was a hoax as I told Bob Fife from the Sun. When I look back and consider what all you have done in the meantime I have the suspicion that there must be something else of great concern to you.
>
> When we met in Zuerich [sic], Switzerland on February 2, 1998 at the Hotel Savoy, I left with the impression that you were in good shape.
>
> On October 17, 1999 you asked for an affidavit or assurance from me which confirms that you never received any kind of compensation from me.

The letter then refers on the fourth page to a lawsuit started by Mr. Schreiber against the Canadian Broadcasting Corporation and a visit with Fred Doucet (a former senior adviser to Brian Mulroney when he was prime minister, and a former lobbyist for Mr. Schreiber). In relation to the latter, Mr. Schreiber writes, "[I] told him that he should tell you that I would not commit perjury if I would have to testify and that I cannot understand why you don't simply tell the truth." The letter speaks again of the extradition proceedings, before closing:

> Dear Brian, I would like to ask you what the reason might be in your opinion, besides this I think it is in your and my best interests that you show up and help me now and bring this insanity to an end. If I am forced to leave Canada this will not end the matter.

I have reproduced the above portions to give a sense of both letters: the March 29, 2007, one to Prime Minister Harper; and the enclosed letter of January 29, 2007, from Mr. Schreiber to Mr. Mulroney.

The March 29, 2007, letter was classified by the ECU as general mail, and the keyword summary notes, "Airbus scandal – many previous – filed."

Mr. Smith testified that, in accordance with ECU procedures, the analyst handling a file should always check with a writer from the unit before closing a file with no reply. However, in the case of the March 29, 2007, letter, the analyst did not send the file to a writer before closing the file. Neither Mr. Smith nor any writer in the ECU was shown the letter. Mr. Smith agreed this was an oversight by the analyst. In explaining the analyst's decision to close the file without consulting an editor or writer, Mr. Smith testified:

MS. BROOKS:	Why would the analyst not have brought this to your or a writer's attention, as she did, or he did, subsequent letters?
MR. SMITH:	First of all, it's a different analyst every time.
MS. BROOKS:	Yes.
MR. SMITH:	They take items out of the bin at random, so it may not have been the same analyst dealing with the next letter. It should have been caught, and it should have been brought to the attention of the writer, but it was not.[42]
	…
MS. BROOKS:	Did you speak to your analyst after these events had occurred to find out whether he had read this letter [the January 29, 2007, letter to Mr. Mulroney]?
MR. SMITH:	I did. After the November events, yes, I did. He didn't remember it specifically. It is not so much the content that should have triggered with him; merely the fact that it was a letter between Mr. Schreiber and Mr. Mulroney would have been enough to send it to the writer, to let her decide what type of response to do.[43]

The analyst made the WebCIMS profile and did not assign it to anyone else.

By the time the March 29, 2007, letter was received, two letters from Mr. Schreiber had been sent by the ECU to the Prime Minister's Correspondence Unit. However, Mr. Smith's group had heard nothing back from the PMC about how Mr. Schreiber's letters should be treated or, for that matter, how they were treated by the PMC. Mr. Smith testified that he did not find this lack of response unusual. He was not waiting for a reply from the PMC.

Mr. Smith did not see all of Mr. Schreiber's letters, so he had not formed an overall view of them. He said he had not issued any instructions to the analysts concerning the treatment of Mr. Schreiber's mail. He had spoken on a number of occasions with the specific writer about the treatment of Mr. Schreiber's mail, but not with the analysts. Mr. Smith said there were no directions from the PMC or the PMO to start ignoring letters from Mr. Schreiber or to treat them in any specific way.

Because no instructions had been received from the PMO that mail from Mr. Schreiber or the issues addressed in his letters were to be handled by that office, all mail from him continued to be classified as general mail under the classification system used by the ECU.

Based on the testimony before me, it is apparent that the analyst ought to have applied the procedures in place for treatment of general mail. Upon receipt of the March 29, 2007, letter, the analyst who handled it should have checked the WebCIMS system to determine how previous mail from Mr. Schreiber had been treated. The analyst should have brought the letter to the attention of an ECU writer or a senior editor for guidance on how to handle it.

I have not been directed by my Terms of Reference to express an opinion on whether the March 29, 2007, letter ought to have been forwarded to the PMC. I am simply directed to answer the question why it was not passed on to Prime Minister Harper.

The March 29, 2007, letter never left the ECU. It is apparent that there was an oversight by the analyst, who did not follow the established procedure for treatment of general mail. However, I am not able to conclude that this oversight was, in and of itself, the sole reason why the letter did not get forwarded to the PMC.

If the analyst had consulted a writer or senior editor, it is possible that, because of the enclosed January 29, 2007, letter to Mr. Mulroney, a direction could have been given to send the March 29, 2007, letter to the PMC. However, given the nature of the allegations in the other 11 letters that also were not passed on to the PMC, it is equally possible that the March 29, 2007, letter would have been viewed in the same light and a direction to close the file with no response could have been given. Had the March 29, 2007, letter been passed on to the PMC, I have no way of knowing, based on how the four letters that were sent to the PMC were handled (described below), whether the March 29, 2007, letter would have been passed on to Prime Minister Harper.

Although I have no way of knowing what instructions the writer or the editor would have given to the analyst, I do know that, had a decision been made to send the March 29, 2007, letter to the PMC, the original letter and the WebCIMS file would have been transferred to the PMC. In accordance with its established practices, the ECU would have kept no copy and would never be informed how the PMC or the PMO treated the letter.

FINDING

There was an oversight by the analyst who handled the March 29, 2007, letter from Mr. Schreiber to Prime Minister Harper in that he did not follow the established procedure of bringing the letter to the attention of a writer or senior editor before directing it to file without reply. This oversight precluded the possibility that a writer or senior editor could have directed that the letter be sent to the Prime Minister's Correspondence Unit (PMC). There is no evidence that the Prime Minister's Office (PMO) or the PMC ever gave any instructions to the Executive Correspondence Unit (ECU) concerning Mr. Schreiber's mail or the issues addressed by Mr. Schreiber in his mail. There is no evidence that there was a desire by anyone in the ECU to conceal from the PMO or the PMC any letters from Mr. Schreiber, including the March 29, 2007, letter.

Although the March 29, 2007, letter was filed without response, it and the January 29, 2007, enclosure were, in fact, passed on to the PMC as two of the 23 enclosures to the September 26, 2007, letter. As noted below, the director of the PMC decided that the September 26, 2007, letter should be directed to file with no response.

One Letter Classified as Priority

Mr. Schreiber's November 30, 2006, letter[44] was classified as priority and given a transmittal form in accordance with the practice for treatment of priority mail.

The November 30, 2006, letter consisted of a one-page letter to Prime Minister Harper, referring him to enclosed copies of documents from the International Assistance Group (IAG) at the Department of Justice and a copy of Mr. Schreiber's letter to Stockwell Day, then minister of public safety. The IAG correspondence concerned the extradition request from the Federal Republic of Germany and the related court proceedings. Mr. Schreiber's letter to Mr. Day in turn enclosed a letter addressed to Mr. Schreiber from the Commission for Public Complaints Against the Royal Canadian Mounted Police. Also enclosed was a letter to Mr. Schreiber from the RCMP acknowledging receipt of a complaint filed by Mr. Schreiber against a number of RCMP officers and the RCMP commissioner.

I note that the enclosures to the November 30, 2006, letter dealt with Mr. Schreiber's extradition case. The enclosures consisted of correspondence and a memorandum on the extradition proceedings and letters concerning a complaint by Mr. Schreiber against members of the RCMP.

Mr. Smith testified that it was he who filled in the transmittal form directing the November 30, 2006, letter and enclosures to those on the distribution list. He said there was no special reason for classifying this particular letter as priority mail and directing it to the clerk of the privy council. One of the writers in the ECU had approached him and said he believed the clerk should be informed that Mr. Schreiber was continuing to write. Mr. Smith agreed and filled out a transmittal form directing the letter to a distribution list comprising the clerk of the privy council, Kevin Lynch; the PMC; Mr. Harper's chief of staff's office; and the Issues Management section in the PMO.

After the November 30, 2006, letter was sent to the distribution list, the ECU heard back from the office of the clerk. The transmittal form that accompanied the letter was returned with a handwritten notation: "Letter is simply a copy of material submitted to the Minister of Justice. Matter still pending before Minister."[45] Mr. Smith testified that this notation was made by Paul Shuttle, legal counsel to the clerk. Another notation on the transmittal form said, "OK to close." The ECU closed the file. No reply or acknowledgement for this letter was sent to Mr. Schreiber.

One Letter Forwarded to Department of Justice

Mr. Schreiber's letter of January 16, 2007,[46] had the subject line "Political Justice Scandal" and referred to two pieces of previous correspondence, the letters of October 27, 2006, and November 30, 2006. Enclosed with the letter was a copy of a letter dated December 14, 2006, from the minister of justice, Vic Toews, to Mr. Schreiber's lawyer, Edward Greenspan, concerning Mr. Schreiber's extradition proceedings. In the January 16 letter, Mr. Schreiber referred to a conspiracy and vendetta, the lawsuit against the "Liberal Minister of Justice and Attorney General."

The January 16 letter was forwarded to the minister of justice, Robert Nicholson, for response. The WebCIMS form for the letter indicated that this correspondence was classified as general mail, and the keyword summary stated "Justice." Mr. Smith was asked why this letter was treated differently from other letters that concerned Mr. Schreiber's ongoing extradition proceedings. He was referred to the letter dated September 26, 2006, also classified as general mail, where the keyword summary stated, "personal legal case, direct to file as per SR."* I note that other letters, where the keyword summary indicated "personal justice case," "personal legal case," and "personal case," were directed to file with no response and were not forwarded to the minister of justice.

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* PCO Report (Exhibit P-15), app. 8, tab 4. Mr. Smith testified that "SR" stood for Shelly Russell, who is "in charge of Justice issues" in the ECU. Testimony of Mr. Donald Smith, Transcript, April 20, 2009, p. 1341.

Mr. Smith testified that there was no specific reason why the January 16, 2007, letter was forwarded to the minister of justice. The writer handling this letter approached him because she felt bad that Mr. Schreiber had not yet received an acknowledgement, and she asked if it was appropriate for her to acknowledge the letter. Mr. Smith said she could do so.

I noted above that the PCO Report stated that mail classified as general usually falls under the mandate of a particular department and the majority of this mail is acknowledged by ECU staff and forwarded to the line departments for information and action, as appropriate. However, the letter of January 16, 2007, was the only piece of Mr. Schreiber's correspondence that was forwarded to another department. In this case, an acknowledgement was sent to Mr. Schreiber advising him that the letter had been sent to the minister of justice "for his information." The January 16, 2007, letter was the only one that elicited a reply of any kind to Mr. Schreiber.

The Four Letters Transferred to PMC

Of the 16 letters received by the ECU, four were classified by the ECU as political mail on the WebCIMS form and forwarded to the PMC.[47] Appendix 10-3 at the end of this chapter lists these four letters and summarizes their enclosures. The four letters sent to the PMC were the first letter sent by Mr. Schreiber to Mr. Harper, dated June 16, 2006; the letters of August 23, 2006, and May 3, 2007; and the letter of September 26, 2007, the final letter of the 16 sent by Mr. Schreiber. The March 29, 2007, letter was not transferred to the PMC in its own right; however, it was included as the 22nd of 23 attachments enclosed by Mr. Schreiber with his letter of September 26, 2007.

Mr. Smith testified that he was consulted on each of the four letters that were sent to the PMC.

In the case of the letter dated June 16, 2006, the first letter received from Mr. Schreiber, the mailroom initially consulted Mr. Smith on whether the letter should be classified as priority or general. The June 16, 2006, letter was four pages long and had the subject line, "The Liberal legacy of scandal." In the letter, Mr. Schreiber touches on his action against the Government of Canada, the preliminary hearing in the Eurocopter case, his extradition case, and the Bear Head Project. Enclosed with the letter was a 1997 letter from Mr. Schreiber to then justice minister Allan Rock and a 1997 newspaper article. Mr. Smith directed that the letter be classified as general. He testified that he was sure he decided that this letter should also be classified as political and sent to the PMC, basing the decision on the reference in the letter to Mr. Mulroney. Mr. Smith said that he would have expected to hear back from the PMC if it decided that the issues addressed in the letter were politically sensitive and should, in future, be handled by the PMC.

The August 23, 2006, letter, the fourth letter received from Mr. Schreiber, had the subject line "Political Justice Scandal" and consisted of four short paragraphs. Enclosed

with the letter was an 11-page "Case Report" that set out Mr. Schreiber's account of the letter of request from Canada to Switzerland; Mr. Mulroney's legal proceedings against the Government of Canada; Mr. Schreiber's legal proceedings against the Government of Canada; and the extradition proceedings concerning Mr. Schreiber. Mr. Smith testified that he decided this letter should be sent to the PMC because "it was entitled 'Case Report' and sounded more important, possibly definitive or perhaps [a] final letter from Mr. Schreiber."[48]

The letter dated May 3, 2007, was the 15th letter to the prime minister received from Mr. Schreiber. The subject lines were: "Child obesity an epidemic in Canada," "Brian Mulroney & Karlheinz Schreiber," and "Director of Public Prosecution." The letter stated, "Dear Prime Minister, I take the liberty to send you a copy of my letter April 15, 2007 to The Right Honourable Brian Mulroney P.C., LL.D. for your personal information." The two-page letter to Prime Minister Harper, together with the attachments, touched on each of the topics identified in the subject lines. Enclosed with the letter were copies of letters from Mr. Schreiber to Mr. Mulroney dated March 29, 2007, and April 15, 2007.

The September 26, 2007, letter was the last one sent to Prime Minister Harper to be put before the Commission. It is the final letter sent to Prime Minister Harper before Mr. Schreiber swore his affidavit on November 7, 2007, in his lawsuit against Mr. Mulroney.* The letter is six pages long and is replete with underlinings, italicized text, and bold text of varying sizes. In his letter, Mr. Schreiber is urging Mr. Harper "to fulfill your election promises to clean up Parliament Hill in Ottawa and to start to fight for the protection of the individual liberties of the ordinary Canadian citizen." Enclosed were 23 documents, the last two of which were referred to by Mr. Schreiber on the final page of his letter: his March 29, 2007, letter to Prime Minister Harper; and the January 29, 2007, letter to Mr. Mulroney that had been enclosed with the March 29, 2007, letter.

Mr. Smith said that the writer was uncomfortable about the letter and she asked him about it. Mr. Smith told her to send it over to the Prime Minister's Correspondence Unit. He said he directed that this letter be sent to the PMC for the same reasons as the May 3, 2007, letter: "It enclosed correspondence between Mr. Schreiber and Mr. Mulroney. There were increasing references to Mr. Mulroney, and the writer was uncomfortable with filing it without a reply."[49]

Ms. Stepanian, the manager of the PMC, testified that the four letters sent to the Prime Minister's Office were filed by the PMC with no acknowledgement or reply to Mr. Schreiber. She testified that, because the PMC recognized Mr. Schreiber's name, it was decided to forward the June 16, 2006, letter to the executive assistant to

* According to a draft report on the handling of Mr. Schreiber's correspondence to the prime minister, a 17th letter from Mr. Schreiber to Prime Minister Harper, dated November 25, 2007, was received by the ECS. Exhibit 17, tab 15.

the deputy chief of staff. The instructions received by Ms. Stepanian were to file the June 16, 2006, letter without response.

The letters dated August 23, 2006, and May 3, 2007, were sent to the executive assistant of the chief of staff for review. In both cases, the direction was given to Ms. Stepanian to file the letters without response.

Ms. Stepanian testified that, when she received the September 26, 2007, letter, she decided it should be filed without reply. Her decision was based on the directions received with respect to the previous three letters. She decided to handle this fourth letter the same way. Ms. Stepanian confirmed that there was no communication to the PCO advising what the PMC had decided to do with these four letters.

FINDING

Mr. Schreiber's September 26, 2007, letter and its enclosures, which included the March 29, 2007, letter to Prime Minister Harper, were not passed on to Prime Minister Harper because the manager of the Prime Minister's Correspondence Unit (PMC) decided it should be treated the same way as the three letters written by Mr. Schreiber that had previously been sent to the PMC. In those three cases, the direction from the executive assistant to the deputy chief of staff and from the executive assistant to the chief of staff was to close the file with no response.

Policy Review – Correspondence Practices of PCO

Mandate

Question 17 of the Terms of Reference directs me to determine whether the Privy Council Office should have adopted any different procedures in this case. I interpret my Question 17 mandate as asking whether, in respect to the handling of all of Mr. Schreiber's correspondence to Prime Minister Harper, the PCO should have adopted any different procedures.

Overview of the Policy Review Process

In approaching its Question 17 mandate, the Commission proceeded in a manner analogous to the approach adopted for its other policy mandate, which involves Canada's ethics rules. (The discussion of the ethics issues may be found in Chapter 11.)

The Commission published on its website in December 2008 a public consultation paper, inviting public submissions on the Question 17 issue. By the March 2009 deadline, the Commission had received no submissions on this issue.

The Commission asked Dr. Paul Thomas, an academic (professor of government, University of Manitoba), to assist in assessing the PCO's correspondence practices, with an eye to comparative experience in other jurisdictions. Dr. Thomas was retained following a literature review identifying those whose academic work included research

within the Commission's area of focus. He prepared a draft research study that was posted on the Commission's website in April 2009 and was provided to the Part II parties – that is, to persons who had sought and been granted standing for the policy phase of the Commission's work.[50]

Parties were invited to make written submissions responding to Dr. Thomas's draft study. The Government of Canada[51] and the PMO[52] filed submissions on Dr. Thomas's draft study. A non-party, Dr. Tom Flanagan,[53] also supplied written comments. Democracy Watch did not comment on any aspects of Dr. Thomas's draft study. However, in its written submissions filed in the policy phase of the Commission's proceedings, that organization took issue with the wording of Question 16 and its presumption that the March 29, 2007, letter was not passed on to Prime Minister Harper.[54]

All the written submissions received in the policy phase – as with the factual phase – are archived on the Commission's website.

In June and July 2009, an expert policy forum was held in Ottawa. The agenda for the forum, including a list of the participants, is set out at Appendices 19 and 20 to my Report. Although the principal focus of the forum was Canada's ethics rules, the handling of correspondence was also discussed at a number of the round-table sessions. Dr. Thomas took part in a discussion of this issue as part of a panel of experts that also included Dr. Lori Turnbull (assistant professor of political science, Dalhousie University) and Dr. Gregory J. Levine (barrister and solicitor, London, Ontario), both of whom also prepared independent research studies on Canada's ethics rules at the Commission's request. The correspondence issue was also discussed in a panel that included Professors Kathleen Clark of Washington University in St. Louis, Missouri; Ian Greene of York University; and Lorne Sossin of the University of Toronto. That issue was also discussed in another panel, composed of noted former public officials: former prime minister the Right Honourable Joe Clark; Mel Cappe (president, Institute for Research on Public Policy); Professor Penny Collenette (University of Ottawa); and David Mitchell (president, Public Policy Forum).

The forum was intentionally kept informal and was conducted as a policy conference, with no sworn testimony. The Commission's experts and panel participants presented their ideas at a series of round-table discussions.

Background

As described in the Privy Council Office's public primer on its functions:

> The Prime Minister is supported directly on a day-to-day basis by staff working in two organizations within the Prime Minister's portfolio. The personal, political staff of the Prime Minister comprise the Prime Minister's Office (PMO), with the PCO

providing public service support to the Prime Minister across the entire spectrum of policy questions and operational issues facing the Government.

Together these organizations provide advice and support from different perspectives on the issues of daily concern to the Prime Minister. The maintenance of the appropriate relationship between the political staff of Prime Ministers and their public service staff is particularly important. As described in 1971 by Gordon Robertson, then Clerk of the Privy Council and Secretary to the Cabinet:

> "The Prime Minister's Office is partisan, politically oriented, yet operationally sensitive. The Privy Council Office is non-partisan, operationally oriented yet politically sensitive…. What is known in each office is provided freely and openly to the other if it is relevant or needed for its work, but each acts from a perspective and in a role quite different from thes [sic] other."

Although separate organizations, a close working relationship between the PMO and the PCO is essential to ensure that consistent, timely advice is provided on the subjects of greatest importance to the Prime Minister:

The Prime Minister's Office supports the Prime Minister in carrying out the functions demanded of a head of government and of a leader of a political party and Member of Parliament. The political staff of the PMO provide advice on policy development and appointments, draft speeches and other public statements to be delivered by the Prime Minister, brief the Prime Minister on matters related to proceedings in the House of Commons and manage the relations of the Prime Minister with Ministers, with caucus and with the party in general. The PMO also plans the Prime Minister's schedule, organizes the Prime Minister's public announcements and relations with the media, processes prime ministerial correspondence and handles matters arising in the constituency of the Prime Minister.

The Privy Council Office is the public service department of the Prime Minister. … [U]nder the leadership of the Clerk of the Privy Council and Secretary to the Cabinet, the PCO provides direct support to the Prime Minister across the range of functions and responsibilities of the head of government.[55]

In his independent research study, Dr. Thomas describes the persons who work for PCO as follows: "The employees of the PCO are career public servants, not politically aligned advisers. As a rule, employees are recruited from line departments, bring their expertise from earlier positions into the PCO, and leave the office after several years to enrich the knowledge of central processes and perspective within other departments and agencies."[56]

The persons who work within the PMO are not part of the official public service, although they are government employees.

In its written submissions to the Commission, the PMO stated:

> [M]embers of the political staff are appointed under s. 128 of the *Public Service Employment Act*. As Government employees, they discharge a public function, not a partisan function. The distinction between *political* activity (advancing the agenda and

> interests of a Minister) and *partisan* activity (supporting a political party or candidate) is clear and constantly reinforced. While the role of political staff is, as the name implies, political, policy ensures that Government resources (including employees' time) are not used for partisan activity. [Italics in original.][57]

Dr. Thomas notes: "Unlike for career public servants the recruitment, appointment, compensation, promotion, and termination of PMO employees are not subject to the rules of the Public Service Commission, which oversees the operation of the merit system for the regular public service."[58] Persons working in the PMO and members of office staff in ministers' offices are referred to as "exempt staff," distinguishing them from public servants.[59]

The PCO has issued the following guidance to ministers and ministers' political staff:

> Ministers and Ministers of State are personally responsible for the conduct and operation of their offices. They hire their own office staff, who are known as "political" or "exempt" staff. The staff are outside the official public service and are exempt from Public Service Commission staffing and other controls. They are nevertheless subject to a broad range of terms and conditions set by the Treasury Board for the government as a whole.
>
> The purpose of establishing a Minister's or Minister of State's office is to provide Ministers and Ministers of State with advisers and assistants who are not departmental public servants, who share their political commitment, and who can complement the professional, expert and non-partisan advice and support of the public service. Consequently, they contribute a particular expertise or point of view that the public service cannot provide. Exempt staff do not have the authority to give direction to public servants, but they can ask for information or transmit the Minister's instructions, normally through the deputy minister.[60]

Thomas Research Study

Preliminary Observations

The process adopted by the Commission gave parties the opportunity to comment on the draft research studies by the Commission's experts. The Attorney General of Canada made written submissions on the three research studies, including Dr. Thomas's.[61] The Commission also received comments directly from the PMO[62] and from Professor Tom Flanagan.[63]

The Attorney General of Canada, in his written submissions on the draft studies, noted:

> Professor Thomas' Report examines the processing, assessment, and responses to communications involving the centre of government, i.e. the Privy Council Office (PCO) and the Prime Minister's Office (PMO). He analyses the procedures for handling the Prime Minister's correspondence within a broader context that includes

government communications, access to information and record management.

The Attorney General notes that, in the context of the policy review, question 17 of the Terms of Reference limits the mandate of the Commissioner to the examination of whether the "Privy Council Office [should] have adopted any different procedures" in processing Mr. Schreiber's correspondence to the Prime Minister.

The following comments will be restricted to the specific issue of correspondence management and not government communications, access to information and record management in general. The Attorney General expects that any Expert Policy Forum organised by the Commission will focus strictly on the examination of correspondence management by the PCO.[64]

I agree that, in his study, Dr. Thomas canvassed issues that are beyond the scope of my mandate. This comment is not a criticism of Dr. Thomas, who approached the issues at both a practical and a theoretical level. However, the Attorney General raises a valid point, and I have approached my review of, and reliance on, Dr. Thomas's study from the perspective of the issues before me in Question 17 of the Terms of Reference. As with any research study, Dr. Thomas has expressed his opinion. It is my task to draw from his study – along with the evidence, the round-table discussions, and the submissions of the parties and others – what I believe is necessary for me to carry out my task. In the following section, I note aspects of Dr. Thomas's study that I believe were relevant to my deliberations in reaching a conclusion on whether the PCO should have adopted any different procedures in this case.

Dr. Thomas's Observations and Conclusions

Dr. Thomas finalized his research study in August 2009, taking into account comments that had been made during the expert policy forum. Dr. Thomas's study was, as he himself observed in it, "necessarily exploratory."[65]

The subject of prime ministerial correspondence-handling has elicited little commentary in the academic literature or even in government reports or other forms of commentary.[66] For his study, Dr. Thomas extracted what he could from these sources, but also conducted a small number of semi-structured, qualitative, off-the-record interviews with past and present political staff and public servants having first-hand experience of government communications at the centre of government.[67] To this end, Dr. Thomas interviewed eight former or present public officials at the national level in Canada, four at the provincial level, and four officials from governments outside Canada.[68] As Dr. Thomas observes in his study, the PCO is the organization most responsible for the quality and completeness of the information and advice that flow to the prime minister and cabinet.[69] The clerk of the privy council rarely deals with correspondence matters.[70] Instead, the communications function is within the purview of the assistant deputy minister in the Communications and Consultation Secretariat, which includes the Corporate Services Branch. That branch is responsible

for "information services, IT support, access to information and privacy [requests], planning, human resources, and general administration."[71]

Executive Correspondence Services and the PMC share a mailing address, but are housed in different buildings.[72] According to Dr. Thomas's study, face-to-face contact between the managers of the two units takes place occasionally, but direct contact between front-line employees is rare.[73] Instead, "[m]anuals, guidelines, criteria, and well-established procedures regulate the flow of documents between the two locations."[74]

In his study, Dr. Thomas discusses correspondence handling, examining the political and institutional environment in which it occurs. As his study notes:

> Planning for, structuring, conducting, and coordinating communications in a wide range of specialized and complicated policy environments, across numerous departments and agencies, in an era of evolving digital technologies, at a time when there is growing insistence on greater transparency, pro-active disclosure, and accountability, and when public trust and confidence in governments is low, all combine to give rise to a challenging new era in public sector communications.[75]

Notwithstanding these identified challenges, Dr. Thomas has few concerns about the PCO's processes, and his conclusions in that area attracted little commentary from participants at the expert policy forum.

Dr. Thomas assesses the ECU's procedures as follows:

> To an outsider, the correspondence operations of the ECU appear to be highly systematic, refined, and professional. Manuals, guidelines, criteria, established procedures, and state-of-the-art information and records management systems are used to receive, sort, analyze, store, track, and respond to communications of all kinds.[76]

Dr. Thomas notes that

> [e]mployees of the ECU have detailed guidelines for processing messages from different categories of respondents and for the precise assignment of responsibility for replies. The procedures for handling various types of communications have been refined over time. The public servants who work in the ECU are generally experienced, and new employees receive training. If there is any doubt about the sensitivity and risks attached to a particular piece of correspondence, employees are encouraged to consult their superiors.[77]

In the course of his study, Dr. Thomas examined practices in the United States, the United Kingdom, and Australia. On the basis of that assessment, he concluded that "similar issues related to the handling of sensitive communications have arisen, but there is not a single straightforward solution."[78]

Dr. Thomas was also able to conduct interviews with officials in four Canadian provinces – Manitoba, New Brunswick, Ontario, and Saskatchewan. Although he notes that his findings must be interpreted cautiously because only four provinces participated in his study, his conclusions are worth reproducing in full:

> The four provincial systems feature the same overlapping and intersecting worlds and cultures of politics and administration that are found in Ottawa. Public servants in charge of communications units and political staff serving premiers both recognize that they have different, but interdependent, roles to play. Size matters in terms of how these two worlds relate to each other. In Ontario, a relatively large governmental system, the structures, procedures, and administrative documentation related to the communications functions are more extensive and formal. For correspondence, for example, the protocols are well developed, having been refined over several decades without many changes when governments have changed. In the three smaller provincial governments, the shared world of politics and administration at the centre is less bureaucratized, less regulated, and more informal and face-to-face. All four provinces follow the practice of having public servants in the correspondence unit sort postal mail and email directed to the premier. All have criteria for separating political and personal mail to be answered by political staff. In general terms, the arrangements correspond to those in the Government of Canada. The interviews did not disclose any structural or procedural arrangements that are distinctive and would represent an improvement to the system of the Government of Canada.[79]

Ultimately, Dr. Thomas concludes:

> In terms of the information-processing systems for handling postal and email correspondence, the PCO's system seems to be state of the art and comparable to or better than those in other countries. …
>
> The Government of Canada does not generally seem to lag behind other governments in terms of coping with the abundance of information received, generated, processed, used, stored, and recovered in the governing and administrative processes.[80]

These views were endorsed by the Attorney General's submissions on behalf of the Government of Canada.[81]

Discussion and Recommendations

The Privy Council Office is the public service department of the prime minister.[82] The majority of mail addressed to the prime minister flows through the PCO – specifically the Executive Correspondence Unit (ECU), which acts as the entry point for correspondence to the prime minister. The division within the PCO that is responsible for the prime minister's correspondence, the Corporate Information Services Division (CISD), has established service standards for carrying out its responsibilities, including the ECU's responsibility for handling the prime minister's correspondence.[83] The CISD's standards are set out in a document entitled "CISD Service Standards."[84] Part 5 of that document deals with the service standards for the ECU. The ECU's standards are stated as objectives, as follows:

PCO Objective

Provide Canadians with good government by providing the best non-partisan advice and support to the prime minister and cabinet.

ECU Objective

Provide a cost effective system to handle the volume of correspondence that Canadians address to their prime minister.[85]

The required "outputs" identified in relation to Canadians who have written to the prime minister are:

A letter or e-mail prepared by the ECU and sent in response to a letter or e-mail addressed to the prime minister.

Responding to requests from Canadians and MPs for greetings celebrating significant wedding anniversaries and birthdays.

Responding to the prime minister's phone calls from the public.

Responding to requests for special messages.[86]

The required "outputs" in relation to the Prime Minister's Office and the PCO are:

Routing the incoming piece of correspondence to another office in the PMO or the PCO for appropriate policy or political reply.

Providing monthly reports summarizing views expressed in correspondence.

Managing the prime minister's public e-mail account.

Reporting any threats against the prime minister.

Providing advice on correspondence matters.[87]

The "indicators of success" are getting the correspondent's concern to the appropriate minister efficiently; providing information to the PCO, the PMO, other government departments, and the Canadian public; and providing correspondence support to the PCO and the PMO.[88]

The CISD has also established time standards: for example, mail is to be sorted within 24 hours; priority mail is to be registered and routed within 24 hours; priority mail is to receive a reply within two weeks; general correspondence is to receive a reply within six weeks; electronic correspondence is to receive a reply within 24 to 48 hours; and phone calls are to be returned within 24 hours.[89]

The ability of citizens to communicate with elected members of parliament and government is an important component of the democratic process. The panel consisting of Joe Clark, Mel Cappe, Penny Collenette, and David Mitchell[90] added valuable insight into the handling of correspondence destined for the prime minister.[91] Other panellists also provided useful insights on this issue. Professor Ian Greene noted at the expert policy forum that "citizens have a right to communicate with their elected

members and their Cabinet Ministers and with the First Minister and … appropriate responses are very important in terms of promoting a democratic culture."[92] I accept these observations by Professor Greene.

However, given the volume of mail sent to the prime minister, it is simply not possible or desirable that all of it actually be put before the prime minister. Mr. Cappe, a former clerk of the privy council, noted that the system used must find a balance between getting the information to the person who needs it at the right time and recognizing that it is "compromising" to bring every bit of information to the prime minister.[93] I accept that a system must exist to separate correspondence that should be seen by the prime minister from that which need not (and perhaps should not, for legitimate reasons of public policy) be seen by the prime minister.

On the basis of the evidence before the Commission, I have concluded that the PCO has a system which generally meets these objectives. On this issue, I concur with Dr. Thomas's concluding observations about the operations of the ECU. I also accept observations made by some of those at the expert policy forum – that no system can be perfect, and that mistakes may arise even where the system is well designed and robust.[94]

I also believe, however, that a number of problems with the treatment of Mr. Schreiber's mail highlight potential areas for improvement.

First, Mr. Schreiber sent nine letters before he received an acknowledgement of receipt in response.[95] This seems to me to be an unacceptable lapse.

Second, the lack of communication back from the PMC to the ECU left the ECU in the position of not knowing how the mail that had been forwarded to the PMC was being treated. Although I accept that political information may need to be shielded from the PCO/ECU, certain basic communications about how a letter has been dealt with by the PMO – for example, filed with no response – is necessary to enable the ECU to carry out its mandate.

Third, the uneven treatment of Mr. Schreiber's mail highlights a need for improved procedures in the ECU for dealing with general mail.

I believe that, had a number of changes been made to procedures employed by the ECU in this case, some of the pitfalls identified above could have been avoided. Specifically, I believe improvements can be made to procedures for acknowledging receipt of general mail, procedures for communications between the PMC and the ECU, and the process followed by analysts when determining how to treat general mail.

I recognize that, even if these modest changes had been made, it is quite possible that the March 29, 2007, correspondence from Mr. Schreiber may not have been sent to the PMC. I express no opinion on whether it ought to have been sent because doing so would be outside my mandate. Rather, my goal is to answer the question whether the PCO should have adopted any different procedures in handling Mr. Schreiber's mail. My recommendations are aimed at having in place a process through which the

assessment in the ECU is carried out in a more principled and consistent manner than was employed in the treatment of Mr. Schreiber's correspondence.

Treatment of General Mail

Mr. Cappe said during one of the Commission's round-table discussions that the public deserves an acknowledgement of receipt and should know that a letter will be seen by the appropriate person.[96] I agree.

Earlier in this chapter, I set out the reasons why a response may not be sent to the writer of correspondence that has been classified as general mail. These reasons are reproduced in Appendix 10-1 at the end of this chapter. While I accept that it is reasonable that no reply will be sent to the writer when the correspondence falls within certain of these categories, it is difficult to understand why a response will not be sent if it falls within certain other categories. For example, I can accept that it is reasonable to file a letter without reply if it is not addressed to the prime minister or if it is obscure, is illegible, contains incomplete return address information, is from a prolific writer on the same subject who has already received a reply, is from a writer on the same topic who has received a previous reply, is one in a mass letter-writing campaign, is irreverent (frivolous, with no serious intent), or is a thank you letter.

There are, however, certain categories for which it does not appear reasonable to file correspondence without response. The fact that a letter is religious (as expanded upon in Appendix 10-1) or is from an inmate in a penitentiary does not constitute a sufficient reason why the writer should not at least receive a standard acknowledgement of receipt.

Moreover, from the letter writer's perspective, the fact that the issue of concern to the writer may have been overtaken by events is not, it seems to me, relevant to whether the writer would expect to receive a standard acknowledgement of receipt and advice to this effect. Two of Mr. Schreiber's letters were classed as overtaken by events.

In the case of mail that concerns a legal case, as shown in Appendix 10-1, the PCO description states:

> Legal case: correspondents writing about a matter before the courts can receive the standard acknowledgment on the impossibility of intervening in a private legal matter, or be directed to file. [Letters from p]eople who write more than once about their legal troubles can be filed as a matter of course.[97]

Based on the evidence before me, such mail is not treated consistently by the ECU. A number of Mr. Schreiber's letters concerned his extradition proceedings and other legal proceedings involving the Government of Canada. His letters of August 4, 2006, September 26, 2006, October 27, 2006, and November 30, 2006, which all mention his legal proceedings, were filed without response.[98] In only one instance, the letter of January 16, 2007, was a letter forwarded to the minister of justice. This was also

the only instance in which Mr. Schreiber received a letter acknowledging receipt (and advising that the letter had been forwarded to the minister of justice).[99] The letter of June 16, 2006, which was forwarded to the PMC, mentions Eurocopter, Airbus, Mr. Schreiber's lawsuit against the Government of Canada, and his extradition proceedings.[100] The other three letters sent to the PMC (August 23, 2006, May 3, 2007, and September 26, 2007) also deal with aspects of Mr. Schreiber's legal proceedings.[101] Instead of eliciting the standard acknowledgement described by the PCO in its materials, or a decision to forward these letters to the minister of justice, a decision was made to forward these letters to the PMC.

Mail not deemed to be political in nature but dealing with a personal legal case should either be forwarded to the minister of justice (or other department, if appropriate) or elicit the standard acknowledgement on the impossibility of intervening in a private legal matter. Whichever route is chosen, the ECU procedures should require that an acknowledgement of receipt be sent for first-time mail received from a writer about a legal case. If the writer continues to write about the same subject, discretion could be exercised as to whether a further response is required. If he or she writes on another, unrelated subject, it may be necessary to send another acknowledgement of receipt.

1 RECOMMENDATION

The Privy Council Office should revise its procedures as to the handling of correspondence addressed to the prime minister. The revisions should include the following:

(a) The categories of general mail where no acknowledgement or reply is sent to the writer should be reduced to exclude "religious"; "overtaken by events"; "writer is an inmate in a penitentiary"; and "concerns a legal case."

(b) An acknowledgement of receipt should be sent to a first-time writer on a particular subject. Where appropriate, the first-time writer on a particular subject should be advised if his or her letter has been forwarded to a minister or department. Where a person writes again, discretion should be exercised to determine whether a further reply should be sent.

(c) Letters dealing with legal matters should be treated in a consistent manner. A writer corresponding for the first time about a legal case should receive a standard acknowledgement on the impossibility of intervening in a private legal matter; an acknowledgement of receipt with advice that his or her letter has been forwarded to the minister of justice; or other appropriate response. Where a person writes again about a legal matter, discretion should be exercised to determine whether a further reply should be sent.

Mail Forwarded to the PMO

Mr. Cappe noted that the system in place when he was clerk of the privy council saw that political letters and constituency letters went in a different direction from government letters sent to the prime minister *ex officio*.[102] The PCO, as the prime minister's department, is well equipped to deal with the bulk of mail and see that an appropriate response is sent. Former prime minister the Right Honourable Joe Clark said co-operation between able political staff and able public service staff can ensure that appropriate correspondence is channelled to the prime minister in a timely way.[103]

Some of our panellists expressed opinions on how discretion needs to be, and should be, exercised by those in the PMO when deciding whether the prime minister ought to see a particular piece of correspondence.[104] This subject is undoubtedly important and one that may be worthy of research and study. However, as I interpret my mandate under the Terms of Reference, I am not asked to study how the PMO exercises its discretion when decisions are made on what correspondence should be brought to the prime minister's attention. Rather, I am directed to focus on whether the procedures used by the PCO were appropriate.

My concern is therefore on the processes and procedures in place to identify what mail should be directed by the PCO to the PMO.

The witnesses from the PCO who testified before this Commission said that the PCO does not identify issues which should be considered as political. I was told that it is the PMO that identifies the issues which it would like to handle and informs the PCO through communications from the manager of the PMC to the manager of the ECU.[105] This process was confirmed by Ms. Powell, who said it is not the PCO's role to identify issues as political. However, if the PCO sees correspondence arriving on a particular issue that it believes is political in nature, it classifies the correspondence as political and sends it to the PMO for a decision on whether the PMO wants to handle it. Ms. Powell also testified that the manager of the Executive Correspondence Unit may approach the manager of the Prime Minister's Office and ask whether the PMO wishes to handle such letters.

As was apparent from the events under investigation here, the ECU, when processing incoming mail, proactively considers whether certain general mail should be classified as political and sent to the PMO. That is what happened with four of Mr. Schreiber's letters. According to Mr. Smith, he directed that these four letters be classified as political so they could be sent to the PMO to see whether that office wanted to handle these letters itself.

Ms. Powell and Ms. Stepanian both said that regular communications take place between the manager of the PMC and the manager of the ECU. Nonetheless, all witnesses on this subject were agreed that, after correspondence which is classified as political is sent by the ECU to the PMC, the ECU is not informed of the manner in which the correspondence has been handled. I find this lack of communication back to the PCO to be problematic.

Assuming that it is appropriate for the PCO to flag letters that the PMO may want to handle, then it is appropriate for the ECU to send letters so flagged to the PMC. But there must be a process in place to ensure that the writer receives an appropriate response, even though his or her letter has been forwarded to the PMC. This objective could be accomplished by ensuring there is some communication back informing the PCO that (a) yes, the PMO wants to handle this letter or indeed all mail on this subject or from this writer; or (b) no, the PMO does not want to handle this letter or such mail.

If the answer is no, then the letter that was sent to the PMO should be transferred back to the PCO to be dealt with appropriately. In reference to Mr. Schreiber's first letter to Prime Minister Harper (dated June 16, 2006), once the PMO determined that it was not going to deal with it, it would have been preferable for the PMO to transfer the letter and the WebCIMS file back to the PCO. The ECU would then have sent the writer an acknowledgement of receipt and status information, as appropriate.

If, after receiving the June 16, 2006, letter, the PMO had decided that it wanted to handle letters from Mr. Schreiber, or particular issues addressed in them, it would have been preferable for the PMO to inform the PCO of that fact. Thereafter, all letters from Mr. Schreiber (or those dealing with the issues so identified by the PMO) would have been classified as political and forwarded to the PMO.

The current lack of communication creates a vacuum that has a negative impact on the ECU's ability to carry out its correspondence mandate effectively. In the present case, the ECU had no way of knowing that the PMO had not acknowledged receipt of Mr. Schreiber's June 16, 2006, letter. In the absence of any direction from the PMO, the ECU on three additional occasions sent Mr. Schreiber's letters to the PMO without knowing whether the PMO wanted to continue to receive such letters. Based on Ms. Stepanian's evidence, I am unable to conclude that the PMO wanted to continue to see Mr. Schreiber's mail.

It is an established process that, when correspondence is within the mandate of a particular government department, a reply is sent to the writer acknowledging receipt and advising the writer of the minister to whom the mail has been forwarded.[106] Mr. Schreiber did not receive such a letter in response to his June 16, 2006, correspondence because the ECU apparently has no procedure for sending such an acknowledgement letter when the mail has been forwarded to the PMO.[107] Indeed, it may not be appropriate for a writer to be sent an acknowledgement of receipt and advice that the letter has been forwarded to the PMO because, strictly speaking, it is within the same department. This situation is distinguishable from one in which the ECU is directing a piece of correspondence to another minister or government department. Nonetheless, a process should be established to ensure that a first-time writer receives at least an acknowledgement of receipt.

2 RECOMMENDATION

When the Privy Council Office (PCO) classifies general mail as political in nature, and has forwarded the mail to the Prime Minister's Correspondence Unit (PMC) for a decision on whether the Prime Minister's Office (PMO) wishes to handle it, a procedure should be established for the PMO to communicate back to the PCO, advising whether the PMO wishes to handle mail from the writer in future. As part of this procedure, if the PMO indicates that it does not wish to handle mail from the writer, the original mail and WebCIMS file should be transferred back to the PCO, to be dealt with appropriately.

3 RECOMMENDATION

The Executive Correspondence Unit and the Prime Minister's Correspondence Unit should develop procedures to ensure that, when a letter is forwarded to the Prime Minister's Office, the writer receives at least an acknowledgement of receipt if it is the first letter from the writer, or receives another response as appropriate.

I believe that formalizing this process to a greater degree will result in an improved system for dealing with mail from the public, while ensuring that the discretion which needs to be exercised by both the public service employees in the PCO and the political staff in the PMO is retained.

Procedures When Closing a File Without Response

As I understand the present procedure, analysts are supposed to consult with a writer or senior editor before closing a file without a reply. The failure of the analyst who handled Mr. Schreiber's March 29, 2007, letter to consult with a writer or senior editor before closing the file highlights the need for a more formalized procedure for dealing with general mail.

It is apparent that the correspondence analysts play a key role in processing the massive amount of correspondence addressed to the prime minister. Correspondence analysts are each expected to handle between 80 and 100 emails a day, and between 25 and 40 letters a day.

Analyst positions are classified at the AS-01 level, the lowest classification in the administrative support category. Ms. Powell said that this level is appropriate for what is expected of analysts, in terms of identifying who has sent the letter, being able to read through the letter and identify whether it includes any threats, making sure that letters are sent to the correct departments, and identifying what is political in nature. Analysts receive on-the-job training from the supervisor in their unit. There are also written procedures, which are supplemented by verbal procedures. As well, analysts receive coaching from their more experienced colleagues.

I have not been made aware of a written procedure directing analysts on the steps to be followed before a letter is directed to file without a reply being sent to the writer. Given the volume of incoming mail, I am not sure whether it is practical, or even desirable, to have a carved-in-stone procedure that makes consultation with a writer or senior editor mandatory in all cases. However, I believe a written procedure should be developed for analysts confronted with this issue.

4 RECOMMENDATION

The Privy Council Office should develop a written procedure to be followed by analysts before a letter is directed to file without reply. The procedure should incorporate the appropriate level of consultation with more senior employees.

Appendix 10-1

PCO Executive Correspondence Unit's Description of Reasons for Directing Correspondence to File Without Response

Obscure: no main point, unclear request, paranoid, irrational, incoherent, nonsensical.

Religious: religious opinions, lectures on morality, although a writer should thank correspondents for prayers and good wishes (encouraging words).

Prolific: having written 10 times or more per year. Usually deemed so by the writer or Mailroom and Production Unit; noted in correspondents' address field. If the individual has not written in six months, the writer may wish to reply to his/her new correspondence (case by case basis).

Does not address PM: letter is not addressed to PM, including courtesy copies forwarded to his attention and general circulation lists (cc'd).

Overtaken by events: obsolete issue, matter resolved, too late to reply. Writer should reply if correspondent is offering additional comments on the issue.

Illegible: unable to read signature or handwriting.

Incomplete information: missing return address or full name (after a search for the information).

Previous reply: correspondent received reply(ies) on same issue previously (within the previous six months). If the correspondent offers new information, they may receive a "continuing interest" reply.

Inappropriate language: profane, slanderous, insulting, racist, undignified language or tone.

Comments: comments made without any expectation of a reply, information only, correspondent does not want a reply, no questions raised, notes on business cards, clippings from newspapers with little to say in the accompanying letter.

Write-ins: mass-produced postcards and form letters with no original content from correspondent; usually caught in the mail room.

Thank you letters: no need to reply except in certain circumstances, such as endorsement of government initiative, encouraging words, VIPs.

Inmates in penitentiary: provincial or federal prisoners do not usually receive replies.

Legal case: correspondents writing about a matter before the courts can receive the standard acknowledgement on the impossibility of intervening in a private legal matter, or be directed to file. People who write more than once on their legal troubles can be filed as a matter of course.

Irreverent: correspondence clearly with no serious intent, such as "buy me a motorcycle".

Source: Appendix 6 to the PCO Report.

Appendix 10-2

Letters and Enclosures from Karlheinz Schreiber to Prime Minister Harper That Were Handled by the Executive Correspondence Unit (ECU)*

July 31, 2006, letter from Karlheinz Schreiber to the Right Honourable Stephen Harper

Enclosures:

1A Letter dated July 31, 2006, from Christine Ashcroft, Counsel, Department of Justice, Edmonton Regional Office, to Hladun and Company, Barristers and Solicitors, Edmonton, re Schreiber v. The Attorney General of Canada

1B Letter dated July 25, 2006, from Hladun and Company, Barristers and Solicitors, Edmonton, to Christine Ashcroft, Counsel, Department of Justice, Edmonton Regional Office, re Schreiber v. The Attorney General of Canada

1C Letter dated June 22, 2006, from Hladun and Company, Barristers and Solicitors, Edmonton, to Christine Ashcroft, Counsel, Department of Justice, Edmonton Regional Office, re Schreiber v. The Attorney General of Canada

1D Letter dated June 5, 2006, from Christine Ashcroft, Counsel, Department of Justice, Edmonton Regional Office, to Robert Hladun, Hladun and Company, Barristers and Solicitors, Edmonton, re Schreiber v. The Attorney General of Canada

1E Affidavit dated June 2, 2006, sworn by Melissa Smith, legal assistant with Hladun and Company, Barristers and Solicitors, Edmonton, re Schreiber v. The Attorney General of Canada

1F Letter dated March 1, 2006, from Hladun and Company, Barristers and Solicitors, Edmonton, to James Shaw, Department of Justice, Edmonton Regional Office

1G Letter dated July 25, 2006, from Karlheinz Schreiber to Hon. Peter MacKay, Minister of Foreign Affairs

1H Excerpts from online Hansard, dated May 27, 1998; February 17, 1998

1I Letter dated August 2, 1995, from Augsburg City Tax Office to Office of Public Prosecutor, Augsburg State Court (Germany)

1J Letter dated May 17, 2006, from Edward Greenspan, Greenspan, White Barristers, Toronto, to Hon. Vic Toews, Minister of Justice and Attorney General of Canada

1K Letter dated June 16, 2006, from Karlheinz Schreiber to the Right Hon. Stephen Harper, PM

* Documents listed are filed as Exhibit P-15.

1L Letter dated January 20, 1997, from Karlheinz Schreiber to Hon Allan Rock, Minister of Justice and Attorney General of Canada, and Philip Murray, Commissioner, RCMP

1M Letter dated July 25, 2006, from Karlheinz Schreiber to Kevin Sorenson, MP

1N Pages from website of Conservative Party of Canada, Crowfoot Electoral District Association, Address by Kevin Sorenson to House of Commons, October 23, 2001

2 August 4, 2006, letter from Karlheinz Schreiber to the Right Honourable Stephen Harper

Enclosures:

2A Letter dated July 31, 2006, from Christine Ashcroft, Counsel, Department of Justice, Edmonton Regional Office, to Hladun and Company, Barristers and Solicitors, Edmonton, re Schreiber v. The Attorney General of Canada

2B Letter dated July 25, 2006, from Hladun and Company, Barristers and Solicitors, Edmonton, to Christine Ashcroft, Counsel, Department of Justice, Edmonton Regional Office, re Schreiber v. The Attorney General of Canada

2C Letter dated June 22, 2006, from Hladun and Company, Barristers and Solicitors, Edmonton, to Christine Ashcroft, Counsel, Department of Justice, Edmonton Regional Office, re Schreiber v. The Attorney General of Canada

2D Letter dated June 5, 2006, from Christine Ashcroft, Counsel, Department of Justice, Edmonton Regional Office, to Robert Hladun, Hladun and Company, Barristers and Solicitors, Edmonton, re Schreiber v. The Attorney General of Canada

2E Affidavit dated June 2, 2006, sworn by Melissa Smith, legal assistant with Hladun and Company, Barristers and Solicitors, Edmonton, re Schreiber v. The Attorney General of Canada

2F Letter dated March 1, 2006, from Hladun and Company, Barristers and Solicitors, Edmonton, to James Shaw, Department of Justice, Edmonton Regional Office

3 August 30, 2006, letter from Karlheinz Schreiber to the Right Honourable Stephen Harper

4 September 26, 2006, letter from Karlheinz Schreiber to the Right Honourable Stephen Harper

Enclosures:

4A Letter dated September 24, 2006, from Karlheinz Schreiber to Gilles Duceppe, Chef du Bloc Québécois
4B Letter dated September 25, 2006, from Karlheinz Schreiber to Hon. Stockwell Burt Day, Minister of Public Safety
4C Political Justice Scandal, International Case and the "Airbus" Affair, Case Report, Ottawa, September 27, 2006
4D Political Justice Scandal, International Case, The "Airbus" Affair – Allan Rock & William Corbett

5 October 27, 2006, letter from Karlheinz Schreiber to the Right Honourable Stephen Harper

Enclosures:

5A Letter dated October 25, 2006, from Karlheinz Schreiber to the Honourable Vic Toews, Minister of Justice and Attorney General of Canada
5B Letter dated October 2, 2006, to Robert W. Hladun, Hladun & Company, Barristers and Solicitors, from Christine A. Ashcroft, Counsel, Civil Litigation and Advisory Services, Department of Justice Canada, enclosing Notice of Motion and supporting affidavit
5C Letter dated September 7, 2006, to Christine Ashcroft from Robert W. Hladun, enclosing copy of letter dated August 24, 2006, addressed to Sutts Strosberg, and Appointment for Examination for Discovery
5D Letter dated June 5, 2006, from Christine Ashcroft to Robert W. Hladun
5E Letter dated July 31, 2006, from Christine Ashcroft to Robert W. Hladun
5F Website pages CBC Watch dated June 3, 2004, entitled: RCMP launched fraud investigation after hearing journalist Stevie Cameron on CBC Radio (printed 01/10/2006)
5G Website pages Dept of Justice Newsroom dated January 6, 1997, entitled: Brian Mulroney v. The Attorney General of Canada et al (printed on 28/04/2006)
5H Excerpt from Harvey Cashore and Stevie Cameron, *The Last Amigo*, pages 288 and 289
5I Website pages from AMPMQ, entitled: Delisle vs. the Attorney General of Canada: A Decision of Great Importance for all RCMP Members (printed 29/09/2006)
5J Letter dated June 5, 2006, to Robert W. Hladun from Christine Ashcroft
5K Letter dated July 31, 2006, from Christine Ashcroft to Robert W. Hladun

5L Letter dated July 25, 2006, to Christine Ashcroft from Robert W. Hladun

5M Website pages Interpol entitled: Canada has Extradition Treaties with the Following Countries (printed 13/10/2006)

5N Website pages Canada Treaty Information (printed 26/10/2006)

5O Website pages Interpol – The Canadian Central Authority (printed 26/10/2006)

5P Website pages Interpol Ottawa (printed 13/10/2006)

5Q Letter dated May 17, 2006, to the Honourable Vic Toews, Minister of Justice and Attorney General of Canada, from Edward L. Greenspan, Greenspan, White Barristers, re: Federal Republic of Germany v. Schreiber

5R Facsimile transmission to Edward L. Greenspan from Lisa Anderson, Paralegal, International Assistance Group Federal Prosecution Services (IAGFPS), attaching letter dated July 28, 2006, to Edward Greenspan from Barbara Kothe, Senior Counsel (IAGFPS). Enclosure copy of a memo dated July 28, 2006, on Germany v. Karlheinz Schreiber – Extradition from Canada to Germany – Request for Reconsideration – Summary of the Case and Submissions

5S Letter dated August 10, 2006, to the Honourable Vic Toews, Minister of Justice and Attorney General of Canada, from Edward L. Greenspan, re: Federal Republic of Germany v. Schreiber

5T Letter dated January 20, 1997, to Honourable Allan Rock, Minister of Justice & Attorney General of Canada, and to Philip Murray, Commissioner, RCMP, from Karlheinz Schreiber

5U Website pages Canada Treaty Information (printed 26/10/2006)

5V Political Justice Scandal, International Case and the "Airbus" Affair, Case Report, Ottawa, September 27, 2006

5W Political Justice Scandal, International Case, The "Airbus" Affair – Allan Rock & William Corbett

6 November 30, 2006, letter from Karlheinz Schreiber to the Right Honourable Stephen Harper

Enclosures:

6A Faxed letter dated November 16, 2006, from Jacqueline Palumbo, Counsel, International Assistance Group, Federal Prosecution Service, Department of Justice, to Karlheinz Schreiber (including fax cover sheet), enclosing copy of memorandum dated November 16, 2006, from Palumbo to Minister of Justice on the subject of Germany v. Karlheinz Schreiber, Extradition from Canada to Germany

6B Faxed letter dated November 14, 2006, from Jacqueline Palumbo to Karlheinz Schreiber, including copy of fax cover sheet

6C Letter dated November 30, 2006, from Karlheinz Schreiber to Hon. Stockwell Burt Day, Minister of Public Safety, enclosing letter of November 15, 2006, from Lorraine Blommaert, Commission for Public Complaints Against the Royal Canadian Mounted Police

6D Letter dated November 28, 2006, from S/Sgt Michael Robineau, Professional Standards Unit, Royal Canadian Mounted Police, Ottawa, to Karlheinz Schreiber

7 December 13, 2006, letter from Karlheinz Schreiber to the Right Honourable Stephen Harper

Enclosures:

7A Letter dated December 7, 2006, from Jacqueline Palumbo, Counsel, International Assistance Group, Federal Prosecution Service, Department of Justice, to Karlheinz Schreiber

7B Letter dated November 15, 2006, from Hladun and Company, Barristers and Solicitors, Edmonton, to the Honourable Vic Toews, Minister of Justice and Attorney General of Canada

8 January 16, 2007, letter from Karlheinz Schreiber to the Right Honourable Stephen Harper

Enclosures:

8A Letter dated December 14, 2006, from the Honourable Vic Toews, Minister of Justice and Attorney General of Canada, to Edward Greenspan, Greenspan, White Barristers, Toronto

8B Pages from Conservative Party of Canada website

8C Pages from AOL News website

9 January 24, 2007, letter from Karlheinz Schreiber to the Right Honourable Stephen Harper

Enclosures:

9A Letter dated January 23, 2007, from Karlheinz Schreiber to the Honourable Robert Douglas Nicholson, Minister of Justice and Attorney General of Canada

9B Letter dated January 24, 2007, from Karlheinz Schreiber to the Honourable Stockwell Burt Day, Minister of Public Safety (2 copies)
9C Letter dated November 28, 2006, from S/Sgt Michael Robineau, Professional Standards Unit, Royal Canadian Mounted Police, Ottawa, to Karlheinz Schreiber (duplicate of letter enclosed with November 30, 2006, letter from Karlheinz Schreiber to the Right Honourable Stephen Harper
9D Letter dated January 10, 2007, from S/Sgt Michael Robineau, Professional Standards Unit, Royal Canadian Mounted Police, Ottawa, to Karlheinz Schreiber
9E Letter dated January 16, 2007, from S/Sgt Michael Robineau, Professional Standards Unit, Royal Canadian Mounted Police, Ottawa, to Karlheinz Schreiber
9F Four-page document entitled "Complaint"
9G One-page document entitled "Complaint"
9H Copy of 3 pages from www.enterstageright.com

10 March 29, 2007, letter from Karlheinz Schreiber to the Right Honourable Stephen Harper

Enclosures:

10A Letter dated January 29, 2007, from Karlheinz Schreiber to the Right Honourable Brian Mulroney
10B November 17, 1997, article by Robert Fife, *Toronto Sun*
10C Pages from RCMP website (www.rcmp-grc.gc.ca)

11 April 8, 2007, letter from Karlheinz Schreiber to the Right Honourable Stephen Harper

Enclosure:

11A Letter dated April 3, 2007, from Robert W. Hladun, QC, Hladun and Company, Barristers and Solicitors, Edmonton, to the Honourable Robert Douglas Nicholson, Minister of Justice and Attorney General of Canada

12 April 10, 2007, letter from Karlheinz Schreiber to the Right Honourable Stephen Harper

Enclosures:

12A Pages from www.globeandmail.com
12B Press clippings from Globe and Mail
12C Letter dated April 10, 2007, from Karlheinz Schreiber to the Right Hon. Brian Mulroney with enclosures
12D Pages from www.cbc.ca; 1 page from www.canada.com
12E Letter dated March 16, 1993, from Karlheinz Schreiber to the Right Honourable Brian Mulroney
12F Photographs and diagrams of military equipment
12G Article from International Defense Review, 1993 "Thyssen Henshel's TH 495 MICV"
12H Page from website, URL not clear, "PUMA infantry fighting vehicles"
12I Letter dated March 17, 1993, from Karlheinz Schreiber to Hon. Kim Campbell, Minister of National Defence
12J Photographs of unidentified items
12K Newspaper article "Equipment 'appropriate,' military assured cabinet," source and date not identified
12L Letter dated October 18, 1990, from Karlheinz Schreiber to Honourable Bill McKnight, Minister of National Defence
12M Letter dated September 25, 1990, from Karlheinz Schreiber to Robert Fowler, Deputy Minister of Department of National Defence
12N Letter dated August 1, 1995, from Paul Heinbecker, Canadian Ambassador, Embassy of Canada in Germany, to Karlheinz Schreiber
12O Article from Ottawa Citizen labelled August 17, 2009, "$2-billion deal replaces aging armoured cars"

Appendix 10-3

Letters and Enclosures Sent by Karlheinz Schreiber to Prime Minister Harper That Were Forwarded from the Executive Correspondence Unit (ECU) to the Prime Minister's Correspondence Unit (PMC)*

1 June 16, 2006, letter from Karlheinz Schreiber to the Right Honourable Stephen Harper

Enclosures:

1 A Letter dated January 20, 1997, to Honourable Allan Rock, Minister of Justice & Attorney General of Canada, and to Philip Murray, Commissioner, RCMP, from Karlheinz Schreiber

1B Article from *Globe and Mail* dated January 22, 1997, "Schreiber threatens Ottawa with court over Airbus"

2 August 23, 2006, letter from Karlheinz Schreiber to the Right Honourable Stephen Harper

Enclosure:

2A Political Justice Scandal – International Case and the 'Airbus Affair,' Case Comment, August 20, 2006

3 May 3, 2007, letter from Karlheinz Schreiber to the Right Honourable Stephen Harper

Enclosures:

3A Letter dated April 15, 2007, to the Rt. Hon. Brian Mulroney with the subject line "Child obesity an epidemic in Canada: report"

3B Letter dated March 29, 2007, to the Rt. Hon. Brian Mulroney (one page)

* Documents listed are filed as Exhibit P-15.

4 September 26, 2007, letter from Karlheinz Schreiber to the Right Honourable Stephen Harper

Enclosures:

4A Copy of signed 8 x 10 photograph of the Rt. Hon. Brian Mulroney, with the inscription "for my friend, Karlheinz, with gratitude and best personal regards Brian Mulroney"

4B Article by the Canadian Press entitled "Mulroney slams Liberals over Airbus, but won't explain dealings with Schreiber"

4C Letter from Karlheinz Schreiber to Prime Minister Harper dated June 16, 2006, entitled "The Liberal Legacy of scandal"

4D Pages from Conservative Party website regarding the Director of Public Prosecutions

4E *National Post* article by Craig Offman entitled "Craig Offman: Mandate unwieldy say RCMP critics" from Canada.com website

4F Letter dated September 13, 2007, from S/Sgt Michael Robineau, Professional Standards Unit, Royal Canadian Mounted Police, Ottawa, to Karlheinz Schreiber regarding complaint by KS against Commissioner Zaccardelli, Superintendent Mathews and Inspector Brettschneider

4G Letter dated August 13, 2007, from S/Sgt Michael Robineau, Professional Standards Unit, Royal Canadian Mounted Police, Ottawa, to Karlheinz Schreiber regarding complaint by KS against Commissioner Zaccardelli, Superintendent Mathews and Inspector Brettschneider

4H Letter dated July 13, 2007, from S/Sgt Michael Robineau, Professional Standards Unit, Royal Canadian Mounted Police, Ottawa, to Karlheinz Schreiber regarding complaint by KS against Commissioner Zaccardelli, Superintendent Mathews and Inspector Brettschneider

4I Letter dated June 12, 2007, from S/Sgt Michael Robineau, Professional Standards Unit, Royal Canadian Mounted Police, Ottawa to Karlheinz Schreiber regarding complaint by KS against Commissioner Zaccardelli, Superintendent Mathews and Inspector Brettschneider

4J Letter dated March 21, 2007, from S/Sgt Michael Robineau, Professional Standards Unit, Royal Canadian Mounted Police, Ottawa, to Karlheinz Schreiber regarding complaint by KS against Commissioner Zaccardelli, Superintendent Mathews and Inspector Brettschneider

4K Letter dated February 16, 2007, from S/Sgt Michael Robineau, Professional Standards Unit, Royal Canadian Mounted Police, Ottawa, to Karlheinz Schreiber regarding complaint by KS against Commissioner Zaccardelli, Superintendent Mathews and Inspector Brettschneider

4L Letter dated February 15, 2007, from S/Sgt Michael Robineau, Professional Standards Unit, Royal Canadian Mounted Police, Ottawa, to Karlheinz Schreiber regarding complaint by KS against Commissioner Zaccardelli, Superintendent Mathews and Inspector Brettschneider

4M Letter dated January 16, 2007, from S/Sgt Michael Robineau, Professional Standards Unit, Royal Canadian Mounted Police, Ottawa, to Karlheinz Schreiber (DUPLICATE OF 9D in Binder of correspondence handled by PCO)

4N Letter dated November 28, 2006, from S/Sgt Michael Robineau, Professional Standards Unit, Royal Canadian Mounted Police, Ottawa, to Karlheinz Schreiber

4O Letter dated September 6, 2007, from James N. Shaw, Senior General Counsel, Civil Litigation & Advisory Services, Justice Canada, Edmonton Office

4P Letter dated September 14, 2007, from Robert W. Hladun, Q.C., to James N. Shaw, Senior General Counsel, Civil Litigation & Advisory Services, Department of Justice

4Q English translation of letter dated July 9, 2007, from the "Swiss Federal Justice and Police Department, Federal Office of Justice, Department of Judicial Assistance in International Matters," to German Federal Office of Justice

4R Letter dated July 9, 2007, from the Swiss "Bundesamt für Justiz," to German "Bundesamt für Justiz"

4S English translation of letter dated July 9, 2007, from the "Swiss Federal Justice and Police Department, Federal Office of Justice, Department of Judicial Assistance in International Matters," to Heinz Raschein, Attorney

4T Affidavit dated July 16, 2007, sworn by Sarah Degetz, translator of All Languages Ltd. of Toronto regarding the German-English translations

4U Letter in German dated July 9, 2007, from the Swiss authorities and signed by Martin Trapp

4V Letter dated March 29, 2007, from Karlheinz Schreiber to the Right Honourable Stephen Harper, entitled "Political Justice Scandal, Airbus Affair, RCMP & IAG Conspiracy and Coverup, Public Inquiry"

4W Letter dated January 29, 2007, from Karlheinz Schreiber to the Right Honourable Brian Mulroney

Appendix 10-4

Letters from Karlheinz Schreiber to Prime Minister Harper June 2006 to September 2007*

	Date of Letter	ECU Classification and Action	Response to Mr. Schreiber
1.	June 16, 2006	General Political Mail – Transferred to PMO – Filed no response	None
2.	July 31, 2006	General Mail – Filed no response	None
3.	August 4, 2006	General Mail – Filed no response	None
4.	August 23, 2006	General Political Mail – Transferred to PMO – Filed no response	None
5.	August 30, 2006	General Mail – Filed no response	None
6.	September 26, 2006	General Mail – Filed no response	None
7.	October 27, 2006	General Mail – Filed no response	None
8.	November 30, 2006	Priority Mail – Sent to Clerk's Office and distribution list – Filed no response	None
9.	December 13, 2006	General Mail – Filed no response	None
10.	January 16, 2007	General Mail – Forwarded to Minister of Justice	Acknowledgement sent by ECU advising letter forwarded to Minister of Justice
11.	January 24, 2007	General Mail – Filed no response	None
12.	March 29, 2007	General Mail – Filed no response	None
13.	April 8, 2007	See April 10, 2007	See April 10, 2007
14.	April 10, 2007	General Mail – Filed no response	None
15.	May 3, 2007	General Political Mail – Transferred to PMO – Filed no response	None
16.	September 26, 2007	General Political Mail – Transferred to PMO – Filed no response	None

* Shading indicates letter was forwarded to PMO.

Appendix 10-5

Letters from Karlheinz Schreiber to Prime Minister Harper That Were Handled Within the ECU

	Date of Letter	ECU Classification and Action	"Notes" from WebCIMS form
1.	July 31, 2006	General Mail – Filed no response	"Direct to file as per DS [Donald Smith] overtaken by event"
2.	August 4, 2006	General Mail – Filed no response	"Personal justice case direct to file as per DS [Donald Smith] overtaken by event"
3.	August 30, 2006	General Mail – Filed no response	"Direct to file as per DS [Donald Smith] overtaken by event"
4.	September 26, 2006	General Mail – Filed no response	"Personal legal case direct to file as per SR [Shelly Russell]"
5.	October 27, 2006	General Mail – Filed no response	"Personal case – Many previous – OBE [overtaken by events] – filed"
6.	November 30, 2006	Priority Mail – Sent to Clerk's Office Filed no response	"No reply required. January 2, 2007. L. MacMillan. Personal legal case"
7.	December 13, 2006	General Mail – Filed no response	"Personal legal case, DTF [direct to file] – see previous"
8.	January 16, 2007	General Mail – Forwarded to Minister of Justice	No WebCIMS notes. [Acknowledgement sent by ECU advising letter forwarded to Minister of Justice]
9.	January 24, 2007	General Mail – Filed no response	"Several previous letters direct to file sent pm copies of letters to ministers"
10.	March 29, 2007	General – Filed no response	"Airbus scandal – many previous – filed"
11.	April 8, 2007*		No WebCIMS notes
12.	April 10, 2007*	General – Filed no response	"Letter regarding Afghanistan vehicles File JD [Joseph Duthie]"

* The April 8, 2007, letter was sent together with the April 10, 2007, letter and treated by the ECU as one mailing.

Appendix 10-6

Letter from Karlheinz Schreiber to Prime Minister Harper, Dated March 29, 2007, with Enclosures

KARLHEINZ SCHREIBER 70920207

7 BITTERN COURT, ROCKCLIFFE PARK
OTTAWA, CANADA K 1 L 8 K 9

TELEPHONE 613 748 7330
TELEFAX 613 748 9697
schreiberbarbel@aol.com

Personal / For His Eyes Only

The Right Hon. Stephen Joseph Harper P.C., M.P.
Prime Minister

House of Commons
Ottawa, Ontario
K1A 0A6

Ottawa, March 29, 2007

Subject: "Political Justice Scandal"& "The Airbus Affair"
RCMP & IAG Conspiracy and Coverup
Public Inquiry

Dear Prime Minister,

Today I take the liberty to send you a copy of my letter January 29, 2007 to The Right Hon. Brian Mulroney, P.C., L. L. D. for your personal and private information.

Concerning a Public Inquiry I am referring to all the letters I have sent to you since June 16, 2006 especially to my letters January 16, 2007 and January 24, 2007. I also attaché a copy of an article of the Toronto Sun November 17, 1997: "Former Prime Minister Brian Mulroney is calling for a Royal Commission into a possible coverup of the Airbus scandal."

AIRBUS INQUIRY URGED; MULRONEY SUSPECTS HIGH-LEVEL COVERUP IN SCANDAL

Since the 6th of February 2006 Canada has a Conservative Government and Brian Mulroney's request for a Public Inquiry disappeared.

Concerning Extradition I attaché 3 pages of a RCMP publication.
Interpol 1- The Canadian Central Authority
2.2 Court Proceedings
2.4 The Decision to Surrender

The document explains the duties of the officials involved and shows the political power of the Minister of Justice.

The situation appears like your Conservative Government is using previous Liberal Government tactics.

Delay the Schreiber lawsuit against the Attorney General of Canada, try to involve him in criminal activities and put him in a jail or extradite him to Germany. Shut him up.

Conceal the biggest "Political Justice Scandal" in the history of Canada.

Assure that the Canadian Public will never get to know what really happened concerning the "Airbus" affair, when a Liberal Minister of Justice and the IAG of the Department of Justice teamed up with the RCMP in an illegal international conspiracy to hunt a previous Conservative Prime Minister and his friends.

How would this work with the Accountability of the Conservative Government and the election promise: Let's clean up government. Canadians have been let down by 12 years of Liberal scandal?

Dear Prime Minister, I always thought that events like this belong to the political behavior in countries with totalitarian Governments and have been the reason for many people to escape to Canada.

Could it be that there is serious concern within the Conservative Government regarding the possible findings of a Public Inquiry which caused you to become part of the conspiracy and the concealing of the biggest "Political Justice Scandal" in the history of Canada?

Yours sincerely

KARLHEINZ SCHREIBER

7 BITTERN COURT, ROCKCLIFFE PARK
OTTAWA, CANADA K 1 L 8 K 9

TELEPHONE 613 748 7330
FACSIMILE 613 748 9697
schreiberbarbel@aol.com

The Right Hon. Brian Mulroney, P.C., LL .D.
47 Forden Crescent

Westmount, Quebec
H3Y 2Y5

Ottawa, January 29, 2007

Dear Brian,

I refer to my letter January 19, 2006 concerning the decision of The Hon. Vic Toews, P.C. M.P. then the Minister of Justice and Attorney General of Canada to support his predecessor The Hon. Irwin Cotler by denying the "Airbus" vendetta against you and your friends and the existence of the "Political Justice Scandal".

This case is much worth and much more dangerous than the Maher Arar case.

Imagine, a Liberal Minister of Justice initiates a political vendetta against a retired Conservative Prime Minister, his friends and the Conservative Party with the involvement of the officials of the Department of Justice, the RCMP, confidential informants and complainants, undercover agents from foreign agencies, journalists and foreign informants with criminal records.

Officials from the Department of Justice and the RCMP participate in an international political conspiracy, traveling during 12 years on taxpayer's money all over the world even violating the sovereignty of foreign countries. No confirmation concerning their allegations of fraud and bribe was found.

A victim of the vendetta files a lawsuit against the Minister of Justice and the Attorney General of Canada.

The vendetta caused an extradition case against the victim. The officials from the Department of Justice and the RCMP are trying to conceal the vendetta and the abuse of power and committed crimes through extradition or detention.

I always thought that events like this belong to the political behavior in countries with totalitarian Governments.

Since February 2006 Canada has a Conservative Government. The victim informed the Prime Minister, the Minister of Justice, the Minister of Foreign Affairs, the Minister of Public Safety and others, including you, about the ongoing vendetta.

On December 1, 2006 the Conservative Minister of Justice confirmed his predecessor's decision to extradite the victim to Germany required through Extradition – Treaty obligations. Every Minister involved and you know that this is a huge lie.

THE CANADIAN - GERMAN EXTRADITION TREATY

ARTICLE V: EXTRADITION OF NATIONALS

(1) NEITHER OF THE CONTRACTING PARTIES SHALL BE BOUND TO EXTRADITE ITS OWN NATIONALS .

Germany will never extradite one of its Nationals to Canada. The German Constitution, Article 16 (2) will not allow the extradition of its Nationals.

Dear Brian, can you please tell me why the Conservative Minister of Justice wants the Canadian National Karlheinz Schreiber, the victim, out of the country and help to conceal the biggest "Political Justice Scandal" in Canadian history contrary to the normal political interest of the Conservative Government.

I do not believe that the Hon.Vic Toews, then the Minister of Justice and Attorney General of Canada, made this decision on his own. What is the political interest of the Conservative Government and the Prime Minister in this case and what are the benefits? Is there a serious concern about the possible result of an inquiry?

Unfortunately, you did not respond to my letter as requested and it appears to me that you have no desire to bring any support to my request for a public inquiry which could bring the insanity to an end.

All my personal problems began with Stevie Camerons book "ON THE TAKE" and Allan Rock's political witch-hunt with the RCMP against you.

Since 1996 I am fighting to bring the truth to light through my lawsuit against the Attorney General of Canada. I never received any support from you despite the fact that I provided support at your request since the late 70s.

From 1985 until 1993 I had confidence in you and your statements concerning the Thyssen Bear Head project. You always told me to hang on and that the Thyssen project would go ahead as promised when the company was asked to come to Canada and provide jobs to the people in Nova Scotia.

During the year 2001 I could read in Stevie Cameron's book "The last Amigo" on page 260 that Norman Spector told RCMP officers : Prime Minister Brian Mulroney killed the Thyssen project in 1990 or 1991. Paul Tellier and Bob Fowler were looking after the business interests of General Motors London Ontario.

This was some time after Thyssen Bear Head Industries signed agreements concerning the projects with the Federal Government and the Provincial Government of Nova Scotia and Thyssen had paid substantial amounts of Dollars to GCI Frank Moores related to the achievements.

You never told Elmer Mackay or me that you killed the project and I went on working on it to fulfill your promises to bring jobs to the people in Nova Scotia.

During the summer of 1993 when you were looking for financial help, I was there again. When we met on June 23, 1993 at Harrington Lake, you told me that you believe that Kim Campbell will win the next election. You also told me that you would work in your office in Montreal and that the Bear Head project should be moved to the Province of Quebec, where you could be of great help to me. We agreed to work together and I arranged for some funds for you.

Kim Campbell did not win the election, but we met from time to time.

At the beginning of November 1995 I informed you about the letter of request from the Canadian Department of Justice (the IAG) to the Swiss Department of Justice.

Some days later your wife Mila was extremely concerned about you and told me that you are considering committing suicide. I was shocked and spoke to you for quite a while and you may recall that I told Mila to buy a little lead pipe to cure the disease.

I did not understand what your problem was since the Airbus story was a hoax as I told Bob Fife from the Sun. When I look back and consider what all you have done in the meantime I have the suspicion that there must be something else of great concern to you.

When we met in Zuerich, Switzerland on February 2, 1998 at the Hotel Savoy, I left with the impression that you were in good shape.

On October 17, 1999 you asked for an affidavit or assurance from me which confirms that you never received any kind of compensation from me.

At the beginning of October 1999 to my great surprise I learnt that your spokesman Luc Lavoie told Harvey Cashore: "*Karlheinz Schreiber is the biggest fucking liar the world has ever seen. That is what we believe!*"

Believing the story, I got from you through a friend, I filed a lawsuit against the CBC which I had to drop when I got to know the truth and listening to the tapes. The fee: $ 50.000.

During the Christmas Holydays 1999 I visited Fred Doucet at his home and told him that he should tell you that I would not commit perjury if I would have to testify and that I cannot understand why you don't simply tell the truth. A few days later, when I met with Fred again, he asked me to sign certain agreements concerning our business relationship. I refused to do so.

On January 24, 2000 Mila sent a letter to Baerbel and wrote: "the truth is certainly the best weapon!" She was right. If you would have taken her advice, you might have avoided a lot of trouble for you.

Until now you have to recognize that the Vendetta is not going away by itself.

During the summer of 2006, you again asked for a certain letter from me to be able to support my case, which I have sent to you on July 20, 2006 for your meeting on July 30, 2006.

When I look at the news during the last week and the activities from last year within the Department of Justice, concerning your settlement with the Government, I have a certain idea why your meeting was very important.

To assure that we have the same understanding about my case:

The Decision to Surrender

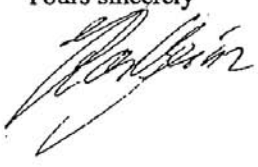
The judicial phase of the extradition process is a determination only that the evidence is sufficient to warrant that the person be extradited. The ultimate decision with respect to whether the person will, in fact, be surrendered to the extradition partner is that of the Minister of Justice.

When you look at my extradition case you have to agree with me that Baerbel's and my life is in the hands of the Minister of Justice and the Prime Minister or the IAG, who can arbitrarily decide since they have no obligation to extradite me to Germany.

Since the Minister of Justice decided on my surrender he must have a special reason to do so. What is the reason, becomes the most interesting question.

Dear Brian, I would like to ask you what the reason might be in your opinion, besides this I think it is in your and my best interests that you show up and help me now and bring this insanity to an end. If I am forced to leave Canada this will not end the matter.

Yours sincerely



AIRBUS INQUIRY URGED; MULRONEY SUSPECTS HIGH-LEVEL COVERUP IN SCANDAL

Journal: The Toronto Sun
November 17, 1997 pg 7
Authors: Robert Fife; Ottawa Bureau
Publication Date: 971117
Word Count: 467
Accession Number: TSU9711170123

Fulltext:

Former prime minister Brian Mulroney is calling for a royal commission into a possible coverup of the Airbus scandal.

Mulroney suspects there is a high-level coverup because no one in government or in the RCMP has taken responsibility for the fiasco, which has cost taxpayers more than $3 million.

He alleges that Prime Minister Jean Chretien and some other senior officials were not innocent bystanders in the kickback investigation of him.

"The only way this can be dealt with is a royal commission inquiry into this entire matter," Mulroney told The Sun in an exclusive interview.

"You can give it a limited mandate to examine the conduct of the ministers and the key personnel and my own... so that the Canadian people will know all of the facts."

Mulroney suspects the government hoped to use the Airbus probe to destroy his reputation and divert attention from the Liberals' botched handling of the Quebec referendum.

Federal officials said Chretien, en route from Hanoi to Ottawa last night, would not respond to Mulroney's allegations until today.

Chretien has denied knowledge of the Airbus probe before it became public in November 1995. RCMP Commissioner Philip Murray and federal ministers Allan Rock and Herb Gray insist they were not directly involved.

But Mulroney said he doesn't believe RCMP Staff Sgt. Fraser Fiegenwald and a mid-level justice department lawyer were solely responsible for the false accusations against him.

"When a former prime minister's name is dragged through the mud... and nobody is responsible - not a minister, not a deputy minister, not a commissioner, nobody is responsible... this is the greatest insult to the Canadian people," he said.

"If there has been a coverup, I think it has to be dealt with very severely."

AIRBUS INQUIRY URGED; MULRONEY SUSPECTS HIGH-LEVEL COVERUP IN SCANDAL

Journal: The Toronto Sun
November 17, 1997 pg 7
Authors: Robert Fife; Ottawa Bureau
Publication Date: 971117
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"You can give it a limited mandate to examine the conduct of the ministers and the key personnel and my own... so that the Canadian people will know all of the facts."

Mulroney suspects the government hoped to use the Airbus probe to destroy his reputation and divert attention from the Liberals' botched handling of the Quebec referendum.

Mulroney said he's also suspicious of a secret deal that allowed Fiegenwald to retire with a full pension and a job with an RCMP-connected security firm.

"I think that is very worrisome and a royal commission is the appropriate instrument to get to the bottom of this," he said.

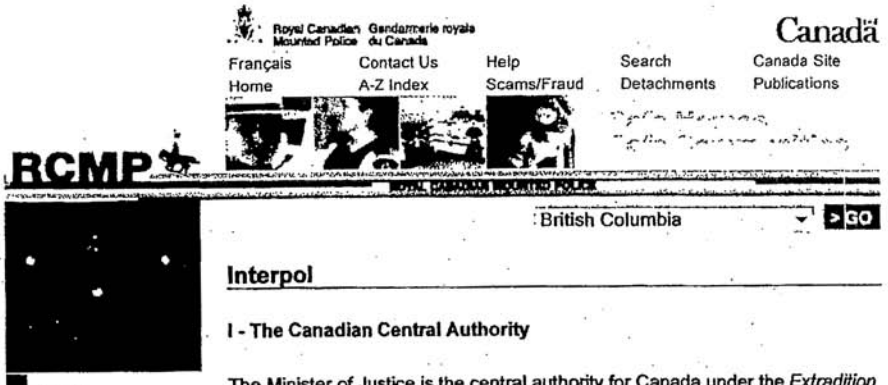
Mulroney warned he may file another lawsuit against the government if it doesn't withdraw a Sept. 29, 1995 letter it sent to Swiss authorities that accused him of accepting $5 million in kickbacks on the sale of Airbus jets to Air Canada.

$2M FOR LEGAL COSTS

"My lawyers have written to the commissioner of the RCMP and the appropriate ministers," Mulroney said. "We want that letter withdrawn...

Now if we don't get that withdrawn, we will take appropriate action in the near future."

In January, the government was forced to apologize to Mulroney and pay him $2 million in legal expenses after he launched a $50-million libel suit to clear his name.



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National Police Services
Technology
Newsroom
Careers / Recruiting

Interpol

I - The Canadian Central Authority

The Minister of Justice is the central authority for Canada under the *Extradition Act* and the *Mutual Legal Assistance in Criminal Matters Act*. The International Assistance Group (IAG), which is part of the Federal Prosecution Service at the Headquarters of the Department of Justice in Ottawa, was established to carry out the functions assigned to the Minister of Justice as central authority for Canada under the *Extradition Act* and the *Mutual Legal Assistance in Criminal Matters Act* and to provide advice to the Minister on his/her responsibilities under these statutes.

The IAG reviews and coordinates extradition and mutual legal assistance requests made to Canada, as well as those made by Canada to other countries. It deals only with requests for assistance in criminal matters. The IAG also has the additional mandate to develop and advise on policy in the area of bilateral treaties and multilateral conventions concerning extradition and mutual legal assistance.

Under the authority of the Assistant Deputy Attorney General (Criminal Law), the IAG is responsible for the development of operational policy in the area of extradition and mutual legal assistance, in consultation with other branches of the Department of Justice and other interested government departments. As well, the IAG participates in the negotiation of extradition and mutual legal assistance agreements and provides consultative advice, to the requesting state if necessary, with respect to the preparation of requests for assistance and extradition to Canada.

The IAG also has established linkages with the International Criminal Tribunals concerned with the prosecution of persons responsible for violations of international law in Rwanda and the former Yugoslavia, and also with the International Criminal Court. Finally, the IAG also carries out, *inter alia*, the following duties: coordinates and/or supports the provision of Canadian viva voce evidence at foreign trials in other countries, coordinates and provides operational policy advice and support for Canada's participation in international bodies involved in criminal law policy with operational consequences, training

be served, issue an authority to proceed. An authority to proceed authorizes an extradition hearing to be held in order to consider whether the person should be committed for extradition.

These responsibilities are, in practice, performed by counsel at the International Assistance Group (the IAG) on behalf of the Minister of Justice.

2.2. Court Proceedings.

Once approved, the IAG forwards the request and all supporting material to the regional office of the Department of Justice in the region where the person sought is believed to be. That regional office will assign legal counsel to take conduct of the case and to initiate and conduct proceedings before a judge to seek an order for the committal for extradition of the person. Regional counsel will also represent the extradition partner throughout any appeal or judicial review hearings.

A person arrested in Canada pursuant to a request for provisional arrest or extradition must be brought before a judge within 24 hours after arrest or if no judge is available during this time, the person must be brought before a judge as soon as possible. The individual is entitled to be considered for bail. In Canada, there is not a presumption against bail in extradition matters.

Generally, the person whose extradition is sought appears at the extradition hearing and participates, with the assistance of legal counsel. In the case of a person sought for the purpose of prosecution, the judge will determine if the evidence provided by the extradition partner is such that the person would be committed for trial in Canada if the offence had occurred in this country. In the case of a person sought for the imposition or enforcement of a sentence, the judge will determine if the person has been convicted with respect to a matter that corresponds to a Canadian offence.

2.3. Evidence at the Extradition Hearing

At the extradition hearing, the *Extradition Act* allows evidence to be presented in a variety of ways:

- In the usual manner applicable to Canadian domestic proceedings such as through the testimony of witnesses;
- In reliance on the provisions for the introduction of evidence set out in an applicable extradition agreement; or
- By means of a «record of the case».

The record of the case is a new and innovative provision which permits the admissibility at the extradition hearing of a document summarizing the evidence available to the extradition partner for use in the prosecution, even if it contains evidence otherwise inadmissible in Canadian domestic proceedings, as long as certain safeguards are respected

the requesting state. The most appropriate authority may be the person who certified the record of the case. The general legal statement should include the following :

- identification of the person providing the statement by name and position, with a brief description of that person's expertise with respect to the law of the requesting state ;
- a description of the person's relationship to the case, i.e. in charge of the case, familiar with it ;
- a statement that the extradition of the person sought is requested for prosecution or imposition or enforcement of sentence for the offence(s) of ... contrary to ... (reference should be made to the applicable statute and section number) with reference to and attaching a copy of the arrest warrant and any relevant charging document ;
- a description or a copy of the text of the laws describing the offence(s) and setting out the applicable punishment ;
- reference to any law of prescription which would apply to the offence(s) as well as a declaration as to whether the prosecution is barred or not by prescription in view of that law ; and
- a declaration that the law with respect to the offence(s) was in force at the time of the alleged conduct and continues to be in force at the time of the request for extradition ;
- where the alleged offence(s) is extraterritorial, an explanation of the basis for jurisdiction to prosecute , attaching if possible any statutory provision setting out the same.

If the presiding judge is satisfied with the evidence, he or she orders the person detained pending the decision of the Minister of Justice whether to surrender the person. Otherwise, the person is discharged and released.

2.4. The Decision to Surrender

The judicial phase of the extradition process is a determination only that the evidence is sufficient to warrant that the person be extradited. The ultimate decision with respect to whether the person will, in fact, be surrendered to the extradition partner is that of the Minister of Justice. At this phase of the process, the Minister will consider any written representations from the person or the person's counsel with respect to why the person should not be extradited or concerning any conditions to which the surrender should be subject. In reaching a decision on surrender the Minister will be obliged to weigh the submissions of the person against Canada's international obligations with respect to extradition. The Minister in reaching his or her decision must respect the rights of the person sought as guaranteed by the *Canadian Charter of Rights and Freedoms*. The *Extradition Act* obliges the Minister to deny surrender if he or she is satisfied that the surrender would be unjust or oppressive having regard to all the relevant circumstances; or the request for extradition is made for the purpose of prosecuting or punishing the person by reason of their race, religion, nationality, ethnic origin, language, colour, political opinion, sex, sexual orientation, age, mental or physical disability or status or that the person's position may be prejudiced for any of those reasons.

If the person is serving a sentence in Canada, the Minister may order

Notes

1 Privy Council Office, Report on the Privy Council Office's Executive Correspondence Procedures and the Handling of Letters from Karlheinz Schreiber to Prime Minister Stephen Harper, June 2006 to September 2007, submitted to the Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney, January 30, 2009 [hereinafter, PCO Report], Exhibit P-15.
2 Prime Minister's Office, Report on the Prime Minister's Correspondence Unit Procedures and the Handling of Letters from Karlheinz Schreiber to Prime Minister Stephen Harper, June 2006 to September 2007, submitted to the Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney, February 5, 2009 [hereinafter, PMO Report], Exhibit P-16.
3 Paul G. Thomas, "Who Is Getting the Message? Communications at the Centre of Government," in Craig Forcese (ed.), *Public Policy Issues and the Oliphant Commission: Independent Research Studies*, prepared for the Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney (Ottawa: Minister of Public Works and Government Services Canada, 2010), 98.
4 PCO Report (Exhibit P-15) app. 1.
5 Thomas, "Who Is Getting the Message?" 100.
6 Figure calculated from PCO Report (Exhibit P-15), app. 2.
7 PCO Report (Exhibit P-15), app. 2. All correspondence-related statistics and procedures cited in this section are derived from Exhibit P-15.
8 Exhibit P-17, tab 31.
9 Ibid., tab 30, p. 6.
10 PCO Report (Exhibit P-15), p. 4. All correspondence-related procedures cited in this section are derived from Exhibit P-15.
11 Exhibit P-17, tab 28, p. 4.
12 PCO Report (Exhibit P-15), p. 3. All correspondence-related procedures cited in this section are derived from Exhibit P-15.
13 PCO Report (Exhibit P-15), p. 3. PMO Report (Exhibit P-16), p. 1.
14 PCO Report (Exhibit P-15), p. 3.
15 Exhibit P-17, tab 28, June 13, 2008.
16 Exhibit P-17, tab 30, January 5, 2001.
17 Testimony of Ms. Sheila Powell, Transcript, April 20, 2009, pp. 1378, 1380.
18 PMO Report (Exhibit P-16), pp. 1–2. PCO Report (Exhibit P-15), p. 3.
19 PCO Report (Exhibit P-15), p. 3.
20 Ibid.
21 Ibid.
22 PMO Report (Exhibit P-16), p. 1.
23 PMO Report (Exhibit P-16), p. 1. PCO Report (Exhibit P-15), p. 3.
24 PCO Report (Exhibit P-15), p. 3.
25 Ibid.
26 Exhibit P-17, tab 22, p. 5 of 20. PCO Report (Exhibit P-15), p. 3.
27 Exhibit P-17, tab 22, p. 11 of 20.
28 PMO Report (Exhibit P-16), p. 1 and app. 2.
29 PMO Report (Exhibit P-16), p. 1.
30 Ibid.
31 Ibid., p. 2.
32 PCO Report (Exhibit P-15) app. 6. PMO Report (Exhibit P-16), p. 2.
33 PMO Report (Exhibit P-16), p. 2.
34 Ibid.
35 Ibid.
36 Testimony of Ms. Sheila Powell, Transcript, April 20, 2009, p. 1386.
37 Ibid., p. 1388.

38 Testimony of Mr. Donald Smith, Transcript, April 20, 2009, pp. 1324–25.
39 PCO Report (Exhibit P-15), p. 5. All correspondence-related references in this section are from Exhibit P-15.
40 PCO Report (Exhibit P-15), app. 8. All correspondence-related references in this section are from Exhibit P-15.
41 PCO Report (Exhibit P-15), app. 8, tab 10. All correspondence-related references in this section are from Exhibit P-15.
42 Testimony of Mr. Donald Smith, Transcript, April 20, 2009, p. 1358.
43 Ibid., p. 1362.
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49 Testimony of Mr. Donald Smith, Transcript, April 20, 2009, pp. 1356–57.
50 As discussed in Chapter 2 of this Report, Inquiry Process, party standing for Part II was granted to the Attorney General of Canada, Mr. Schreiber, and Democracy Watch.
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57 PMO Response.
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59 Thomas, "Who Is Getting the Message?" 94. Canada, PCO, *Accountable Government: A Guide for Ministers and Ministers of State* (2008), chap. VI, s. 1; available online under Reports and Publications at http://www.pco-bcp.gc.ca/
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78 Ibid., 116.
79 Ibid., 116–17.
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11

Trust, Ethics, and Integrity

Introduction

Question 14 of the Commission's Terms of Reference, which I address in this chapter, reads as follows:

> ***14. Are there ethical rules or guidelines which currently would have covered these business and financial dealings? Are they sufficient or should there be additional ethical rules or guidelines concerning the activities of politicians as they transition from office or after they leave office?***

The first sentence of Question 14 is, at core, a factual one – that is, are there current rules that would have covered the transaction between Brian Mulroney and Karlheinz Schreiber if it occurred today. This factual question is, however, of a very different character from the others posed in the Commission's Terms of Reference. It concerns the current status of law and policy – a matter of public record – and does not inquire into the particular private conduct of individuals. To an extent, this factual dimension of Question 14 helps illuminate the rationale for the second sentence; that is, whether the current rules grapple properly with the post–public service employment of politicians. For these reasons, both questions posed in Question 14 will be dealt with together in this Report.

In a representative democracy, citizens delegate enormous power and responsibility to a relatively small number of elected officials. This system is sustainable only if

citizens trust public officials to exercise power in the public (rather than in their own private) interest. Ethics rules are designed to create or preserve this trust. The ethical rules and guidelines that currently apply to public office holders (and, in particular, a prime minister and former prime minister) have changed significantly, especially since 2006. In part because the federal rules applicable to high office holders in Canada have been codified into law, the rules are now among the most rigorous of the jurisdictions scrutinized by this Commission and its experts. However, although the Canadian framework may be rigorous, adjustments and improvements can and should be made to these rules, particularly in the areas of coverage of consultancy retainers, clarity, detection, and enforcement.

The refinements that I propose in this chapter are not, by themselves, a panacea. I am persuaded that an emphasis must also be given to enhancing Canada's "ethical political culture," especially through ethics education and training of public office holders.

My conclusions and recommendations should not be seen as reflecting any sense on my part that Canada's public office holders are in any manner unethical, or that the current system is intentionally or irremediably flawed. As noted, Canada's ethics regime is among the most rigorous of those examined by the Commission.

I take the view that, as a point of principle, efficacy in any system of ethics regulation requires both appropriate and clear standards (as well as means to clarify those standards in the inevitable grey areas that arise in everyday life) and the clear communication of those standards to public office holders. I also believe that rules, no matter how rigorous, require effective implementation and oversight. In my view, the single most concerning aspect of the present regime is the absence of any process that allows violations of the post-employment standards to be detected, except by happenstance, or that permits the rules to be meaningfully enforced.

The difficulties that currently exist in the ethics system – especially in the area of enforcement of post-employment rules – could precipitate future crises, undermining public confidence in Canada's political ethics apparatus. Put bluntly, if the events that prompted this Commission of Inquiry were to occur today, I am not persuaded that the Conflict of Interest and Ethics Commissioner (referred to in this Report as the ethics commissioner) would learn about them, because there is no process or procedure in place that would allow her to detect them.

Even with all the excellent refinements, enhancements, and reforms that culminated with the passage of the 2006 *Conflict of Interest Act*,[1] there is room for improvement. My hope is that the recommendations contained in this chapter will be taken in the spirit in which they are given: to ensure that the Canadian ethics regime is one that will nurture and sustain the high degree of confidence that Canadians should have in their government.

Scope of the Mandate Under Question 14

Before turning to a consideration of the ethics issues, I must first determine the scope of the Commission's mandate under Question 14. It refers to "ethical rules or guidelines." This phrase is potentially quite broad – it could encompass all the mechanisms designed to ensure that governance in Canada is done in the public interest. However, the Commission's mandate is much narrower than this phrase might at first suggest. The Commission is not invited to comment on Canada's ethics rules and guidelines writ large. Instead, in the first sentence of Question 14, it is charged with examining whether any of these rules would have applied to the dealings between Mr. Mulroney and Mr. Schreiber had they occurred today.

The task assigned to the Commission in the second sentence of Question 14 is broader. Here, the Commission is charged with determining whether there is room for improving the standards governing the transition of a politician from public office to private life and after he or she has left office. However, even with this broader remit, the Commission's mandate focuses on a particular portion of a public office holder's "life cycle": the departure from public life and the re-entry into private life.

Neither sentence of Question 14 invites the Commission to opine on certain highly specialized legal regimes that might be construed as falling within a broad understanding of "ethics rules and guidelines" but applicable to different circumstances – for example, rules on electoral finance. Nevertheless, a focus on the transition from public to private life does not confine the Commission's inquiry simply to the particular, specific rules governing post–public office employment. Transitioning public office holders remain public office holders until they actually leave office. Therefore, the full range of ethics rules and guidelines applicable to such individuals comes into play. These rules are properly subject to examination by the Commission.

Moreover, the Commission's mandate is not limited to the rules that apply to an individual holding the office of the prime minister. The dealings that led to this Commission involve a prime minister who resigned that office to sit as a member of parliament (MP) before ultimately becoming a private citizen on the dissolution of Parliament for the 1993 election. Similarly, the Commission is directed by Question 14 to examine the suitability of rules governing the transition of "politicians" (a broad class) to private life. Taking this context into account, I conclude that the Terms of Reference direct me to consider the rules applicable to a sitting prime minister, former prime minister, sitting MP, and former MP.

In practice, the factual circumstances at issue in the business and financial dealings between Mr. Mulroney and Mr. Schreiber and the focus on the transition from public to private life mean that the Commission's attention is directed primarily to

the 2006 *Conflict of Interest Act* and, to a lesser extent, the 2004 Conflict of Interest Code for Members of the House of Commons.[2] Properly speaking, therefore, the Commission has a mandate to deal with "ethics rules and guidelines" contained within Canada's "conflict of interest" rules.

Process

In carrying out its Question 14 mandate, the Commission proceeded as follows. First, it prepared and published on its website in December 2008 a public consultation paper inviting public submissions on the Question 14 issue. By the March 2009 deadline, the Commission received a single substantive submission.[3]

The Commission also retained two experts – Dr. Lori Turnbull, political scientist and ethics code of conduct specialist, and Dr. Gregory Levine, lawyer and conflicts of interest specialist – to assist in assessing Canada's federal ethics rules and guidelines. They were retained on the strength of a literature review directed by the Commission's director of research, Professor Craig Forcese, designed to identify those whose academic research was within my area of focus. An effort was made to include both a political scientist and a lawyer to ensure diversity of professional perspectives. These experts prepared draft research papers, posted on the Commission's website in April 2009 and supplied to the Policy Review (Part II) parties; that is, persons who had sought and been granted standing for the policy phase of the Commission's work. Party standing for the policy review phase was granted to the Government of Canada, Mr. Schreiber, and Democracy Watch. Parties were invited to make written submissions responding to the draft expert papers. The Government of Canada and Democracy Watch both did so.

In June 2009 an expert policy forum was held in Ottawa. The agenda for the forum, including a list of the participants, is set out at Appendices 18 and 19 of this Report. At the June forum, four panels of experts were asked to address a series of questions pertaining to the Commission's Question 14 mandate. Members of the first panel, Dr. Turnbull and Dr. Levine, presented their draft papers, responded to questions, and participated in the three June panels that followed. Dr. Paul Thomas, retained by the Commission to prepare an expert paper on prime ministerial correspondence-handling practices but also a scholar on government ethics, also participated as a panel member in the first panel.

Joe Wild, executive director of strategic policy with the Treasury Board, a government expert on the *Conflict of Interest Act*, was present during one of the round-table discussions before the Commission. Mr. Wild played a considerable role in the drafting of the *Federal Accountability Act*.[4] In his presentation before the Commission, he provided insight into the principles underlying the conflict of interest provisions of that Act. I refer to certain of his comments later in this chapter.

A second panel of academic experts – Dr. Ian Greene, York University; Dr. Lorne Sossin, University of Toronto; and Professor Kathleen Clark, Washington

University in St. Louis, Missouri – offered their views on the matters before the Commission and in the draft expert studies, serving as something of a peer review panel for the latter documents. These individuals were invited to appear following a literature review examining their writings in the area of political ethics and conflicts of interest. Again, the Commission endeavoured to include both legal academics and social scientists on this panel. Two of the participants – Dr. Sossin and Professor Clark – are law school professors, while Dr. Greene is a political scientist. Of particular note also, Professor Clark, a professor of law from the United States, was invited to offer a vital comparative law perspective.

The third panel forum comprised four ethics commissioners: Mary Dawson, federal ethics commissioner; Paul D.K. Fraser, BC conflict of interest commissioner; Lynn Morrison, then acting (now appointed) Ontario integrity commissioner; and Karen E. Shepherd, then interim (now appointed) federal commissioner of lobbying. These individuals examined and juxtaposed their respective mandates and provided practical insight into their operations.

Finally, the Commission invited input from a panel of noted former public officials who contributed practical insight into the intersection between ethics rules and the realities of public life. The four individuals – the Right Honourable Joe Clark, former prime minister; Mel Cappe, president, Institute for Research on Public Policy and a former clerk of the privy council; Professor Penny Collenette, University of Ottawa; and David Mitchell, president, Public Policy Forum – brought to their panel a range of professional experience, including service as a prime minister of Canada, leadership roles in public policy and academic think-tanks, senior public service appointments, positions in the office of former prime ministers, and membership in provincial legislature.

In late July 2009 a final hearing was convened with Sue Gray, head of the Propriety and Ethics Team in the UK Cabinet Office, and Mary Dawson, federal ethics commissioner. They addressed matters that had arisen in the earlier forum sessions, particularly the post–public service employment system in the UK and the role of education and training in promoting ethics.

The expert policy forum was intentionally informal and was conducted as a policy conference rather than as a quasi-judicial hearing. Experts presented rather than swore testimony, and discussion took place around a table rather than in front of a dais. The discussion included the experts, the parties, the Commissioner, and the Commission's lawyers and research director. I owe all the invited participants a sincere debt of gratitude. Their insight and analysis inform much of what follows in this final report, and their points of view are described throughout.

Dr. Turnbull and Dr. Levine finalized their expert studies in mid-July 2009, and these final documents were supplied to the parties. Parties were given the opportunity to make final written submissions on the matters raised in Question 14

by the end of July 2009. Democracy Watch did so. All the submissions received from parties in the policy phase – as with the factual phase – will be archived on the Commission's website and in Library and Archives Canada.

The balance of this chapter is divided into four parts. In Part I, I provide a brief overview of the ethics rules and guidelines of potential relevance to the Commission's mandate. In the second part, I focus on whether these rules and guidelines would cover the Mulroney / Schreiber–type dealings, which I describe as a "consultancy retainer." In Part III, I examine whether the rules applicable to politicians as they transition from office or after they leave office are sufficient. I make concluding observations in Part IV.

Part I – Today's Ethics Rules and Guidelines

I begin by outlining the aspects of the ethics rules and guidelines that are of potential relevance to the Commission's mandate. My purpose here is to provide a broad overview of the ethics architecture at the federal level, and not simply to imply that each of the rules discussed below is necessarily of close concern to this Commission in pursuing its mandate. This discussion largely reproduces information found in the Commission's December 2008 consultation paper.

Overview

Ethics rules pertaining to politicians at the federal level have evolved since Mr. Mulroney took office as prime minister in 1984. In 1985, the Conflict of Interest and Post-Employment Code for Public Office Holders (1985 Ethics Code) came into effect. It has since been revised by succeeding governments, notably in 1994, 2004, and 2006, and it is referred to generically in this chapter as the Public Office Holder Code or POH Code.

By the end of Mr. Mulroney's tenure in office (as prime minister until June 24, 1993, and as member of parliament until September 8, 1993), the ethics rules of relevance to the Commission's work were also contained in the *Parliament of Canada Act*, and the *Criminal Code*. The *Lobbyist Registration Act*, while not strictly including ethics rules at the time, has since become more relevant as an ethics instrument.[5]

The content of each of these instruments changed with time. The most sweeping renovation came in 2006, with the passage of the *Federal Accountability Act*. A core component of that statute was the *Conflict of Interest Act*,[6] which replaced the non-statutory POH Code. A form of POH Code persists in residual form in a document issued by the prime minister in 2007: *Accountable Government: A Guide*

for Ministers and Secretaries of State.[7] This document includes an annex entitled "Ethical Guidelines for Public Office Holders."

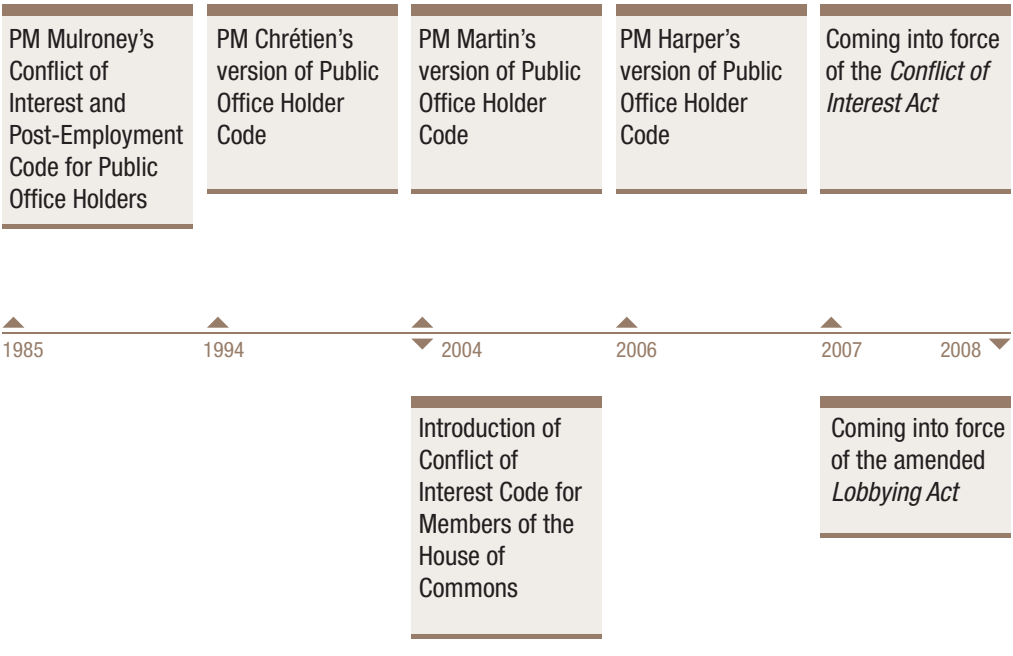
The *Federal Accountability Act* also introduced changes to what was renamed the *Lobbying Act*, with implications for the federal ethics regime. Of note also is the Conflict of Interest Code for Members of the House of Commons (MP Code),[8] which came into effect in October 2004 as part of the Commons Standing Orders. The Senate adopted an analogous instrument on May 18, 2005 – the Conflict of Interest Code for Senators.*

Figure 11-1 is a chronology showing the sequencing of key federal ethics instruments.

Comparative Content

The content of these instruments varies. Table 11-1 sets out the Commission's understanding of the rules and restrictions found in Canada's federal conflicts of interest regime, as it applies to politicians and former politicians.

Figure 11-1: Chronology of Key Federal Ethics Instruments



* Because the Commission's mandate does not raise questions about ethics rules specific to senators, the Senate code will not be discussed further.

Table 11-1: Comparative Content of Federal Ethics Instruments

Rule	Conflict of Interest and Post-Employment Code for Public Office Holders (POH Code)[a]				*Conflict of Interest Act* (2007)[b]	Conflict of Interest Code for Members of the House of Commons (2004)
	1985	1994	2004	2006		
Definition of "conflict of interest"					✔	
Must arrange affairs to avoid conflict of interest	✔	✔	✔	✔	✔	✔
Must recuse oneself where decision creates conflict			✔	✔	✔	✔
Not to give preferential treatment based on identity of person	✔	✔	✔	✔	✔	
Not to use non-public information to further private interest	✔	✔	✔	✔	✔	✔
Not to use position to influence decision-making in favour of private interest		✔	✔	✔	✔	✔
Not to be influenced in conduct of powers by prospects for outside employment	✔	✔	✔	✔	✔	
Not to accept gifts that might be seen to influence office holder	✔	✔	✔	✔	✔	✔
Gifts of a certain value are forfeited to the Crown			✔	✔	✔	
Not to accept travel on private aircraft, subject to exceptions			✔	✔	✔	
Not to be a party to a contract with a public sector entity					✔	✔
Not to have an interest in a business enterprise that is party to a contract with a public sector entity					✔	✔
Not to contract on behalf of the government with immediate family		✔	✔	✔	✔	
No outside business activities	✔	✔	✔	✔	✔	
No use of government property for anything other than official activities	✔	✔	✔	✔		
No solicitation of funds where would create a conflict			✔	✔	✔	
No holding of "controlled assets"	✔	✔	✔	✔	✔	
No circumvention of these rules	✔ [c]	✔ [c]	✔	✔	✔	✔
Compliance with rules as a condition of employment	✔	✔	✔	✔	✔	
Once a former public office holder, not to act in a manner so as to take improper advantage of previous public office	✔	✔	✔	✔	✔	
Once a former public office holder, not to act for someone in connection with any specific matter on which acted for government while in public office	✔	✔	✔	✔	✔	
Once a former public office holder, not to provide advice using non-public information obtained while a public office holder	✔ [d]	✔	✔	✔	✔	

Table 11-1: Comparative Content of Federal Ethics Instruments

Rule	Conflict of Interest and Post-Employment Code for Public Office Holders (POH Code)[a]				*Conflict of Interest Act* (2007)[b]	Conflict of Interest Code for Members of the House of Commons (2004)
	1985	1994	2004	2006		
Once a former public office holder, for a cooling-off period, not to enter into contract of service with, accept appointment to a board of directors of, or accept an offer of employment with an entity with which had direct and significant dealings for a year prior to leaving office	✔ [e]	✔ [e]	✔ [f]	✔ [f]	✔	
Once a former public office holder, for a cooling-off period, not to make representations to any public entity[g] with which had direct and significant dealings for a year prior to leaving office	✔	✔	✔	✔	✔	
Once a former public office holder, for a cooling-off period, not to provide counsel for commercial purposes of the recipient concerning programs or policies of the former office holder's department or a department with which the former office holder had a direct and significant relationship for a year prior to leaving office.	✔					
Once a former minister, for a cooling-off period, not to make representations to a former ministerial colleague who remains a minister			✔	✔	✔	
For certain senior public office holders (including ministers), no lobbying for five years				✔	✔ (under the *Lobbying Act*)	

a The 1985 Conflict of Interest and Post-Employment Code is referred to in Chapter 9 as the 1985 Ethics Code. In this chapter, it and its successors are referred to generically as the POH Code.
b Enacted as part of the *Federal Accountability Act*, SC 2006, c. 9.
c Language confines non-circumvention rule to selling or transferring assets to family members or other persons for the purposes of circumvention.
d This obligation is, however, found in the objects portion of the Code, not in the formal obligations portion.
e Refers only to "accept … employment" and not "offers" of employment or "contracts of service."
f Refers to "services contracts" rather than "contract of service" and does not include "offers" of employment.
g The 1985 and 1994 Codes prohibited representations to "any department" rather than to "any public entity."

At present, the instruments applicable to an MP with a ministerial post are the *Conflict of Interest Act*, the *Lobbying Act*, the MP Code, the *Parliament of Canada Act*, and the *Criminal Code*. These instruments apply to different (although overlapping) categories of public officials, and impose varying requirements.

The *Conflict of Interest Act* and the *Lobbying Act*

The *Conflict of Interest Act* is the most detailed (and most recent) instrument. It applies to "public office holders" – a defined term that includes mostly senior executive branch officials, including "a minister of the Crown" (section 2).

Definition of Conflicts of Interest

The *Conflict of Interest Act*, section 4, imposes specific prohibitions on the activities of public office holders, designed to eliminate "conflicts of interest." A conflict of interest exists where a public office holder "exercises an official power, duty or function that provides an opportunity to further his or her private interests or those of his or her relatives or friends or to improperly further another person's private interests." There is no limit on what might constitute a "private interest," although the *Conflict of Interest Act* in section 2 excludes interests that are general, affect the public office holder as one of a broad class of individuals, or concern remuneration or benefits received in return for employment as a public office holder.

Sample Prohibitions

The *Conflict of Interest Act*, section 15, precludes certain specific actions. For example, most public office holders are barred from engaging in employment or the practice of a profession, managing or operating a business or commercial activity, or serving as a paid consultant while in office. They must arrange their affairs to avoid conflicts of interest (section 5). They may not make an official decision, or participate in that decision, if they know, or should know, that in doing so they would be in a conflict of interest (section 6).

Public office holders are also prohibited from giving "preferential treatment" in exercising their official powers, duties, or functions to anyone "based on the identity of the person or organization" representing that entity (section 7). Similarly, no public office holders can use information obtained through their office and not available to the public to further (or seek to further) their private interests, or those of relatives or friends. Nor can they use this information to further (or seek to further) "improperly" another person's private interests (section 8). The *Conflict of Interest Act*, section 9, also bars the office holder from using his or her position to influence another official to further these private interests. In addition, there are rules on receiving gifts and complimentary travel, entering into contracts with public sector agencies, and fundraising.

It is worth noting that these concrete rules are augmented by more general obligations in the "Ethical Guidelines for Public Office Holders" annex, included in the prime minister's *Accountable Government* document. The guidelines specify, among other things, that public office holders are to "act with honesty and uphold the highest ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of the government are conserved and enhanced." They also have an obligation to "perform their official duties and arrange their private affairs in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law." Public office holders must "make decisions in the public interest and with regard to the merits of each case," and they shall not "directly or

indirectly use, or allow the use of, government property of any kind, including property leased to the government, for anything other than officially approved activities."[9]

Disclosure and Divestment Rules

The *Conflict of Interest Act* also includes detailed rules obliging disclosure to the ethics commissioner (and, in some cases, obliging a public declaration) of, among other things, public office holders' assets. In some cases, public office holders must divest themselves of those assets. The core disclosure and divestment rules are summarized in Table 11-2.

Table 11-2: Asset Disclosure and Divestment Rules for Reporting Public Office Holders Under the *Conflict of Interest Act*

Class	Asset
Confidential Disclosure	Within 60 days of appointment, a confidential disclosure is made to the Conflict of Interest and Ethics Commissioner of: • All assets and liabilities (direct and contingent) of office holder; ministers must include similar information on family members; • All income during the 12 months before appointment and all income the public office holder is entitled to receive for 12 months after appointment; ministers must include similar information on family members; • Benefits from a contract with a public service entity the public office holder (or his or her family members or a private corporation or partnership in which he, she, or his or her family has an interest) is entitled to receive for 12 months after the appointment; • Certain outside activities (e.g., business activities, involvement in charitable activities) from two years before becoming an office holder; ministers must include outside activities of family members. Within 30 days of any material change in the above, a confidential report is made to the Conflict of Interest and Ethics Commissioner. Within 30 days, gifts exceeding $200 in a single year from any one person other than a family member or friend shall be disclosed to the Conflict of Interest and Ethics Commissioner.
Public Declarations	Within 120 days of appointment, the public office holder must publicly declare all assets that are neither "controlled" nor "exempted." Ministers must also publicly disclose all liabilities in excess of $10,000. Within 120 days of appointment, the public office holder must publicly declare whether he or she is a director or officer in a charitable, philanthropic, non-commercial, or Crown corporation. Within 60 days of a recusal done to avoid a conflict of interest, the public office holder must make a public declaration describing in sufficient detail the conflict of interest that was avoided. Within 30 days of receipt by the public office holder or a family member of a gift or other advantage with a value of $200 or more from anyone other than a friend or relative, the public office holder must make a public declaration describing the gift or advantage and the circumstances under which it was accepted. Within 30 days of accepting travel in a manner that falls within the permitted exceptions contained in the Act, a minister must make a public declaration describing the travel and circumstances.
Mandatory Divestment (Controlled Assets)	Within 120 days of appointment, the public office holder must divest him or herself of controlled assets by selling them in an arm's length transaction or placing them in a blind trust. Controlled assets are those whose value "could be directly or indirectly affected by government decisions or policy," including: • publicly traded securities of corporations and foreign governments, whether held individually or in an investment portfolio account; • self-administered registered retirement savings plans, self-administered registered education savings plans, and registered retirement income funds, if composed of at least one asset that would be considered "controlled" if outside the plan or fund; • commodities, futures, and foreign currencies held or traded for speculative purposes; and • stock options, warrants, rights, and similar instruments.

Table 11-2: Asset Disclosure and Divestment Rules for Reporting Public Office Holders Under the *Conflict of Interest Act* (Continued)

Class	Asset
Exempt Assets and Interests	Assets and interests for the private use of public office holders and their families and assets that are not of a commercial character, including: • Residences, recreational property, and farms used or intended for use by public office holders or their families; • Household goods and personal effects; • Works of art, antiques, and collectibles; • Automobiles and other personal means of transportation; • Cash and deposits; • Canada savings bonds and other similar investments issued or guaranteed by any level of government in Canada or agencies of those governments; • Registered retirement savings plans and registered education savings plans that are not self-administered or self-directed; • Investments in open-ended mutual funds; • Guaranteed investment certificates and similar financial instruments; • Public sector debt financing not guaranteed by a level of government, such as university and hospital debt financing; • Annuities and life insurance policies; • Pension rights; • Money owed by a previous employer, client, or partner; • Personal loans receivable from the public office holder's relatives, and personal loans of less than $10,000 receivable from other persons if the public office holder has loaned the moneys receivable; • Money owed under a mortgage of less than $10,000; • Self-directed or administered registered retirement savings plans, self-administered registered education savings plans, and registered retirement income funds composed exclusively of assets that would be considered exempt if held outside the plan or fund; and, • Investments in limited partnerships that are not traded publicly and whose assets are exempt assets.

Source: *Conflict of Interest Act*, s. 20 *et seq*.

Post-Employment Rules

Of particular importance to this Commission, the *Conflict of Interest Act* regulates post-employment activities – that is, what public office holders may do once they leave office.

While still in public office, public office holders must not permit themselves to be influenced in their official activities "by plans for, or offers of, outside employment" (section 10). Reporting public office holders must disclose all "firm offers" of outside employment to the ethics commissioner within seven days (section 24). Similarly, acceptance of an offer of outside employment must be disclosed to the ethics commissioner within seven days. Ministers who accept such an offer must also report this fact to the prime minister (section 24).

The *Conflict of Interest Act* also seeks to regulate conduct once the person has left public office. Some of these rules are permanent; that is, they endure for an indefinite period of time. These rules apply to all former public office holders, as that concept is defined in the Act.

Thus, the Act specifies in section 33 that "[n]o former public office holder shall act in such a manner as to take improper advantage of his or her previous public office." More specifically, it prohibits the former office holder from acting for a person in

respect to any specific matter in relation to which the former public office holder had acted for, or provided advice to, the government. Similarly, the former public office holder may not give advice to a client, business associate, or employer using non-public information obtained by virtue of the office holder's former position (section 34). There is no time limitation on the public office holder's obligations under these rules.

The *Conflict of Interest Act* also imposes "cooling-off" periods – additional prohibitions that endure for a limited period of time. These rules apply to "reporting" public office holders, as that term is defined in the *Conflict of Interest Act*. The difference between reporting and non-reporting public office holders is not of concern for this Report. Both classes include ministers (and ministerial staff who work on average 15 hours or more a week).

For ministers, the cooling-off period is two years. For other reporting public office holders, it is one year. During the cooling-off period, former reporting public office holders may not enter into (among other things) a contract of service (that is, an employment contract) with, accept an appointment to a board of directors of, or accept an offer of employment with an entity with which they had "direct and significant official dealings" for one year before their departure from office. Similarly, they may not make representations on behalf of any entity to a public agency with which they had "direct and significant official dealings" for one year before their departure from office. This rule is supplemented for former ministers: they may not make representations to a current minister who was a former ministerial colleague (section 35).

The *Lobbying Act* augments the post-employment rules contained in the *Conflict of Interest Act*. Under the *Lobbying Act*, certain "designated" public office holders – including ministers – may not lobby for five years after leaving office. Thus, the former minister may not (for payment and on behalf of a client) arrange a meeting between a public office holder and another person; or (for payment and on behalf of a client or, in some instances, an employer) communicate with a public office holder in respect of a number of public policy initiatives. The latter include the promulgation of a statute or making of a regulation, the development or amendment of any government policy or program, or the awarding of any "grant, contribution, or other financial benefit by or on behalf" of the government or, in the case of consultant lobbying, awarding of a contract.[10]

MP Code and the *Parliament of Canada Act*

Members of parliament are governed by a separate instrument, appended to the Standing Orders of the House of Commons – the Conflict of Interest Code for Members of the House of Commons (referred to in this Report as the MP Code). This is not a legislative instrument – that is, it was never introduced as a bill, assessed by both the Commons and the Senate, and accorded royal assent. Rather, it is a set of rules created by the Commons as a manifestation of its inherent parliamentary privilege to discipline its own membership.

The MP Code applies to "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" (section 4). It applies, therefore, to ministers, at least when acting in their parliamentary capacity – for example, voting on a measure in the House of Commons. Ministers and regular MPs are, however, treated differently under the MP Code: MPs who are not ministers may carry on a business or engage in employment in a profession. This authorization is subject to the requirement that, in so acting, MPs must remain able to fulfill their obligations under the MP Code (section 7).

The conflict of interest rules in the MP Code are broadly similar to (although less numerous than) those found in the *Conflict of Interest Act* and are directed at precluding MPs from exercising their functions in a manner that favours their private interests (or those of relatives) or improperly favours the private interest of some other party. Unlike the *Conflict of Interest Act*, the MP Code defines the term "furthering private interest." Furthering a private interest exists 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) [income from employment, a contract or a business];
(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.

Also of note, the *Parliament of Canada Act*, section 41, bars MPs from receiving or agreeing to receive any compensation for services to any person "in relation to any bill, proceeding, contract, claim, controversy, charge, accusation, arrest or other matter before the Senate or the House of Commons or a committee of either House; or … for the purpose of influencing or attempting to influence any member of either House." Violation of this prohibition is an offence, potentially disqualifying the MP from sitting in the House of Commons or holding any position in the federal public administration for five years.

The MP Code imposes substantial disclosure requirements, obliging MPs to report their and their family members' most important assets to the ethics commissioner. A summary of this disclosure is available for public inspection.

A significant distinction in the rules governing MPs (as compared to senior executive branch officials under the *Conflict of Interest Act*) is that neither the MP Code nor the *Parliament of Canada Act* includes rules on post-employment of the sort found in the *Conflict of Interest Act*.

Criminal Code

The Commission has no mandate to examine criminal law matters; however, for completeness, I note that the *Criminal Code* is among Canada's ethics rules and guidelines. Provisions of the *Code* prohibit the most serious forms of unethical conduct by public officials, including politicians. For instance, section 119 of the *Criminal Code* criminalizes the actual or attempted bribing of (or acceptance of a bribe by) "members of Parliament." Other sections extend to "officials," a term defined broadly to include all those who hold a government office or who are appointed or elected to "discharge a public duty" (section 118). The *Criminal Code*, section 122, makes fraud or "breach of trust" committed in connection with an official's duties a crime. The *Code* also criminalizes what is colloquially known as "influence peddling" – in essence, the selling of, or offering to sell, influence with the government for a fee. The influence-peddling provision applies to anyone who gives, offers, or agrees to give or offer (or any official who demands, accepts, or offers or agrees to accept) a reward as payment for selling influence, whether or not the official actually has the power to influence a government decision (section 121).

Enforcement and Administration

Enforcement of the criminal provisions discussed above – including the *Criminal Code* and the *Parliament of Canada Act* – is a police matter. The *Conflict of Interest Act* and the MP Code are administered by a special official, the ethics commissioner.

The Governor in Council (in essence, the federal cabinet) appoints the ethics commissioner, "after consultation with the leader of every recognized party in the House of Commons and approval of the appointment by resolution of that House."[11] The ethics commissioner must be a former judge; someone who has served on a government board, commission, or tribunal and who has, in the federal cabinet's view, relevant expertise; or a former Senate ethics officer or former ethics commissioner.* He or she enjoys substantial security of tenure – he or she is appointed for seven years (with the possibility of renewal for an additional seven years) during "good behaviour." The ethics commissioner may be removed for cause by the Governor in Council on address of the House of Commons.[12]

Under both the *Conflict of Interest Act* and the MP Code, the ethics commissioner administers the disclosures made by public officials of their assets. As required by the *Conflict of Interest Act* (section 28 *et seq.),* he or she reviews these disclosures annually and may order the public office holder to take certain steps to bring them into compliance with the Act – including recusals on certain matters or divestment.[13]

* The former ethics commissioner was the office in existence before the enactment of the *Federal Accountability Act* and creation of the position Conflict of Interest and Ethics Commissioner.

The ethics commissioner also has responsibilities in relation to the post-employment rules. A former public office holder must notify the ethics commissioner of any lobbying he or she does during the cooling-off period (section 37). More generally, the ethics commissioner assesses compliance with all the post-employment rules, and, if he or she concludes that there has been non-compliance, the commissioner may order that current public office holders have no dealings with the former official (sections 40–41). The ethics commissioner is also authorized to relax some of the post-employment restrictions for certain former public office holders should a number of listed criteria linked to the public interest be met.[14]

Charged with giving confidential advice to the prime minister and individual public office holders concerning compliance with the Act, the ethics commissioner also investigates complaints of non-compliance made by a senator or a member of parliament "who has reasonable grounds to believe that a public office holder or former public office holder has contravened this Act" (section 44). The ethics commissioner may also initiate his or her own investigation where he or she has "reason to believe that a public office holder or former public office holder has contravened" the Act (section 45). The ethics commissioner reports any findings to the prime minister, to the complainant (where applicable), to the public office holder in question, and also to the public (sections 44 and 45). The conclusions of the ethics commissioner that "a public office holder or former public office holder has or has not contravened this Act may not be altered by anyone but is not determinative of the measures to be taken as a result of the report" (section 47).

The ethics commissioner's responsibilities under the MP Code are broadly analogous. He or she administers the disclosure process, is empowered to issue opinions on compliance questions to inquiring MPs, and investigates complaints concerning non-compliance made by MPs (or may investigate on his or her own initiative). The commissioner's findings concerning investigations are tabled in the House of Commons, and the matter may then be debated in the House of Commons.

Penalties

Penalties under the instruments described above vary. They include disqualification from sitting as an MP (for violation of the *Parliament of Canada Act*), potentially significant fines (for *Criminal Code* violations or the limitations on post–public office lobbying under the *Lobbying Act*), or terms of imprisonment (*Criminal Code* and *Lobbying Act* violations).

There are comparatively few formal sanctions for violations of the *Conflict of Interest Act* or the MP Code. Although the *Conflict of Interest Act* imposes modest fines on a public office holder for violations of disclosure obligations,[15] it is silent on penalties for other instances of non-compliance with the Act. Ultimately, the sanctions

imposed on a non-compliant public office holder are a matter for the prime minister to decide. Similarly, the imposition of penalties for violation of the MP Code lies in the hands of MPs themselves. As a manifestation of Parliament's inherent privileges, MPs are entitled to vote disciplinary measures on their colleagues.

Hypothetical Application of Ethics Rules

As is apparent from the foregoing discussion, different rules apply to different officials, and an official whose status changes with time would be subject to a variety of different standards over the course of his or her career. For my purposes, I believe it is helpful, for the sake of illustration, to situate the general discussion of federal ethics rules in a more specific context: the rules as they would apply to a member of parliament who becomes prime minister and who then resigns after a year to sit again as a regular member of parliament for one year before leaving public life entirely. Table 11-3 sets out my understanding of how the rules would apply in this example.

Table 11-3: Timeline of Application of Ethics Obligations: A Hypothetical Example

Time Horizon, Part 1 (Period leading up to appointment as prime minister in Year 0 and period as prime minister)						
Year	**Year 0 minus 2 (prior to PM)**	**Year 0 minus 1**	**Year 0 minus 1**	**Year 0**	**Year 0 plus 60 days**	**Year 0 plus 120 days**
Status of individual	Private citizen	Elected MP	Sitting MP	Appointed PM	Sitting PM	
Applicable ethics instruments	*Criminal Code, Parliament of Canada Act*	*Criminal Code, Parliament of Canada Act*, and MP Code		*Criminal Code, Parliament of Canada Act*, MP Code (insofar as acting in parliamentary capacity) and *Conflict of Interest Act*		
Ethics / financial disclosure obligations	N/A		Within 60 days of sitting as MP, file confidential statement with the ethics commissioner disclosing the MP's private interests and the private interests of the members of the MP's family. A summary of the statement is prepared by the ethics commissioner and placed on file at the office of the ethics commissioner and made available for public inspection[a]		Confidential disclosure obligations per Table 11-2 above	Public disclosure obligations per Table 11-2 above
Obligations relevant to business transactions	General obligations, including *Criminal Code* rules concerning bribery, influence peddling, etc., and *Parliament of Canada Act* rules in relation to offering compensation for services to an MP in connection with a matter before the Commons.	General obligations, including *Criminal Code* rules concerning bribery, influence peddling, etc., and *Parliament of Canada Act* rules in relation to receiving or agreeing to receive any compensation for services to any person in connection with a matter before the Commons MP-specific obligations about not advancing "private interest" and being a party in a contract with a public entity		General obligations, including *Criminal Code* rules concerning bribery, influence peddling, etc., and *Parliament of Canada Act* rules in relation to receiving or agreeing to receive any compensation for services to any person in connection with a matter before the Commons MP Code obligations continue insofar as PM acting in parliamentary capacity Specific obligations under the *Conflict of Interest Act* barring advancement of "private interest," the giving of preferential treatment, or the acceptance of gifts that might be seen as influencing actions Specific obligations about being a party in a contract with a public entity Bar on engaging in employment, the practice of a profession, managing or operating a business or commercial activity, or serving as a paid consultant		
Specific obligations relevant to post-employment	N/A	N/A		Must not allow plans for or offers of outside employment to influence exercise of official power Disclosure of all "firm offers" (and acceptance) of employment to the ethics commissioner within seven days		

Table 11-3: Timeline of Application of Ethics Obligations: A Hypothetical Example (Continued)

Time Horizon, Part 2 (Period after Year 1 when no longer a prime minister, sits as a member of parliament and then transitions to private life)				
Year	Year 1	Year 2	Year 3 to Year 5	After Year 5
Status of individual	No longer PM; sitting MP	Private citizen		
Applicable ethics instruments	*Criminal Code, Parliament of Canada Act*, MP Code, and post-employment provisions in *Conflict of Interest Act*, *Lobbying Act*	*Criminal Code*, *Parliament of Canada Act*, MP Code, and post-employment provisions in *Conflict of Interest Act*, *Lobbying Act*		
Ethics / Financial disclosure obligations	Continuing obligations to file material changes to the disclosure statement made under the MP Code Obligation to report any lobbying done to the ethics commissioner	Obligation to report any lobbying done to the lobbying commissioner		
Obligations relevant to business transactions	General obligations, including *Criminal Code* rules concerning bribery, influence peddling, etc., and *Parliament of Canada Act* rules in relation to receiving or agreeing to receive compensation for services to any person in connection with a matter before the Commons MP-specific obligations about not advancing "private interest" and being a party in a contract with a public entity	General obligations, including *Criminal Code* rules concerning bribery, influence peddling, etc., and *Parliament of Canada Act* rules in relation to offering compensation for services to an MP in connection with a matter before the Commons		
Specific obligations relevant to post-employment	Must not act in such a manner as to take improper advantage of previous public office Must not act for a person in respect to any specific manner in relation to which the PM had acted for the government Must not advise a client, business associate, or employer using non-public information obtained by virtue of the PM's former position Must not enter into a contract of service with, accept an appointment to the board of directors of, or accept an offer of employment with an entity with which the PM had "direct and significant" dealings for one year before his or her departure from office Must not make representations on behalf of any entity to a public agency with which the PM had "direct and significant official dealings" for one year before his or her departure from office Must not make representations to a current minister who was a former ministerial colleague Must not lobby – that is, for payment and on behalf of a client, arrange a meeting between a public office holder and another person, or communicate with a public office holder in respect of a number of public policy initiatives, including the promulgation of a statute or making of a regulation, the development or amendment of any government policy or program, or the awarding of any contract, "grant, contribution, or other financial benefit by or on behalf" of the government		Must not act in such a manner as to take improper advantage of previous public office Must not act for a person in respect to any specific matter in relation to which the PM had acted for the government Must not advise a client, business associate, or employer using non-public information obtained by virtue of the PM's former position Must not lobby	Must not act in such a manner as to take improper advantage of previous public office Must not act for a person in respect to any specific matter in relation to which the PM had acted for the government Must not advise a client, business associate, or employer using non-public information obtained by virtue of the PM's former position

a Conflict of Interest Act, s. 20 *et. seq.*

Part II – Application of Today's Rules

Question 14 of the Commission's Terms of Reference first requires the Commission to determine whether the rules discussed above would "cover" business and financial dealings of the sort that arose between Mr. Mulroney and Mr. Schreiber in the early 1990s if they took place today. This section addresses that issue, first, by expanding on the scope of the Commission's focus, and, second, by analyzing the existing law's coverage in relation to such an affair.

Consultancy Retainer

In Chapter 6, I found that Mr. Mulroney entered into an agreement with Mr. Schreiber on August 27, 1993, and that, pursuant to that agreement, Mr. Schreiber retained Mr. Mulroney's services to promote the sale of military vehicles produced by Thyssen in the international market. I also found that no agreement was reached at the Harrington Lake meeting on June 23, 1993. As to the payment, I was unable to make a finding, given the dearth of independent evidence, as to whether Mr. Mulroney was paid $225,000, as he asserted, or $300,000, as Mr. Schreiber asserted, but I found that he was paid at least $225,000 cash in Canadian $1,000 bills. I was also unable to find that Mr. Mulroney rendered any services in exchange for the money paid to him.

For the purposes of the first task assigned the Commission by Question 14, therefore, the starting point is a transaction in which a sitting member of parliament enters into an agreement to act for a businessperson at the international level and receives cash payments pursuant to that agreement while still a member of parliament. For the purpose of the analysis that follows, I shall style this arrangement a "consultancy retainer." This arrangement is, in legal terms, a "contract for services" – that is, a contract between a client and an independent contractor in business for his or her own account. It is not a "contract of service," an alternative name for a formal employment/employee arrangement in which a person becomes an employee of an employer. The distinction between contracts "for" and "of" service is widely recognized in the common and statutory law and becomes important in the analysis that follows. As will be discussed, the nature of the relationship between that businessperson and the prime minister, the precise subject matter of the consultancy retainer and the timing of any payment under it, and how and where the prime minister acts in pursuing the businessperson's interest all affect the reach and applicability of Canada's current ethics rules.

It is important to include a disclaimer at this point. Question 14 clearly asks the Commission to take the facts associated with the transaction between Mr. Mulroney and Mr. Schreiber and juxtapose them against today's ethics rules and guidelines. This is an entirely hypothetical exercise. The current rules and guidelines are just that – current.

They do not apply retroactively. I do not imply, either expressly or by implication, that these rules actually governed or applied to the events that took place in the 1990s. I have analyzed the rules applicable to that era in Chapter 9 of my Report, which deals with the appropriateness of Mr. Mulroney's conduct and the ethics regime in place at the time. Again, the sole focus in this Part is to determine whether today's rules would cover a situation analogous to that existing for Mr. Mulroney and Mr. Schreiber in the 1990s – what I have styled a "consultancy retainer."

Interpretation of Ethics Rules

I also think it important, at the outset, to underscore the approach I intend to apply in interpreting Canada's federal ethics rules in relation to these matters. I begin by observing that it appears that neither the courts nor the ethics commissioner has definitively interpreted most of the provisions in Canada's ethics laws. Nor, for the most part, is there a useful legislative history illuminating the meaning of the many specific terms requiring interpretation. I am obliged, therefore, to develop my own interpretation of these rules. In doing so, I am guided by four considerations.

First, I assess the ethics rules with a close eye to the specific mandate set out in Question 14 – the applicability of these rules to a consultancy retainer of the sort at issue in the factual portion of this Report. The Terms of Reference ask whether the current rules "would have covered" such a transaction. The expression "covered" is broad. An action may be "covered" by a rule in the sense that the rule applies to those factual circumstances, even if, in the end, the substance of that action does not violate the rule. I do not confine my interpretation, therefore, to assessing those instances where a consultancy retainer would transgress today's ethics rules. I also offer my interpretation of how and when consideration of those rules would be triggered by such a transaction.

Second, in construing the provisions in the *Conflict of Interest Act*, I am guided by various rules of statutory interpretation. As the Supreme Court of Canada has directed: "Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."[16] I also rely on section 12 of the federal *Interpretation Act*, which stipulates that every Act "is deemed remedial" and directs that every Act "shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects."[17]

The remedial purpose of the *Conflict of Interest Act* is underscored in the statute itself, which states at section 3 as one of its purposes "minimiz[ing] the possibility of conflicts arising between the private interests and public duties of public office holders and provid[ing] for the resolution of those conflicts in the public interest should they arise." The Act accordingly attracts the "general rule of statutory interpretation that

accords remedial statutes a 'large and liberal' interpretation,"[18] one that best supports the securing of its objectives.[19]

Third, in keeping with this canon of statutory interpretation, I find it useful to construe the ethics rules in a purposive manner; that is, I examine these rules with an eye to what I believe to be their objectives. As noted, the *Conflict of Interest Act* itself specifies its objectives. Those objectives, however, are often too general to guide specific interpretations of particular words. In the absence of a clear legislative history illuminating the specific meaning of individual terms, I must rely on common sense and judgment. In applying my judgment, I find particularly instructive the purposive structure developed by Dr. Turnbull in her expert report on post–public service employment rules and the concepts she terms "influence," "ingratiation," "profiteering," and "switching sides."[20]

Fourth the evidence at the expert policy forum is also of utility in understanding the purpose of ethics rules. As many of the experts and panellists who appeared before the Commission underscored, ethics rules are aimed at generating public trust in public office holders. To do so, they pursue a number of objectives. Although not every expert and panellist I consulted offered up the same list of considerations, the objectives identified include:

- *Clarity*: Ethics rules clarify standards for public office holders and concretize public expectations of these office holders. I note that the *Conflict of Interest Act* itself at section 3(a) lists as a purpose establishing "clear conflict of interest and post-employment rules for public office holders."
- *Consensus*: Ethics rules may reflect consensus among public office holders about what sorts of behaviour are acceptable and foster a shared culture of ethics.
- *Public commitment and education:* Ethics rules are a means of communicating to the public the premium public office holders put on ethics. They may also be political tools meant to show resolve and response in the wake of an ethics crisis or scandal. Ethics rules also alert those to whom they apply of potential conflicts.
- *Transparency*: Ethics rules, in their substance, create transparency on the nature of public office holders' relationships and interests in an effort to foster public trust.
- *Restrict opportunities for impaired interest*: Ethics rules protect the public interest by reducing the prospect that public office holders will conduct their duties in a private interest.

Some experts and panellists contested whether ethics rules in fact succeed in creating a culture of ethics and in enhancing public trust, a matter I return to in Part III of this chapter. For the purposes of this Part, however, I accept that the purposes and objectives noted above characterize ethics rules.

I am also guided by past practice in interpreting ethics rules. I note that courts interpreting the former Conflict of Interest and Post-Employment Code for Public Office Holders (and its public service equivalent) have established demanding standards

for those governed by these instruments. Writing for the majority of the Supreme Court of Canada in *R. v. Hinchey*, where the Court was examining the application of *Criminal Code* anti-corruption provisions, Justice Claire L'Heureux-Dubé commented: "[G]iven the heavy trust and responsibility taken on by the holding of a public office or employ, it is appropriate that government officials are correspondingly held to codes of conduct which, for an ordinary person, would be quite severe."[21]

In *Canada (Attorney General) v. Assh*,[22] a 2006 decision of the Federal Court of Appeal examining the conflict of interest code for the public service, the court emphasized the "object of enhancing the public's confidence in the integrity of the public service" in giving that instrument a demanding reach. This approach was also adopted by the Federal Court Trial Division (as it then was) in an earlier case, *LGS Group Inc. v. Canada (Attorney General)*.[23]

These authorities suggest that ethics rules should be read broadly and generously to impose expansive obligations on public office holders. Yet, for the reasons discussed later, it is also my view that the interpretation of the sometimes highly general rules should not be so sweeping as to preclude viable post-employment careers for former public officials. In support of this view, I note that the *Conflict of Interest Act*, section 3, also states as among its purposes: to "encourage experienced and competent persons to seek and accept public office" and "facilitate interchange between the private and public sector." As discussed below, I am not persuaded that the rules at present deter entry into public life of such persons, or deny the anticipated private / public sector "interchange." I accept, however, that, if the rules were to be interpreted too restrictively, they could have such an effect.

I turn now to the applicability of the present rules to consultancy retainers.

Applicability of Today's Ethics Rules to a Consultancy Retainer

As noted, the Commission retained two experts – Dr. Lori Turnbull and Dr. Gregory Levine – to assist in assessing Canada's federal ethics rules and guidelines. Both concluded that the current rules would – or at least could – cover a consultancy retainer of the sort at issue in this final report, if it took place today. Much, however, would hinge on the interpretation of a number of uncertain provisions in the current rules. It is fair to say, also, that the two experts differed in their enthusiasm for curing these uncertainties, and their suggestions are discussed in Part III of this chapter.

The attorney general, in his submissions on behalf of the Government of Canada, agreed that the current ethics rules could cover the business dealings between Mr. Schreiber and Mr. Mulroney if the events had occurred today.[24] Democracy Watch's submissions do not expressly address this question. Its submissions seem to be directed less at examining whether the current ethics rules could cover a consultancy

retainer than at questioning whether they do so well enough. Mr. Schreiber made no submissions on any of the issues raised in Part II.

In setting out my own conclusions on the reach of the current rules, I find it useful to refer to the framework set out by Dr. Levine in his study. As the term I have used suggests, I shall follow Dr. Levine's sensible approach in his expert study and envisage a consultancy retainer as involving a "retainer" to provide services. In this case, the services were to be provided in the future, but payment was made (at least in part) in advance of the services (although not while the prime minister was still in executive office). The retained individual is not an employee, in the formal common law sense of the term, but instead an independent contractor. Given these contours, I approach the question before me with an eye to three specific scenarios, as follows:

- Offer of a consultancy retainer to a sitting prime minister: I concluded in Chapter 6 that no consultancy retainer was offered by Mr. Schreiber to Mr. Mulroney while he was still prime minister. Nevertheless, for the purposes of my analysis of the current ethics regime, I believe it is useful to canvass the implications of a consultancy retainer being offered to a sitting prime minister by a private third party.
- Entry into consultancy retainer agreement with a sitting MP: Can an MP who was formerly a prime minister enter into a consultancy retainer agreement?
- Performance of consultancy retainer by former prime minister: Does the subject matter of the consultancy retainer agreement matter? Is one kind of work acceptable but not another? Does it matter if the retainer was for work with a foreign entity or government rather than for work directed at the Canadian government?

Offer of a Consultancy Retainer to a Sitting Prime Minister

In this first scenario, the prime minister is still in office and thus is subject to the rules and guidelines applicable to serving public office holders, most especially those in the *Conflict of Interest Act*. All the rules described in Part I above are of potential application. To summarize the most relevant of these rules:

- The prime minister must arrange his or her affairs to avoid conflicts of interest (section 5).
- The prime minister may not make an official decision or participate in that decision if he or she knows, or should know, that in doing so he or she would be in a conflict of interest (section 6).
- The prime minister is prohibited from giving "preferential treatment" in exercising his or her official powers, duties, or functions to anyone "based on the identity of the person or organization" representing the entity that is receiving the preferential treatment (section 7).
- The prime minister may not use information obtained through his or her office and not available to the public to further (or seek to further) his or her

private interests, or those of relatives or friends. Nor can he or she use this information "improperly" to further (or seek to further) another person's private interests (section 8).

- The *Conflict of Interest Act* also bars the prime minister from using his or her position to influence another official to further these private interests (section 9). Notably, a consultancy retainer, once offered, may constitute one of these private interests that the prime minister must not advance in his or her official functions.

In addition to these general rules, there are several specific expectations that are more closely correlated to the sort of consultancy retainer at issue in this Commission and that require more detailed examination.

Sections 10 and 24 of the *Conflict of Interest Act*

Section 10 of the *Conflict of Interest Act* admonishes public office holders "not to be influenced in the exercise of an official power, duty or function by plans for, or offers of, outside employment." The purpose of section 10 is obvious. It falls within the category of what Dr. Turnbull calls an anti-ingratiation rule.

In an expert paper authored for the Organisation for Economic Co-operation and Development (OECD), Professor Kenneth Kernaghan describes the public policy justification for such a measure:

> While individuals are still working for government, they can take measures to improve their future employment prospects outside government. They can give preferential treatment, in such forms as grants, subsidies or lax rule enforcement, to outside organisations. This offence is often described as "going soft" on particular clients in the performance of one's official responsibilities. Officials performing regulatory roles (e.g. police, environmental protection officials) are in an especially good position to take advantage of their public office in this fashion. Involvement in this offence is facilitated by the well-known phenomenon of "regulatory capture" according to which regulatory officials whose mandate is to seek the public interest end up favouring the interests of those being regulated – and in some cases favouring their own interests in future employment over their official duties.[25]

Particularly egregious forms of ingratiation rise to the level of a criminal offence. As noted earlier in this chapter, the *Criminal Code* criminalizes "influence-peddling" – an offence designed to "prevent government officials from taking benefits from a third party in exchange for conducting some form of business on that party's behalf with government."[26] Influence-peddling arises where the accused official intentionally demands or accepts a "loan, reward, advantage or benefit of any kind for himself, herself or another person" as recompense for "cooperation, assistance or exercise of influence in connection with the transaction of business with or relating to the government."[27]

Other forms of favouritism might not rise to the level of influence-peddling but could fall within the scope of section 10 of the *Conflict of Interest Act*, which states:

"No public office holder shall allow himself or herself to be influenced in the exercise of an official power, duty or function by plans for, or offers of, outside employment." I believe that this admonishment is clear: a public office holder may not act in a manner to curry favour with prospective post–public service employers. This is true even if the offer of post–public office employment does not take place, since there is no requirement in section 10 that the offer be "firm." Moreover, section 10 may be engaged even if discussions or negotiations concerning post–public service employment have not yet commenced, since section 10 refers to "plans for … outside employment." "Plans" include intentions that may simply be a gleam in the eye of the public office holder and not yet manifest in any other manner.

Also of note are the disclosure rules in subsection 24(1): "A reporting public office holder shall disclose in writing to the Commissioner within seven days all firm offers of outside employment." Unlike section 10, subsection 24(1) is triggered by a "firm" offer. During the expert policy forum, the ethics commissioner told the Commission that she views a "firm offer" as meaning "a serious offer" that is "something less than a legally binding agreement" and "something more than preliminary discussions." The ethics commissioner also noted, "[a] firm offer, for example, would result from serious negotiations with respect to a defined position."[28] Subsection 24(2), for its part, requires "reporting" public office holders to disclose any acceptance of "an offer of outside employment" to the ethics commissioner (among possible other individuals) within seven days. Notably, in the *Conflict of Interest Act*, section 2, the definition of "public office holders" and "reporting public office holders" includes ministers of the Crown (and therefore the prime minister).

Read together, these provisions anticipate that existing ministers may seek, receive, and accept offers concerning post–public service "employment," subject to the obligation that these plans and offers not affect their actions as public office holders and that "firm" and accepted offers be disclosed. Put another way, post–public service arrangements may be made by the minister as long as his or her obligations under the *Conflict of Interest Act* are respected. Dr. Levine also reached this conclusion in his study.

One question considered in Dr. Levine's study was the meaning of "employment." Specifically, are these rules confined to circumstances in which a public office holder is offered or has plans for a formal employee / employer relationship, or does it also extend to other arrangements – for example, plans or offers relating to work as a paid consultant? Dr. Levine concluded that "employment" in these contexts must be broadly construed:

> It would seem almost pointless in the context of an ethics code or ethics law to prohibit or inhibit only those employment relations defined narrowly as waged positions and to allow individuals to take other forms of paid work such as consulting or professional work. The potential for conflict of interest and conflict of duty is surely just as great with the latter type of work.[29]

I understand Dr. Levine's concern. However, the Act is awkwardly drafted if "employment" is intended in a broad rather than a technical sense. I note that, in the other sections where employment relationships are regulated, the Act regularly supplements reference to employment with wording on "contracts" and paid consultant work. For instance, section 14 provides: "No public office holder who otherwise has the authority shall, in the exercise of his or her official powers, duties and functions, enter into a *contract or employment relationship* with his or her spouse, common-law partner, child, sibling or parent." Section 15 distinguishes between engaging in employment and serving as a paid consultant.

There is reason to believe, therefore, that sections 10 and 24 do not cover contracts for services of a sort at issue in a consultancy retainer. If so, this is a critical flaw in the current Act. In light of this problem, I believe that the *Conflict of Interest Act* must be amended to clarify that these sections apply to contracts for services[30] – a matter to which I return in Part III of this chapter. I examine in more detail the issue of "contracts for services" below.

Section 15 of the *Conflict of Interest Act*

The scope of another key provision of the *Conflict of Interest Act* – section 15 – is somewhat different. Although section 24 recognizes that post–public office employment may be contemplated, sought, offered, and accepted under the Act, section 15 provides that broad classes of work cannot be performed while the individual is still in public office. Subsection 15(1) reads, in part:

> No reporting public office holder shall, except as required in the exercise of his or her official powers, duties and functions,
> (a) engage in employment or the practice of a profession;
> (b) manage or operate a business or commercial activity;
> …
> (e) serve as a paid consultant; …

In this amplification of the different categories of paid work, a public office holder is barred from "engaging" in "employment" or the "practice" of a "profession." At the same time, he or she may not "manage" or "operate" a "business or commercial activity" or "serve" as a "paid consultant."

The range of activity regulated by section 15 obviously extends well beyond a formal employment arrangement. For the reasons that follow, in my view, a consultancy retainer of the sort at issue in this Report – that is, one with the qualities of the transaction between Mr. Mulroney and Mr. Schreiber of the early 1990s – might be prohibited by subsection 15(1).

Engaging in Employment or Serving as a Paid Consultant

On a plain reading of subsection 15(1)(a), the public office holder may not "engage in employment." Here, employment can be understood to refer to a conventional employee / employer relationship, given the express juxtaposition of "employment" against the other forms of paid work listed in section 15. Therefore, to engage in employment, one must necessarily *be* an employee. A consultancy retainer does not have this characteristic.

Subsection 15(1)(e) bars "serving" as a paid consultant. A consultancy could cover any subject matter, including that at issue in a consultancy retainer. However, to "serve" as a paid consultant, in my view, requires that the person who is retained must be actually providing the services. A promise of such services in the future would not engage this section. This interpretation is shared by the ethics commissioner.[31]

Engaging in the Practice of a Profession

The prohibition on engaging in the practice of a profession in subsection 15(1)(a) is more difficult to define. The reach of this aspect of paragraph (a) hinges on what properly is considered a "profession" and what actions constitute engaging in the "practice" of that profession. It is my view that entering into a retainer agreement in which money is paid immediately on the promise of services to be rendered in the future can amount to engaging in the practice of a profession in some cases.

The types of profession caught by subsection 15(1)(a) are not defined. For the sake of illustration, it is worth noting that it is conventional for a lawyer to accept payment of a retainer in advance of the provision of legal services. The retainer is disbursed as income earned from the lawyer's trust account once services have been rendered. Although the retainer payment is not income until earned – and hence is held in the trust account on the client's behalf – the acceptance of the retainer is an indisputable professional practice, carried out by persons in the business of offering legal services.

Similarly, again for the sake of illustration, I conclude that accepting a money retainer to carry out lobbying activity could amount to engaging in the profession of lobbying. Unlike the practice of law, entry into the lobbying business is not regulated. Nevertheless, the practice of lobbying is regulated by the *Lobbying Act*, an instrument that requires the existence of a "Lobbyists' Code of Conduct."[32] In its present form, the latter obliges lobbyists to observe, among other things, "the highest professional and ethical standards."[33] These instruments, read together, suggest the existence of a lobbying profession, one with "professional" standards and expectations.

In the lobbying profession, retainers may be accepted against future work. However, not every sort of retainer will require registration under the *Lobbying Act*, since the subject matter of the retainer may not constitute reportable lobbying.[34] I believe it reasonable, therefore, to interpret the concept of "engaging" in the practice of the lobbying "profession" to include acceptance of a money retainer for only those activities that themselves constitute lobbying, as that concept is understood for registration purposes under the *Lobbying Act*.

Nevertheless, in both the legal services and the lobbying scenarios, whether an arrangement constitutes practising a profession is much less certain where no formal retainer is entered into and no money changes hands. In legal practice, for example, a lawyer can be expected to meet with prospective clients before formally agreeing to be retained by them. There is an argument for treating these initial consultations as engaging in the practice of a profession – they are, after all, part of running a legal services business.

In his expert paper, Dr. Levine argues that a broad reading of this sort – precluding discussions on the provision of prospective services on departure from public office – is not compatible with sections 10 and 24, which expressly anticipate public office holders' seeking, receiving, and accepting offers concerning post–public service employment.[35] I agree with this conclusion, but only if "employment" in sections 10 and 24 is read to include all forms of paid work, and not simply formal employment as an employee. If, as discussed above, sections 10 and 24 confine their coverage to these contract *of* service relationships (and do not extend to contracts *for* services), then the contradiction raised by Dr. Levine does not arise.

It is possible, therefore, that a consultancy retainer in which the relationship between a prime minister and a businessperson amounts simply to an offer to discuss prospective, future retention of the prime minister on departure from office could constitute engaging in the practice of a profession. Such an offer to discuss a prospective retainer would be barred as the practice of a profession for the purposes of section 15 if the services on offer were "professional" services.

Managing or Operating a Business

A retainer to conduct activities that fall short of the actual provision of consultancy, legal, or lobbying services may still amount to "managing" or "operating" a business. On a plain reading, "managing" or "operating" a business includes more than actually fulfilling the terms of a contract. Part of any business is developing business opportunities. Managing or operating a business can include, therefore, eliciting contracts in the first place. It follows that entering into negotiations for a consultancy retainer could amount to the management or operation of a business where the public office holder seeks or receives offers relating, for example, to government relations, even if the actual performance of the anticipated work is to occur in the future.

Nothing in the Act appears to stand in the way of interpreting "managing" or "operating" a business as including actions taken while in public office to develop future business opportunities. In these circumstances, the prohibition in paragraph 15(1)(b) could extend to a consultancy retainer. Discussions of such a retainer would, therefore, be prohibited, even if entered into near the end of the prime minister's time in office and even if the actual work anticipated by the retainer is to be conducted after departure from that office.

Conclusion

On the basis of this analysis, I conclude that a prime minister may enter into a retainer to provide services to a client on completion of his or her term of office only in circumstances where that retainer does not amount to a violation of section 15 of the *Conflict of Interest Act*. In practice, there is no violation of section 15 where the public office holder seeks, is offered, or accepts post–public service "employment" – sections 10 and 24 anticipate offers and acceptances of this employment while in public office. However, the Act creates substantial uncertainty, with the result that the bars on practising a profession and operating a business found in section 15 could reach activities aimed at entering into professional or business contracts for future consultancy work. If we assume that the "employment" in sections 10 and 24 refers to employment arrangements only (and not consulting relationships that is, contracts for services), section 15 would be more restrictive of activities aimed at securing contracts for future consultancy retainers than it is with respect to activities aimed at securing contracts for future "employment." No good purpose is served by this distinction. As I set out in Part III, the Act needs to be clarified.

Members of Parliament and Retainer Agreements

The rules governing members of parliament who are not also public office holders (as defined by the *Conflict of Interest Act*) are significantly different. As noted, for MPs the key ethics instrument is the MP Code.

In respect of a consultancy retainer, the MP Code differs substantially from the *Conflict of Interest Act*. Provided obligations under the MP Code are fulfilled, an MP who is not a minister or parliamentary secretary may engage in employment or the practice of a profession or carry on a business.[36] There are, however, substantive rules in the MP Code that affect the manner in which these extra-parliamentary activities may be conducted.

Principles of Conduct

The MP Code enunciates a series of general principles, which may be seen as broader than the more specific rules and prohibitions that follow in the MP Code. Thus, among other things, MPs 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.[37]

I note, in particular, the emphasis in this provision on appearances; not least, the need to avoid circumstances that raise concerns about "apparent" conflicts of interest. The terms "conflict of interest" and "apparent conflict of interest" are not defined in the MP Code. In his study, Dr. Levine cites the Parker Commission Report.[38] There, Justice W.D. Parker indicated that an apparent conflict of interest "exists when there is a *reasonable apprehension*, which reasonably well-informed persons could properly have, that a conflict of interest exists."[39] I consider the issue of apparent conflicts of interest in Part III. For the purposes of this Part, I will follow Justice Parker's understanding of apparent conflicts. I conclude that MPs are expected to arrange their private affairs to avoid circumstances where a well-informed person could reasonably conclude that a conflict exists between these private affairs and the MPs' public duties and functions. More generally, under the MP Code principles, MPs are to act in a manner that enhances public confidence.

Specific Rules of Conduct

The MP Code also sets out more specific rules of conduct. For instance, section 8 specifies that an MP is not to further his or her "private interest" when performing functions as an MP. The rule is amplified by even more specific restrictions in section 9 barring the MP from using "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." An MP is also prohibited in section 10 from using "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."

Subject to certain exceptions of no direct relevance to a consultancy retainer, an MP furthers his or her private interests when, among other things, his or her actions lead to "an increase in the person's income from" employment, a contract, a business, or a profession.[40] Put simply, MPs may not receive pay from an external source as compensation for conducting their activities as MPs in a particular manner.

Disclosure of Private Interest

I note also that private interests are subject to disclosure obligations under the MP Code. Subsection 21(1) requires disclosure of trusts from which the MP "could,

currently or in the future, either directly or indirectly, derive a benefit or income." This instrument also requires disclosure of the amount and 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." This is a continuing disclosure obligation – any "material change" in this information obliges the MP to disclose the revised information to the ethics commissioner within 60 days.[41] This time delay is problematic. As Dr. Turnbull notes in her report, if an MP were to acquire a private interest that conflicted with the requirements of the Code, the ethics commissioner might not learn of it for two months.[42]

Conclusion

At least some of the rules set out in the MP Code would cover a consultancy retainer. For instance, I agree with Dr. Turnbull's observation that an MP in receipt of a cash retainer procured as part of the practice of a profession or in the pursuit of a business would be obliged to disclose this income within 60 days of receipt.[43] This is true even if the cash retainer was payment against future services and did not constitute income at the time of receipt. Because the MP Code, subsection 21(1), also requires disclosure of trusts from which the MP "could, currently or in the future, either directly or indirectly, derive a benefit or income," a retainer might be captured in this category, even if not outright income at the time received.

Whether other rules in the MP Code apply to a consultancy retainer is less certain. Certainly, if the MP were retained to exercise his or her official functions in a particular manner as part of the retainer, some or all of the provisions described above could apply. Indeed, depending on exactly what the MP is asked to do, it is conceivable that some of the anti-bribery sections of the *Parliament of Canada Act* and/or the influence-peddling provisions in the *Criminal Code* would be violated.

That is not, however, the scenario before this Commission. At issue is a retainer in existence while the MP remains in office, but which pertains to services that are not barred by the MP Code and which were to be performed on the MP's return to private life. This arrangement does not appear to transgress the MP Code.

At the same time, there is a question of appearances. At issue would be the principles obliging MPs 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," and "to arrange their private affairs so that foreseeable real or apparent conflicts of interest may be prevented from arising." What these standards mean in practice is obviously a matter of judgment.

As I noted in Chapter 9, the fact of concluding an agreement to provide consulting services to a paying client of a sort permissible under the MP Code

does not necessarily transgress these principles. However, doing so in return for a substantial cash payment, exchanged while the MP remains in office and passed between the parties in an envelope, is conduct of the sort that would attract public suspicion – and rightfully so. Although the agreement prompting this exchange may be entirely consistent with the MP Code, the nature of this exchange makes it difficult to verify. Instead, the transaction seems to bear the stereotypical hallmarks of something more unseemly. This is especially true if the transaction is not disclosed immediately, and the advice of the ethics commissioner is not sought on measures to maintain public confidence.

On this last point, I note again that the MP need not make disclosure of "material changes" in income for 60 days. This time frame becomes a potentially important issue if, during these 60 days, the MP leaves office and is (as I interpret the matter) no longer subject to the MP Code. In these circumstances, income earned in a consultancy retainer in the last 59 days in office may never be disclosed. This omission strikes me as a weakness in the MP Code, and I return to this issue in Part III below.

In sum, I conclude that the MP Code could cover a consultancy retainer of the sort at issue in this Report, and indeed that serious questions about the propriety of such a transaction under the principles of the MP Code would be raised.

Performance of a Consultancy Retainer by a Former Prime Minister

I turn now to the final stage of a consultancy retainer – the actual provision of governmental relations or related consultancy services by a former prime minister to a paying client. As the discussion that follows suggests, the conduct of a former prime minister now in private life is indisputably covered by the *Conflict of Interest Act* and, potentially, the *Lobbying Act*.

As noted in Part I of this chapter, there are two types of post-employment rules in federal ethics law: rules or standards that are of indefinite (or permanent) duration; and a larger number of time-limited rules that apply for a fixed period following the prime minister's departure from office. The starting point for the latter is necessarily the prime minister's final day in office as a public office holder (whether or not he or she immediately leaves the public sector). There are no post-employment strictures for MPs, under the MP Code or anywhere else. These expectations are imposed on senior executive branch officials exclusively.

I summarize these rules in Table 11-4. For the purpose of the analysis that follows, I find it useful to divide these rules into four categories: rules relating to insider information; rules relating to approaches to government; rules relating to the nature of post–public service activities; and a general rule on "improper advantage."

Table 11-4: Permanent and Time-Limited Post-Employment Restrictions

Section	Time Period	Activity	Activity done for	Activity directed at
Rules relating to insider information				
Conflict of Interest Act, s. 34(1)	Permanent	Act in connection with any specific proceeding, transaction, negotiation, or case to which the Crown is a party and with respect to which the former public office holder had acted for, or provided advice to, the Crown	Any person or organization	
Conflict of Interest Act, s. 34(2)	Permanent	Give advice using information that was obtained by a former public office holder in his or her capacity as a public office holder and is not available to the public	A client, business associate, or employer	
Rules relating to approaches to government				
Lobbying Act, s. 10.11	Five years after leaving office	As an individual or employee of an organization, communicate, for payment, in respect of: (i) the development of any legislative proposal by the Government of Canada or by a member of the Senate or the House of Commons, (ii) the introduction of any bill or resolution in either House of Parliament or the passage, defeat, or amendment of any bill or resolution that is before either House of Parliament, (iii) the making or amendment of any regulation, (iv) the development or amendment of any policy or program of the Government of Canada, or (v) the awarding of any grant, contribution, or other financial benefit by or on behalf of Her Majesty in right of Canada	Any person or organization	Designated public office holder[a]
Lobbying Act, s. 10.11	Five years after leaving office	As an employee of a corporation communicate as in the row above if this communication would constitute a "significant part" of the person's duties	Corporation	Designated public office holder
Lobbying Act, s. 10.11	Five years after leaving office	As an individual, communicate as in the manner described two rows above or communicate on the awarding of any contract by or on behalf of Her Majesty in right of Canada	Any person or organization	Designated public office holder
Lobbying Act, s. 10.11	Five years after leaving office	As an individual, arrange a meeting, for payment	Any person or organization	Designated public office holder
Conflict of Interest Act, s. 35(2)	Two years after leaving office (for ministers)	Make representations, whether for remuneration or not, for or on behalf of any other person or entity		To any department, organization, board, commission, or tribunal with which the public office holder had direct and significant official dealings during the period of one year immediately before his or her last day in office

a Under the *Lobbying Act*, a "designated public office holder" includes ministers of the Crown, ministers of state, and any person employed in their offices who is appointed under section 128 of the *Public Service Employment Act*, and senior members of the bureaucracy (including deputy ministers and associate deputy ministers).

Table 11-4: Permanent and Time-Limited Post-Employment Restrictions (Continued)

Section	Time Period	Activity	Activity done for	Activity directed at
Rules relating to approaches to government (continued)				
Conflict of Interest Act, s. 35(3)	Two years after leaving office (for ministers)	For former ministers, make representations		To a current minister of the Crown or minister of state who was a minister of the Crown or a minister of state at the same time as the former reporting public office holder
Rules on type of post–public office activities				
Conflict of Interest Act, s. 35(1)	Two years after leaving office (for ministers)	Enter into a contract of service with, accept an appointment to a board of directors of, or accept an offer of employment	An entity with which the former public office holder had direct and significant official dealings during the period of one year immediately before his or her last day in office	
Rule on improper advantage				
Conflict of Interest Act, s. 33	Permanent	Act in such a manner as to take improper advantage of previous public office		

Rules Relating to Insider Information

A former public office holder, including a former prime minister or minister, cannot "switch sides" – that is, act for another party in a matter in which the Government of Canada is involved where he or she acted for or provided advice to the government. Nor can he or she exploit non–publicly available information obtained while a public office holder. These obligations are permanent.

Side-Switching

The *Conflict of Interest Act*'s side-switching rule, in section 34(1), is triggered when the former public office holder acts for anyone in connection with, first, any "specific proceeding, transaction, negotiation or case to which the Crown is a party," and, second, "with respect to which the former public office holder had acted for, or provided advice to, the Crown." The section does not specify the nature of the post-employment involvement – that is, it does not confine its reach to an involvement in which the former public office holder has *actual* contact or communication with the Canadian government (or actually advises the new client or employer on the government's policies and procedures). All that is required to trigger the side-switching rule is that the Canadian government be a party to the matter.

Exactly what "party" means is unclear. For example, a complicated business transaction may involve both a foreign element and a domestic component. The Canadian government may be implicated in the latter, but not involved in the former.

Nevertheless, it seems reasonable to conclude that the Canadian government is a party to the business transaction defined broadly. If so, then under the terms of the side-switching rule, a former public office holder who confines his or her involvement to international lobbying may still transgress the rule if he or she acted for or provided advice to the Crown on any aspect of the transaction while in public office.

The apparent purpose of the side-switching rule is to prevent the exploitation of inside information acquired because of the former public office holder's privileged position. Even if the complicated business transaction were carefully spliced into domestic and international components, privileged information concerning the Canadian government position in the domestic sphere could prove key in advancing a client's interest in international markets. An example would be a multi-state competition to attract a foreign investor, in which several states are engaged in separate negotiations with a prospective investor. A former public office holder once involved in advancing Canada's case, or deciding its position, would be in a unique position to know Canada's bargaining stance. That knowledge could be usefully deployed if the former official were now to act for the investor in international lobbying of foreign governments, potentially to the detriment of the Canadian position.

In light of these observations, I am of the view that the side-switching rule would cover a consultancy retainer, even if the former public office holder confined his or her involvement to the international component of a transaction that also had a Canadian dimension involving the Canadian government. The single difficulty on this point relates to the prospective extraterritorial reach of this provision – that is, its applicability to actual overseas conduct. I return to concerns about the geographic reach of the *Conflict of Interest Act* in Part III.

There is a secondary question of what the *Conflict of Interest Act* means in employing the phrase "acted for, or provided advice to, the Crown." The reference to acting for the Crown suggests a relationship, in which the public office holder represents the Crown's interests. Providing advice is, however, broader and could include expressing an opinion on the merits of a particular transaction at, for example, a cabinet committee meeting. Thus, if, in a consultancy retainer, the former public office holder opined on the merits or in any other way sought to influence the conduct of the government in respect to the transaction while in public office, he or she could fairly be said to have advised the Crown.

Exploiting Information Unavailable to the Public

The second form of insider information enumerated in Table 11-4 is considerably broader than the side-switching rule. Instead of being confined to matters on which the public office holder provided advice or acted for the government, it extends to all information he or she obtained – while a public office holder – that is "not available to the public."

Read too expansively, this section could effectively shackle a former public office holder from any sort of meaningful post–public service career. In construing this section, I therefore start from the assumption that the *Conflict of Interest Act* precludes advice using actual *information* obtained while a public office holder, not *expertise* acquired in that role. As Dr. Ian Greene noted in his presentation, the difference between these two concepts is subtle but important.[44]

A public office holder – especially a prime minister – might be expected to gain an expertise on government operations, personnel, and procedures while in office, one that is not generally shared by the public. That seems an inevitable consequence of having occupied public office. I do not read the *Conflict of Interest Act* as precluding the former public office holder from parlaying this expertise into a post–public office career. As already noted, one of the *Conflict of Interest Act*'s purposes is to "facilitate interchange" between private and public sectors. Excising from a public office holder's experience expertise gained while in office is both impossible and contrary to this purpose.

However, where the former office holder's knowledge extends not simply to a general understanding of government operations but also to specific information unavailable to the public concerning, for example, contracts, programs, initiatives, plans, or intentions of government, the former public office holder is no longer exploiting a general expertise but, rather, insider information stemming from the earlier privileged position.

The issue of where to draw the line between expertise and inside knowledge under the *Conflict of Interest Act* is not squarely before me in this inquiry, and in my view it is better left for the ethics commissioner to determine. I simply conclude that the insider information rules would extend to a consultancy retainer where, as part of the services rendered by the former prime minister, advice was given to the client using information obtained by the office holder when in office that is not available to the public and is more than simply expertise gained while in public office.

Rules Relating to Approaches to Government

The rules relating to post–public service communications with government can be divided into two categories: first, those that prohibit lobbying of the Canadian government for five years; and, second, broader rules that prohibit communications with government bodies with which the former public office holder was affiliated.

Not every contact with government constitutes lobbying under the *Lobbying Act*. To constitute lobbying under the Act, (1) the individual must be paid, either as an independent contractor (or "consultant lobbyist") or as an employee of a corporation or an organization;* (2) the communication must relate to a list of enumerated

* In the case of an employee of a corporation, the communication must constitute a "significant part" of the person's duties.

government actions, or (in the case of a consultant lobbyist) involve arranging a meeting; and (3) the communication (or meeting) must be with a "public office holder." A public office holder is defined in the *Lobbying Act* to include "any officer or employee of Her Majesty in right of Canada."

If these requirements are all satisfied, the activity constitutes lobbying and must be registered as such. Moreover, under amendments introduced by the *Federal Accountability Act* of 2006, this lobbying cannot take place for a period of five years, post–public office, by certain former "designated public office holders." "Designated public office holders" is a class of senior executive branch officials that includes ministers (section 10.11).

These rules would not impose obligations on the parties to a consultancy retainer of the sort at issue in this Report. Given the contours of the arrangement in question, the former prime minister would not fall within the class of consultant lobbyist, unless he or she personally interceded to communicate with, or arrange meetings with, federal Canadian government officials. Advice given by the former prime minister on whom to approach or what strategy to adopt would not be lobbying, and therefore would not be covered by the *Lobbying Act* prohibitions. Moreover, even direct approaches, if made to either provincial or foreign government officials, are not regulated by the *Lobbying Act*.

Of much broader scope are the provisions in the *Conflict of Interest Act*, section 35(2), prohibiting representations to government bodies with which the former reporting public office holder was affiliated. The threshold here is very different from that under the lobbying rules. For one thing, the *Conflict of Interest Act* provisions do not depend on the former public office holder being paid. For another, the rules extend to any sort of representation made on behalf of a person or organization by the former public office holder, and not just the sorts of communications covered by the *Lobbying Act*. Finally, the *Conflict of Interest Act* rules apply not to all of government but only to representations directed (for former ministers) at current ministers who were cabinet colleagues and (for all former public office holders) at "any department, organization, board, commission or tribunal with which the public office holder had direct and significant official dealings during the period of one year immediately before his or her last day in office."

Two key points must be made about this provision. First, everything hinges on the meaning of "direct and significant official dealings." Second, there may be some doubt about the geographic reach of this section (and of the post-employment provisions of the *Conflict of Interest Act* in general).

Representations to the agencies and bodies listed in section 35(2) of the *Conflict of Interest Act* are barred if they are among those with which the former reporting public office holder had "direct and significant official dealings during the period of one year immediately before his or her last day in office." The Act does not define the phrase "direct and significant official dealings."

I note that, in her study for the Commission, Dr. Turnbull observes that the rules against influence are based on the assumption that former public office holders "might be able to exert special pressure on former colleagues when representing a private client, which would confer on this entity an unfair advantage over competitors." In her view, "[r]ules against influence seek to remove the possibility for impaired judgment by shielding [current] public office holders from the ethical dilemma of how to maintain neutrality when pressured by a former colleague." These rules, in other words, are designed to avoid the public interest being "compromised in order to accommodate the requests of a former colleague."[45]

The more senior the former official, presumably the wider the scope and the more concerted the influence that person might exercise over current officials. A former prime minister is likely to be a much more influential figure than, for example, a former member of ministerial staff.

I note that "direct and significant official dealings" is a conjunctive phrase; therefore, the dealings must be both direct *and* significant. In many instances, significant dealings will also be direct. In my view, however, the terms mean different things – a position also taken by the ethics commissioner.[46]

The ethics commissioner described "significant dealings" as including such things as negotiations, briefings, contracts, or the making of representations.[47] I start from a general perspective and follow the *Oxford English Dictionary* (online edition) in interpreting "significant" as "important" or "notable." As the ethics commissioner notes, "a very short conversation on a very high profile expenditure might, indeed, be very significant."[48]

I think significance must also be indexed to the office the public official occupies. On this point, one could say that *all* official dealings between a prime minister and an agency of the Canadian government must be regarded as "significant." The prime minister is, after all, the head of government. This construal obviously gives the *Conflict of Interest Act* provision a broad reach. However, anything less than this understanding of "significant" risks misapprehending the potentially enormous prestige and residual influence a recently departed prime minister might be capable of exercising over public agencies on behalf of a private client.

At any rate, concern about overreach in this provision is partially attenuated by the second requirement: that the official dealing be "direct." Many of the prime minister's official dealings may not meet this standard. Much, of course, rests on what "direct" means. Prime ministerial styles vary. However, it seems unlikely that most prime ministers have personal official dealings with a substantial number of government office holders beyond those in the immediate central government agencies such as the Privy Council Office (PCO). This in part reflects the prime minister's position at the pinnacle of executive government. A busy individual such as the prime minister should be expected to conduct official dealings mostly through staff or other agents. In his study for the Commission, Dr. Levine noted that, as a result of his or her status,

> the prime minister would have had a level of inside information available to few others in government, so the potential for misuse of information is likely higher. However, because other ministers and their officials and administrators do most of the actual operational work of government, it is not as likely that the prime minister will have had direct dealings with many government officials. The prime minister will have had significant dealings with many, but direct dealings with few.[49]

I note that the British Columbia conflict of interest commissioner has interpreted the expression "directly involved" that appears in the BC ethics law. In deciding whether this direct involvement exists, the BC commissioner considers, among other things, "[w]hether the Ex-Office Holder even if he had no personal dealings with an agency, person or entity … directed staff to take certain actions with respect to that entity. Such direction may be considered by the B.C. Commissioner to constitute 'direct involvement.'"[50]

The ethics commissioner appears to take a similar approach and includes as direct involvement "situations where a person acted on behalf of the reporting public office holder in question, and it could also include situations where the reporting public office holder has the authority and the decision-making power in a particular matter."[51] This is a sensible approach, and the concept of "direct" should include staff members in the Prime Minister's Office (PMO) – not least the chief of staff – and others who act with the authority of the prime minister, not as autonomous agents.

Of course, even this sort of approach to "direct" still leaves much of the prime minister's affairs outside of the ambit of the *Conflict of Interest Act* rule. Unlike other ministers, the prime minister does not generally have statutory responsibility for a particular department – a legislated assignment, which, I believe, would necessarily make the minister's contact with that department direct. The one exception to this situation is the practical link between the PCO and the prime minister, with the PCO acting (among other things) as a bureaucratic secretariat for the prime minister. As a result, ministers and their senior political and public service staff, not the prime minister, will conduct much departmental contact. It is conceivable that a prime minister's contact with a department would remain sufficiently direct where he or she acts *through* a minister. The prime minister's interaction with a minister as departmental head can obviously be conflated with direct dealings with the department headed by that minister.

To presume that – because the prime minister is *primus inter pares* (first among equals) in the cabinet system – *all* ministerial dealings with their departments amount to direct official dealings by the prime minister would leave the expression "direct" largely meaningless. Effectively, the prime minister's significance would make all his or her official dealings direct. Much turns, in other words, on the nature and specifics of the official dealings in question, and a substantial quantity of ministerial dealings with departments will likely bear no imprimatur from the prime minister.

As is apparent from this discussion, because the Act does not define "direct and significant official dealings," there is much uncertainty about its meaning. In this area, the issuance of an interpretive bulletin by the ethics commissioner would be helpful. I return to this point in Part III of this chapter.

I note that this post-employment rule in the *Conflict of Interest Act* includes no geographic limitations. The section does not restrict its coverage to a *Canadian federal* or even a *Canadian* "department, organization, board, commission or tribunal." I note that one of the predecessors to this section – the 1985 Ethics Code, section 60(b) – spoke of "departments" and nothing more, a much narrower term.

In his submission to the Commission, Democracy Watch's Duff Conacher took the view that sections 33 and 35 of the *Conflict of Interest Act* cover activities involving international governments and organizations.[52] At first blush, this position is certainly plausible, in light of the use of the highly general expression "organization" in the Act and the absence of any qualifier limiting these bodies to Canadian or Canadian federal agencies.

Dr. Greene told the Commission that, although the current rules do not cover dealings with international governments and organizations, these bodies should be covered, particularly if the reporting public office holder is a cabinet minister who, while in office, has gained privileged information and knowledge about international issues, and, in particular, international trade issues. Filling in this "loophole," as he termed it, could strengthen the current rules.[53]

Still, there may be doubt as to whether, in its present form, this provision can be read to include international activities. It is a recognized precept of Canadian statutory interpretation doctrines that Parliament is not to be presumed to legislate extraterritorial obligations "in the absence of clear words or necessary implication to the contrary."[54]

There is uncertainty, therefore, whether the *Conflict of Interest Act* covers circumstances where former public office holders make representations to international or foreign bodies. Does this lack of clarity matter? For reasons I set out in Part III of this chapter, I do not believe the absence of an express extraterritorial qualifier is of great significance for this particular provision. Nevertheless, that absence could prove debilitating to other post-employment rules in the Act. I discuss this matter further below, noting that the effect of several post-employment rules is unduly truncated if those provisions cover only conduct within Canada.

On the basis of this discussion, I conclude that this *Conflict of Interest Act* provision would cover a consultancy retainer. There is some doubt, however, whether international representations by the former prime minister would be included.

Rules Relating to the Nature of Post–Public Service Activities

Section 35(1) of the *Conflict of Interest Act* also limits for whom a former reporting public office holder may work. Dr. Turnbull's study describes this rule as guarding against "ingratiation" – that is, favouritism shown to a private entity by the public office holder while in office in the hope of being rewarded privately later.[55] Under the Act, a former public office holder cannot enter into a "contract of service with, accept an appointment to a board of directors of, or accept an offer of employment with" an entity with which he or she had direct and significant official dealings during the period of one year immediately before his or her last day in office. This restriction applies for two years after leaving office in the case of a former minister of the Crown or minister of state, and one year for all other former reporting public office holders.[56]

In a consultancy retainer, the "entity" would be the businessperson seeking to retain the services of the former prime minister. Whether such a contract is permissible under section 35(1) hinges, first, on the sort of paid work regulated by section 35(1) and, second, on the meaning of "direct and significant official dealings."

Section 35(1) uses the term "contract of service" and not "contracts for services." As noted earlier in this chapter, an established legal distinction is drawn between a contract *of* service (an employment relationship) and contracts *for* services (a contract entered into as an independent contractor). The consultancy retainer at issue in this Report is a contract *for* services, not a contract *of* service. That consultancy retainer is also not an acceptance of an offer of employment with an employer (or appointment to a board of directors).

Section 35(1) would appear, therefore, not to cover a consultancy retainer. If so, this is a notable omission. Former public office holders would be entirely free of the strictures of this section simply by virtue of how they structure their post-employment paid activities – that is, by acting as independent contractors rather than as employees.

A purposive interpretation of section 35(1) might seek to circumvent this inevitability. That analysis might be advanced by noting the redundancy in section 35(1) if "contract of service" is equated simply to employment relationships; in those circumstances, the provision bars being an employee and also "accept[ing] an offer of employment." "Contract of service" has an indisputably narrow meaning in law, one that does not extend to contracts with independent contractors. Indeed, where Parliament intended independent contractors to be covered elsewhere in the *Conflict of Interest Act*, it used contract "*for* services."[57] Parliament also chose the expression "contract of service" over the potentially much more expansive "services contract" expression used in the 2004 and 2006 versions of the Conflict of Interest and Post-Employment Code for Public Office Holders, an instrument that served as the inspiration for the *Conflict of Interest Act*.

I am driven to conclude that section 35(1) may not cover contracts for services, a category in which consultancy retainers fall. In my view, this uncertainty requires correction, a point to which I return in Part III.

Because clarification of what section 35(1) covers would not necessarily extend the provision to all consultancy retainers, I believe it useful to consider the second element of the section. Specifically, were there "direct and significant official dealings" between the former reporting public office holder and his or her client?

This language is identical to that described above in the section on representations to affiliated agencies. As noted there, the two terms "direct" and "significant" must both be satisfied for the section to apply. As above, I take the view that, for a prime minister, "direct" official dealings should include those carried out personally by the prime minister or his or her staff in the PMO or anyone acting as an agent of the prime minister.

The concept of "significant" requires more careful probing in this context than in the discussion above. I do not assume that every official dealing by the prime minister with the private sector (as opposed to his or her dealings with the public service) is significant. The prime minister may, for example, attend the official opening ceremony of an industrial plant as an official duty. To conclude that every such attendance is "significant" for the purposes of this section of the *Conflict of Interest Act* would give it a potentially overwhelming breadth. As above, I interpret "significant" as meaning "important" or "notable." Exactly what sort of official dealings are "important" or "notable" will always be determined by the facts in a given situation. For a commercial entity, I believe that significant dealings would include those that have an important (as opposed to incidental) actual or potential pecuniary impact on the firm. In the context of the consultancy retainer, a "significant" official dealing would certainly include circumstances in which a prime minister played a role in government decision-making concerning a specific contract, policy, project, proposal, or the like advanced by the businessperson.

I note that the direct and significant dealing must also be official. I construe this word to require that the dealings relate to the prime minister's exercise of his or her executive office; that is, his or her government business. This interpretation would appear to be shared by the ethics commissioner.[58] Exactly what this means in practice – and whether "official" extends to the prime minister's conduct as party leader at, for example, fundraising events – is a matter that this Report need not deal with.

For the purposes of this Report, it is sufficient to observe that an official dealing would not include mere discussions between the prime minister and the businessperson about prospective post–public service employment (defined broadly to include all forms of paid work).

The activity undertaken by the public office holder must also be "dealings." A key question is whether direct and significant official dealings require actual contact between public office holders (or their agent or staff) and the entity. Obviously, a public office holder may make decisions that have a significant *impact* on a firm, without having *contact* with that entity. A minister approving government support for an industrial facility may have no actual contact with the sponsoring firm. Nevertheless, a public

office holder who conducts his or her affairs in a manner that is advantageous to the entity, in the hope of reward, while having no actual contact with the entity, is as unsatisfactory as a person who does so after or during such contact; in either instance, the public interest is ill-served.

If the behaviour was detected while the public office holder was still in government, section 10 of the *Conflict of Interest Act* could be violated – the public office holder has allowed plans for outside employment to influence his or her conduct. However, as Professor Kenneth Kernaghan notes in a study for the OECD, ingratiation "can often be committed in such a subtle fashion that a public official's colleagues may not suspect wrongdoing or, if they do, be unable to prove it."[59] A pattern of behaviour may be revealed as ingratiation only when the official takes up employment after leaving public office – a point at which section 10 of the Act no longer applies.

A compelling argument may be made, therefore, that "dealings" should include circumstances where the public office holder was in a position to confer an advantage on the entity in the first place. I note that Alberta's understanding of "significant official dealings" has been construed by that province's ethics commissioner as including not just regular and routine contact between public office holder and entity, but also "input into policy in a specific area in which the entity operates" and the "preparation and presentation of matters" for cabinet approval.[60]

From a textual perspective, the word "dealing" can be read narrowly to require actual interpersonal communication. It can, however, be construed more broadly to include actions taken in a specific manner toward someone. For the reasons set out above, I believe that the broad and liberal reading is to be preferred. A "dealing" includes, therefore, "[a]cting (in some specified way) towards others; way of acting, conduct, behaviour" or "treatment."[61]

Read together, I believe that "direct and significant official dealings" includes circumstances where an official – personally or through subordinates or agents – embarks on a course of conduct, way of acting, or treatment of an entity that has an important pecuniary impact on the entity.

General Rule on "Improper Advantage"

The last post-employment rule in the *Conflict of Interest Act*, section 33, obliges a former public office holder not to act "in such a manner as to take improper advantage" of previous public office. Given its breadth, this rule could cover a consultancy retainer. How it would apply depends on the meaning of the term "improper advantage," a concept not defined by the Act.

Dr. Turnbull, in her study, regards this provision as guarding against "profiteering" – that is, the reaping by former public office holders of "personal or private benefits or profits from their work in the public domain, whether influence or ingratiation has occurred."[62] She explains:

> Even if profiteering does not carry a risk of impaired judgment on the part of current public office holders, it makes sense to employ prohibitions against profiteering to discourage people from seeking public office if even part of their justification for doing so is for the purpose of private gain later. [63]

Dr. Turnbull's interpretation would extend the reach of post-employment restrictions beyond the specific admonishments set out above, in the section on side-switching. As a matter of strict logic, the "improper advantage" provision must mean something above and beyond the more specific prohibitions described – those already detailed by the Act. Nothing would be added by the reference to "improper advantage" if it meant no more than what is already proscribed. Instead, as the ethics commissioner put it, this provision is best viewed as a "residual clause"[64] that would capture, for example, using insider knowledge not for the benefit of another person, but in setting up one's own business. I agree with the ethics commissioner's interpretation.

The *Oxford English Dictionary* (online edition) defines "improper" as "[n]ot in accordance with good manners, modesty, or decorum; unbecoming, unseemly; indecorous, indecent." The concept then measures more than simply legal compliance, covering a broad form of propriety. Propriety is a sufficiently diffuse concept that it raises the problem of subjective interpretation. One plausible measure of propriety is, however, whether a given action is an accepted or common practice among like individuals. In this last regard, it may be worth noting that high-profile business activities are not uncommon for former highly placed public officials.

Again, I note that one of the goals of the *Conflict of Interest Act* is to "encourage experienced and competent persons to seek and accept public office" and "facilitate interchange between the private and public sector." I also emphasize the distinction drawn in the discussion above between expertise and specific information obtained while in public office. Profile, experience, and contacts – like expertise – are necessarily accumulated while in public office. It would ask too much for public office holders to somehow purge themselves of these acquired characteristics on departure from public office to meet the propriety standard in the *Conflict of Interest Act*. To do so, I think, would be to ignore the language of the Act. By invoking an "improper" advantage, the Act suggests, implicitly, that there are instances where former public office holders may take "proper" advantage of their previous position.

For these reasons, I do not interpret the *Conflict of Interest Act* as limiting the possibility of public office holders' capitalizing on their profile, as long as the other provisions of the Act have been respected. Nor would exploiting the contacts developed while in public office be an uncommon and improper venture, if the former public office holder has complied with his or her obligations under the Act.

In sum, the current ethics rules and guidelines would cover a consultancy transaction in various ways, and I summarize these in Table 11-5. The final issue – to which I turn in Part III – is whether they do so well enough.

Table 11-5: Specific Post-Employment Restrictions

Section	Rule	Relevance to Consultancy Retainer
Offer of a Consultancy Retainer to a Sitting Prime Minister		
Conflict of Interest Act, s. 10	Public office holders must not be influenced in the exercise of an official power, duty, or function by plans for, or offers of, outside employment	Once an offer (whether firm or not) is made, employment planned for, the prime minister must not be influenced by these developments in the exercise of his or her official duties. However, "employment" may not include a consultancy retainer.
Conflict of Interest Act, s. 24	Reporting public office holder shall disclose in writing to the ethics commissioner within seven days all firm offers and any acceptance of outside employment	If the employment offer is "firm" – that is, it follows serious negotiations with respect to a defined position – its existence must be disclosed to the ethics commissioner. However, "employment" may not include a consultancy retainer.
Conflict of Interest Act, s. 15	No reporting public office holder shall: engage in employment or the practice of a profession; manage or operate a business or commercial activity; or serve as a paid consultant	The mere offer of a consultancy retainer does not constitute engaging in employment or "serving" as a paid consultant. If "employment" in sections 10 and 24 is interpreted to exclude other, non-employment related forms of paid work, nothing stops the concept of practising "a profession," or managing or operating "a business or commercial activity" from reaching discussions concerning a consultancy retainer for work to be performed in future.
Conflict of Interest Act, ss. 5–9	Other rules about avoiding conflicts of interest, preferential treatment, etc.	The offer of a consultancy retainer may give rise to a private interest. Among other things, the prime minister may not advance that private interest in the exercise of his or her official functions.
Entry into Retainer Agreement with a Sitting MP		
MP Code, s. 2	MPs are expected, among other things, to arrange their affairs to avoid real and *apparent* conflicts of interests, and maintain and enhance public confidence and trust in the integrity of each member and in the House of Commons	The entry into a consultancy retainer in circumstances in which an unrecorded cash payment is made to secure the MP's future services may raise questions about apparent conflicts of interest, confidence and integrity.
MP Code, s. 21	MPs are expected to disclose material changes to their sources of income within 60 days	The cash retainer associated with a consultancy retainer is disclosable.
Performance of Retainer by Former Prime Minister		
Rules relating to insider information		
Conflict of Interest Act, s. 34(1)	No former public office holder shall act for or on behalf of any person or organization in connection with any specific proceeding, transaction, negotiation or case to which the Crown is a party and with respect to which the former public office holder had acted for, or provided advice to, the Crown	The services performed as part of the consultancy retainer may not include "switching sides," even if the former prime minister works exclusively on the international aspect of a transaction that has both domestic and international aspects.
Conflict of Interest Act, s. 34(2)	No former public office holder shall give advice to his or her client, business associate, or employer using information that was obtained in his or her capacity as a public office holder and is not available to the public	The services performed as part of the consultancy retainer may not include providing information not available to the public to the client, although the former prime minister can reasonably be expected to share expertise.

Table 11-5: Permanent and Time-Limited Post-Employment Restrictions (Continued)

Rules relating to approaches to government		
Lobbying Act, s. 10.11	No designated former public office holder may lobby for five years after leaving office	For five years, the services performed as part of a consultancy retainer may not involve the former prime minister communicating or arranging meetings with government officials on government grants, policies, programs, etc.
Conflict of Interest Act, s. 35(2)	For a cooling-off period, no former reporting public office holder shall make representations whether for remuneration or not, for or on behalf of any other person or entity to any department, organization, board, commission, or tribunal with which he or she had direct and significant official dealings during the period of one year immediately before his or her last day in office	For two years, the services performed as part of a consultancy retainer may not involve the former prime minister communicating with government officials in the PCO or in any government agency with which the former prime minister had personal dealings, or dealt with through staff, an agent or via a minister (acting as a departmental head) for one year prior to leaving office.
Conflict of Interest Act, s. 35(3)	For a cooling-off period, no former reporting public office holder who was a minister of the Crown or minister of state shall make representations to a current minister of the Crown or minister of state who was a minister of the Crown or a minister of state at the same time as the former reporting public office holder	For two years, the services performed as part of a consultancy retainer may not involve the former prime minister communicating with an existing minister who was a minister at the same time as the prime minister was in executive office.
Rules on type of post-public office activities		
Conflict of Interest Act, s. 35(1)	For a cooling-off period, no former reporting public office holder shall enter into a contract of service with, accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he or she had direct and significant official dealings during the period of one year immediately before his or her last day in office	A former prime minister who, in his or her last year in office, played a role in government decision-making (either personally or through staff or agents) concerning specific contracts, policies, proposals, projects, or the like with an actual or potentially important pecuniary impact on a commercial entity may not enter into a contract of service with that entity for two years after leaving executive office. The term "contract of service" may not include consultancy retainers.
Rule on improper advantage		
Conflict of Interest Act, s. 33	No former public office holder shall act in such a manner as to take improper advantage of his or her previous public office	Whatever else it might mean, this prohibition does not preclude a former prime minister utilizing contacts and expertise developed in public office as part of a consultancy retainer so long as other provisions of the Act are observed.

Part III – Sufficiency of Rules

The second part of Question 14 of my Terms of Reference asks whether the existing ethics rules are "sufficient" and whether there should be "additional ethical rules or guidelines concerning the activities of politicians as they transition from office or after they leave office." The clear focus of these aspects of my Terms of Reference is on post-employment rules and the rules relating to how current public office holders conduct their affairs in anticipation of leaving office. As noted earlier, in considering this final question, the Commission is not confined to the consultancy retainer at issue in Part II of this chapter. Its inquiry may be more wide-ranging, examining in a more general sense the rules applicable to politicians transitioning to private life and thereafter.

I divide this discussion as follows. First, I discuss a number of issues that should weigh on any examination of ethics rules and their design and development. Second, I look at the Canadian federal post-employment rules in the context of practices in certain other countries, as well as provincial and territorial jurisdictions. Third, I focus on a number of specific areas of concern to parties or experts appearing before the Commission or more generally. Finally, I recommend a number of changes to the federal ethics rules and guidelines.

The Cost of Ethics Rules

Rule Minimalism

Not all those who study the actions of public officials welcome codified ethics rules. Indeed, whether ethics rules enhance public trust is a matter of some contention. In her study, Dr. Turnbull argues that ethics rules may impose a significant cost on public trust, in part because the proliferation of ethics rules (usually in the wake of scandals) affirms public suspicion that public officials are not trustworthy and thus require close regulation.[65] A fixation on these rules by the public and media may breed what panellist David Mitchell, president of the Public Policy Forum, calls a "culture of scandal."[66]

Moreover, the codification of ethics principles may prompt an attitude of rule "minimalism" – that is, a propensity by public office holders to comply with the letter of written standards but not conduct their affairs according to the much more diffuse and intangible standards of propriety that lie at the core of ethical behaviour. The risk is that everything is viewed as permissible unless it is expressly barred. If public office holders rely on rule minimalism as a shield against criticism of behaviour that seems to fall below public expectations, this situation may precipitate further distrust.[67]

On this point, Brent Timmons, in a thoughtful submission to the Commission, observed,

> [E]thics rules, while well meaning, undermine our democracy. The rules take away the important responsibility, and therefore an important motivator, of the electorate to judge the character of the candidates and decide who should fill the office. The rules themselves focus on individual acts rather than the virtue and character of the holders. Once this process is started, there is an ever-growing need for ethics rules as character is removed and each and every act will have to be regulated and our democratic choice will be severely limited and inconsequential.[68]

These views are echoed by two American academic critics, Donald Maletz and Jerry Herbel, who note:

> [T]he ethics reform movement … inevitably creates high expectations. And yet these expectations cannot be fulfilled by the kinds of efforts yet undertaken or foreseeable in the future if the ethics legislation is sustained and developed. Ethics is a word of some breadth of meaning. It suggests the basic components of honesty, decency, truthfulness, law-abidingness, uprightness, and similar qualities. It also suggests higher and more comprehensive levels of virtue, excellence of character, and distinction of mind, qualities sometimes captured in broad terms such as integrity. Yet, the real world of government ethics action seems to be relentlessly directed toward the simpler elements of ethics. Ethics legislation today is almost entirely devoted to attacks on corruption. It aims to prevent, not to inspire. The ethics laws are directed toward specifying what is prohibited and merely allude to positive models of what is to be recommended. The ethics programs take on in this way a highly legalistic character – in fact, if not in intention. Ethics programs and agencies seek methods to define and expose the public official who takes bribes, maintains financial ties with external persons or firms, makes decisions with the goal of improving opportunities after concluding government employment, and so forth.[69]

Even in the narrow area that ethics rules seek to regulate, it is not known whether enforcement mechanisms can effectively detect and deter non-compliance with the rules. Dr. Turnbull points to the ambiguous empirical record of whether more rules result in fewer infractions.[70] For these reasons, we should exercise caution in trying to superimpose too many behavioural standards on public office holders. As Maletz and Herbel argue:

> The self-interest of individuals and groups may be more enlightened or less enlightened, but it is difficult to imagine that it could be eliminated from the operations of government, and there might be great dangers in trying. In short, the inventors of the democratic republic saw that success would likely emerge not from an improvement in human nature but from the managed conflict of self-interested individuals and groups. This was a risky proposal in its time, but the institutions developed in that period remain the ones we employ to govern ourselves. The risks of this system are still

> endemic to public life. They require us to indulge or tolerate some human qualities that we might wish were formed differently. At the same time, the goal of creating and sustaining a successful democratic republic is one that should be at the heart of all projects for improving government ethics in our time. Yet that goal may require a certain moderation in the pursuit of ethics reform to serve more adequately the larger political objective.[71]

This view is shared by Mel Cappe, a former clerk of the privy council, president of the Institute for Research on Public Policy. Mr. Cappe observed that rules can never replace judgment, and that no rule, no matter how well crafted, can ever vitiate the possibility of violation.[72] Rules that seek to stamp out all malfeasance may overreach and create their own ills in terms of decreased efficiency, morale, and initiative that exceed the consequences of occasional violations.

Deterrent Effect

Dr. Turnbull also expresses concern that too strict or invasive regulations may "deter some people from continuing in public office or from running in the first place."[73] Former prime minister Joe Clark echoed this concern.[74]

Scholars critical of ethics rules urge that qualified candidates may be deterred for a variety of reasons, including (but not limited to): violations of privacy, inability to supplement a government salary with other work, and fear that partisan and journalistic attacks (often invoking ethics principles, not always persuasively) can make public life an unfulfilling pursuit.[75] On this last point, in testimony in 1995 before the parliamentary Joint Committee on a Code of Conduct, Dr. Sharon Sutherland discussed the consequences of an ethics code for Parliament. Arguing that such a code could have serious costs, she noted: "Once the code is in place, the media will scrutinize it intently and will report that a particular person did not comply with a particular provision – that he or she took a certain amount of money and must now resign. There will be artificial scandals. A code might even increase the number of scandals."[76]

There is some U.S. empirical support for the deterrent theory, although it is far from definitive. In an American study, Dr. Beth Rosenson addressed the possible deterrent impact that ethics laws have on certain individuals with particular career backgrounds.[77] Dr. Rosenson's research shows a connection between financial disclosure rules and a decrease in business owners sitting in the state legislature. At the same time, those states that had an ethics commission had more contestants running for office. Dr. Rosenson concluded that "[t]he effects of ethics laws were thus mixed in terms of deterring potential public servants."[78] Moreover, the actual cause of the reduction of certain classes of individuals in public office associated with stringent disclosure rules was unclear. In her words:

> It is arguably a bad thing if the laws deter well-qualified individuals who do not have serious potential conflicts of interest simply because they do not want their private affairs publicized. On the other hand, if the laws mainly drive away individuals who do possess serious potential conflicts that might impair their judgment, the deterrent effect is not necessarily undesirable.

In his presentation before the Commission, Dr. Levine speculated that some rules – particularly those concerning blind management of assets and disclosure and divestment of assets – could inhibit people from entering public life. However, he noted that he had not seen a single study that definitively demonstrated that existing ethics rules have a deterrent effect on participation in public life.[79] Professor Collenette expressed similar doubt that quality candidates for political office are deterred by today's ethics rules.[80]

Risk Aversion

Ethics rules may have direct effects other than simple deterrence. Maletz and Herbel suggest that efforts to minimize corruption often lead to overly elaborate strategies and frameworks of control, supervision, and disclosure. These rules become so rigid and demanding that they may end up weakening a given administration. Pointing to anti-corruption initiatives in New York City, they suggest that "the pursuit of comprehensive defenses against corruption leads to multiple levels of control and regulation, to meticulous supervision and review of employees, and to defensive management techniques – in short, to the opposite of creative, risk-taking, entrepreneurial methods of public management."[81] Ethics may be reduced to irritating and time-consuming form filling and filing, a bureaucratic process that trivializes rather than inspires.

Several of the experts who appeared before the Commission made similar observations. Mr. Clark warned about excessive ethics regulation and a focus on catching wrongdoing rather than on "enhancing the spirit that would lead one to respect rules."[82] Some of these experts attributed a diminished creativity in the federal public service to new ethics rules and some concluded that this atmosphere stemmed from the *Federal Accountability Act*.[83] However, with the exception of concerns about financial disclosure and divestment rules, no particular ethics standard was singled out as precipitating this crisis in governance. Instead, the experts saw a culture of risk aversion created by a general preoccupation with checks and balances and accountability.[84]

These critics make a compelling argument that values, not rules, should undergird ethics in public office. Rules cannot cure unethical behaviour, although they may expose it. This exposure, however, may in turn contribute to a sense of disregard for public office holders by the general public and may also impose other, direct costs in the form of bureaucratic paralysis. These arguments caution against rule inflation as a means to stamp out unethical behaviour.

I agree that values and political culture are elemental to ethical behaviour. It is less certain that a value-based culture and specific ethics rules are mutually exclusive. None of the experts before the Commission was proposing that the current system be abandoned. There are, in fact, strong arguments favouring that system. First, ethics rules amount to a codification of values. Not all are precise – and indeed many are ambiguous – but all are more precise than an undeveloped system of values that public office holders would be expected to assimilate. Ethics rules establish benchmarks against which public office holders can measure their actions and to which they can be held to account. As Dr. Gregory Levine urged, the articulation of the rules "concretizes" expectations and eliminates confusion.[85] There is not, as Dr. Paul Thomas observed, a tradeoff between values, on the one hand, and codified rules, on the other.[86]

Second, whether ethics are defined by values or rules, transgression of these standards should bear a stigma. That stigma, in turn, reinforces social expectations of how public office holders are expected to behave, and puts other public office holders on notice. In Dr. Levine's words, "we ought not to be overly concerned about expecting people to be honest and proper in their conduct when they are public servants or when they are politicians. I think that is minimal."[87]

Third, it is entirely appropriate that the standards expected of public office holders be demanding, and their transgressions readily discernible. Public office holders ultimately owe their position to the public, whose business they are conducting. Ensuring that they do not prefer their private interests at the expense of their public duties is a fundamental objective of ethics standards.

Finally, on the issue of whether ethics rules may dissuade individuals from running for public office, there appears to be no Canadian empirical evidence on this point. The experts appearing before the Commission identified financial disclosure and divestment rules as the most likely to be overly onerous, especially when extended to spousal assets.[88] Those rules, however, are not the principal focus of this Inquiry. I also note that evidence from other jurisdictions – particularly the United Kingdom – suggests that post-employment rules do not deter individuals from accepting a ministerial post. The UK system – described below – is indisputably more intrusive than the present Canadian approach to post-employment in terms of the disclosure it requires. Yet, the UK Cabinet Office's head of the Propriety and Ethics Team told the Commission that it does not deter individuals from seeking high public office.[89]

In the end, I believe that codified rules governing how public office holders transition to private life are desirable. The question remains, "What rules?" On this point, I am particularly attentive to a warning from Dr. Turnbull and Professor Collenette: ethics rules, frequently coming in the wake of political scandal, are often hastily and poorly designed.[90] Indeed, as Mr. Mitchell emphasized, Canada's ethics rules have historically evolved in fits and starts following crises of public confidence in government rather than in response to carefully reasoned principles of good governance.[91]

Rules Compared in Other Jurisdictions

Before addressing the issue of what rules, I think it instructive to look to precedents from other jurisdictions. The Canadian federal ethics rules are described as among the most detailed and demanding of any jurisdiction examined by the Commission. As Dr. Turnbull puts it, Canada is "among the most regulatory of OECD countries."[92] In the area of post–public sector employment, a recent and comprehensive study on comparative public sector conflict of interest rules in the European Union confirms this conclusion.[93] That 2007 study concluded that half the European institutions examined had no rules whatsoever on post-employment, making this area the "least regulated" conflict of interest issue in EU member states.[94]

Still, there has been an evolution in post-employment guidelines that can be seen in the comparative studies carried out by the OECD.[95] The OECD – comprising the chief industrialized countries (including Canada) – has devoted substantial attention to post-employment conflict of interest issues. Its work includes a study of comparative practices in the area,[96] and several reports,[97] culminating in an April 2009 study detailing "good practices for preventing and managing conflict of interest in post-public employment."[98] In that 2009 report, the OECD concluded :

> Identifying, preventing and managing conflict of interest (defined as "a conflict between the public duty and private interests of public officials, in which public officials have private-capacity interests which could improperly influence the performance of their official duties and responsibilities" …) in post-public employment is critical to defending the public interest and controlling potential breaches to integrity when officials leave the public sector, be it temporarily or permanently.[99]

In its comparative study of practices among its member countries, the OECD noted that post-employment rules are motivated by a common set of objectives:

> [T]he primary objective of post-public employment prohibitions and restrictions is to avoid use of "insider information" to the disadvantage of both former employers in the public sector and potential competitors in the private sector. … The majority of OECD countries also aims at discouraging influence peddling as well as avoiding suspicion of rewarding past decisions benefiting prospective employer by minimising the possibility of using public office to unfair advantage in obtaining opportunities for outside employment.[100]

It is also true, however, that states have very different approaches to grappling with these objectives. In the sections that follow, I provide a brief overview of the rules applicable in three common law jurisdictions: the United States, the United Kingdom, and Australia. I then examine Canadian provincial and territorial practice.

United States Standards

Professor Kathleen Clark noted that the U.S. post-employment rules are firmly anchored in statutory law[101] and indeed constitute part of U.S. criminal law. Violation of these rules may result in five years' imprisonment or civil penalties in the order of $50,000 per offence or the amount of compensation earned from or offered for the prohibited conduct.[102]

Broadly speaking, the rules focus on the same sorts of areas covered by their Canadian equivalents: rules relating to "insider information"; rules related to "approaches to government"; and, to a lesser extent, rules relating to the "nature of post–public service activities." There is, however, no general rule on "improper advantage." Some of the U.S. post-employment rules extend to former members of Congress. In the discussion that follows, however, I focus exclusively on rules that apply to executive branch officials.

Rules on Insider Information

Former U.S. government officials are permanently barred from knowingly, with intent to influence, making a communication to or appearance before the U.S. government on behalf of any other person in connection with a particular matter in which the United States has a direct and substantial interest. This rule applies to matters in which the former official participated personally and substantially while in office and which involved a specific party or parties at the time of that participation.[103]

U.S. law imposes a separate two-year cooling-off period for those circumstances where the former official does not participate personally and substantially in the matter, but knows (or should know) that the matter was actually pending under his or her official responsibility within his or her final year in office.[104]

A highly specialized additional rule applies where the former official "personally and substantially participated in any ongoing trade or treaty negotiation on behalf of the United States within the 1-year period preceding" his or her departure from office.[105] Where the former official has access to information "concerning such trade or treaty negotiation which is exempt from disclosure under section 552 of title 5," that is, the U.S. *Freedom of Information Act*, "which is so designated by the appropriate department or agency, and which the person knew or should have known was so designated," he or she "shall not, on the basis of that information, knowingly represent, aid, or advise any other person" in relation to an ongoing "trade or treaty negotiation for a period of 1 year" after departing public office.[106]

Rules on Approaches to Government

A core focus of the U.S. rules is on restricting the influence former public office holders may exert on their former colleagues after leaving office. For instance, a former senior-

level official may not knowingly, with intent to influence, make a communication to or appearance before an agency with which the official was employed within one year of leaving office, on behalf of any other person in connection with official action by that agency. This restriction persists for a cooling-off period of one year,[107] although President Barack Obama's administration has required that this period be extended to two years for incoming, non-career officials.[108]

The statutory restriction is broadened for enumerated, former "very senior" employees to include, not just officials at the agency where the person worked, but also certain other high-level executive branch officials.[109] The cooling-off period in this instance is two years by statute.

There is also a special one-year cooling-off period for former senior and very senior employees on representing, aiding, or advising foreign governments or foreign political parties with the intent to influence the official activities of a U.S. government agency.[110] President Obama has supplemented these rules by executive order requiring, for instance, that incoming non-career officials undertake, as a condition of contract, not to lobby any "covered executive branch official" – essentially senior executive officials – or any "non-career Senior Executive Service appointee" for the remainder of the administration.[111]

Rules Relating to the Nature of Post–Public Service Activities

Unlike the Canadian *Conflict of Interest Act*, the U.S. rules do not include express limitations on the entities with whom the former public office holder may work. Instead, they include very detailed rules on conflicts of interest that may arise when employment is sought while the official is still in office. A U.S. official may "not participate personally and substantially in a particular matter that, to his knowledge, has a direct and predictable effect on the financial interests of a prospective employer with whom he is seeking employment."[112] The employee must notify his or her agency of this disqualification, resulting in disclosure. "Seeking employment" is expansively defined as:

- Engaging in negotiations for employment with any person (in turn defined as "discussion or communication with another person, or such person's agent or intermediary, mutually conducted with a view toward reaching an agreement regarding possible employment with that person"); and,
- Making an "unsolicited communication to any person, or such person's agent or intermediary, regarding possible employment with that person." However, this standard is not triggered by some communications, such as where the sole purpose of the communication is to reject an unsolicited communication regarding employment.[113]

"Employment" is defined broadly as:

> any form of non-Federal employment or business relationship involving the provision of personal services by the employee, whether to be undertaken at the same time as or subsequent to Federal employment. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee.[114]

Enforcement Record

The U.S. Office of Government Ethics publishes an annual survey of prosecutions under the U.S. conflict of interest laws, including the post-employment standards.[115] Those documents suggest that in the period 2001–07 (dates for which data are provided), there were at least eight cases involving investigations and prosecutions of the post-employment rules.

United Kingdom Standards

Rules

The UK approach is very different from that of the United States. Rather than employing legislated rules for ministerial-level officials, the United Kingdom has a non-statutory code of conduct. The UK House of Commons Public Administration Select Committee has described this Ministerial Code as "the rule book on ministerial conduct."[116] The most recent iteration of the Ministerial Code – dated July 2007 – contains the following provision relating to post-employment:

> 7.25 On leaving office, Ministers must seek advice from the independent Advisory Committee on Business Appointments [ACBA] about any appointments or employment they wish to take up within two years of leaving office, apart from unpaid appointments in non-commercial organisations. Ministers will be expected to abide by the advice of the Committee.[117]

Notably, the strictures for departing civil servants are stricter than those for ministers.[118]

Prior to appointment, the UK Cabinet Office's head of the Propriety and Ethics Team, currently Ms. Sue Gray, apprises ministers of their obligations, including in relation to paragraph 7.25 and the ACBA.[119]

Advisory Committee on Business Appointments

The ACBA is the key institution in the UK post–public office employment process. The propriety of post-employment activities hinges on a case-by-case assessment by the committee.

The ACBA dates from 1975. Described as a "quango" (for quasi-non-governmental organization), it is an independent body supported by a small secretariat situated in the Cabinet Office. The body is independent, in the sense that it makes its own decisions without intervention by any other entity.[120] As described in the ACBA's most recent annual report, its members "have experience at the most senior levels of Parliament, the Home Civil Service, the Diplomatic Service, the Armed Forces, or business."[121] There is also now a member from the private sector.

The prime minister formally appoints members of the ACBA. Ms. Gray explained that these persons are selected for their familiarity with the political and civil service environment from which applicants come and, in the case of the private sector member, for their ability to judge the likely reactions of that sector to a prospective appointment.[122] The three political members are, in fact, nominated by the three main political parties in the United Kingdom, through a process decided by each party itself.[123] In practice, the political party members have been peers from the House of Lords with substantial experience in political life who are perceived to be acting in a public rather than partisan interest.[124]

Until recently, the eight persons comprising the ACBA held their positions for an initial three-year term, with prospects of a renewal for one further three-year term.[125] The committee's composition attracted the attention of the Commons Public Administration Select Committee in 2008, which noted that several of the members had been in place for nearly 10 years, all were more than 70 years old, and all had been educated at two elite educational establishments, Oxford or Cambridge.[126] Recent reforms, however, have answered this critique, at least in part. Members will now be appointed for fixed five-year terms, without the possibility of reappointment.[127] Traditionally, committee members have been unpaid. They will now receive a small honorarium in the range of £8,000 per annum at the chair level, less for members.[128]

The ACBA advises the prime minister on outside appointments of senior civil servants (and the foreign secretary, in the case of members of the diplomatic service). More important for the purposes of the Commission's mandate, the ACBA fulfills the functions anticipated in section 7.25 of the Ministerial Code – that is, it advises former ministers in relation to any appointment (other than unpaid appointments in non-commercial organizations) that they wish to accept within two years of leaving public office. These include both employment relationships with employers and self-employment as a consultant. It does not matter if the position or work is international or domestic.[129]

In developing their views, committee members have traditionally corresponded with one another. They have begun, however, to meet more regularly, especially to deal with more difficult cases. According to Ms. Gray, decisions from the committee on prospective employment are relatively prompt – within days if there is time sensitivity associated with an appointment – and otherwise generally within two or three weeks.[130]

In actually giving its advice, the ACBA follows guidelines provided by the government. Several features of these guidelines merit discussion. First, the guidelines emphasize the appearance of propriety; they are aimed at preventing "suspicion," not just actual harm to government interests. They specify, in paragraph 1, that "[i]t is in the public interest that former ministers with experience in government should be able to move into business or into other areas of public life. It is equally important that when a former minister takes up a particular appointment there should be no cause for *any suspicion* of impropriety" (emphasis added). Thus,

> [the guidelines] seek to counter suspicion that:
> (a) the statements and decisions of a serving Minister might be influenced by the hope or expectation of future employment with a particular firm or organisation; or
> (b) an employer could make improper use of official information to which a former Minister has had access; or
> (c) there may be cause for concern about the appointment in some other particular respect.[131]

Second, in keeping with these concerns, the ACBA's advice is made with an eye to a number of criteria, including whether the appointment could leave the former minister "open to the suggestion" that it represents a reward for past favours, and whether the minister is privy to government insider information that would give his or her employer an unfair advantage.

Third, the ACBA will consult with the minister's former department to determine the nature of any relationship between that department and the minister's prospective employer. An application by a former minister to the ACBA is accompanied by a statement from the civil service head of the minister's former department, specifying whether the minister had contact with the organization with which he or she proposes employment, whether the job offer could be seen as a reward for past favours, and whether the former minister has knowledge and policy background that could disadvantage competitors of the employer.[132] The ACBA may then follow up with this official.[133] With the authorization of the applicant, the committee may also approach competitors of the firm with which the former official is seeking employment to elicit their reactions. In the case of a consultancy, which may have multiple clients, the minister may seek approval on a portfolio of business areas or fields, to obviate the need for approval each time a new client retains the former official's services.[134]

Fourth, the Ministerial Code and the guidelines both note a continuing obligation to consult the ACBA during a two-year period following a minister's departure from public office. There is not simply a one-time obligation to consult, confined to the time of departure from public office. Ms. Gray noted that, if a former minister were to take a job without consulting with the committee, that fact, if revealed in the press or otherwise, would prompt the ACBA to contact the former minister to advise him or her of the need to seek approval for the appointment.[135]

Fifth, there is an automatic period of unemployment for former ministers. The guidelines specify that a former minister is expected to take no post–public office employment for a period of three months after leaving office, except as waived by the ACBA. Waiver is rare and typically involves indisputably non-contentious appointments, such as academic posts.[136]

Sixth, the committee's advice comes in three forms: it may indicate no objection to the position; it may recommend a delay of up to two years before the minister takes up the position; or it may advise that the appointment is unsuitable. In practice, the committee may also impose conditions where an appointment is taken up.

If a former minister declines to pursue the appointment, the committee's advice remains confidential. If he or she accepts the position, the advice (including any conditions imposed by the ACBA) is made public and is published in the committee's annual report (and on its website on a monthly basis).[137] An official unhappy with the committee's decision may ask to appear in person to argue his or her case and bring to the ACBA's attention information that he or she feels has not been properly considered.[138]

There is no formal sanction if a former official disregards the ACBA process, either by failing to consult the committee or ignoring its advice. According to Ms. Gray, the media, parliamentarians, and the Cabinet Office closely scrutinize the whole process. She described lapses as "very occasional and very few."[139] Former ministers generally prefer to pass through the review process to distance themselves from criticism concerning their post-office employment.[140] A failure to do so will provoke controversy in the media and Parliament. Moreover, there may be consequences for the reputation of the former minister's employer, to the point that future government contract prospects may be impaired.[141] Also of note, if the former minister remains a parliamentarian, any outside employment is registered in a Register of Members' Interests. The latter allows the media and others – including the ACBA itself – to cross-reference current activities against those approved by the ACBA.[142]

Australian Standards

As Dr. Turnbull notes in her study, the Australian rules are the "least onerous" of the jurisdictions examined.[143] The Australian post-employment standards for former ministers are contained in *Standards of Ministerial Ethics*, a code of conduct introduced

by the Rudd government in December 2007. The *Standards* begin with a series of general principles, including the following:

> Ministers must accept the full implications of the principle of ministerial responsibility. They will be required to answer for the consequences of their decisions and actions – that is, they must ensure that:
> - their conduct in office is, in fact and in appearance, in accordance with these Standards;
> - they promote the observance of these Standards by leadership and example in the public bodies for which they are responsible; and
> - their conduct in a private capacity upholds the laws of Australia, and demonstrates appropriately high standards of personal integrity.[144]

Two directives are found under the heading of "post-ministerial employment," as follows:

> 2.19. Ministers are required to undertake that, for an eighteen month period after ceasing to be a Minister, they will not lobby, advocate or have business meetings with members of the government, parliament, public service or defence force on any matters on which they have had official dealings as Minister in their last eighteen months in office. Ministers are also required to undertake that, on leaving office, they will not take personal advantage of information to which they have had access as a Minister, where that information is not generally available to the public.
>
> 2.20. Ministers shall ensure that their personal conduct is consistent with the dignity, reputation and integrity of the Parliament.

The Australian rules grapple, therefore, with two of the issues addressed in their Canadian counterpart: post-employment approaches to government, and insider information. The *Standards* do not include any language on investigation and enforcement of, or penalties for, violations of the post-employment rules. The language on implementation found in the document focuses on existing ministers, specifying "that it is for the prime minister to decide whether and when a Minister should stand aside if that Minister becomes the subject of an official investigation of alleged illegal or improper conduct."[145] As Dr. Turnbull notes, "it is not clear how a former minister would be punished for non-compliance. It would seem that the purpose of the post–public employment restrictions in this case is to clarify expectations and to encourage 'good behaviour' rather than to deter or punish questionable conduct."[146]

Canadian Provincial and Territorial Practice

I turn now to a brief overview of Canadian provincial and territorial practices, which are summarized in Table 11-6. Several of these provincial and territorial rules – designed for government systems that are mirrored at the federal level – are especially instructive. All the provinces, with the exception of Quebec, have post-employment

rules for former ministers. A list of the relevant legislation is set out in Table 11-7. At the time of writing, a bill was before the National Assembly of Quebec that, if enacted, would impose similar standards in that province.

Table 11-6: Summary of Relevant Provincial and Territorial Provisions

Issue	Canada	BC	AB	SK	MB	ON	QC[a]	NB	NS	PE	NL	NU	NWT	YT
Definition of conflicts of interest	✔	✔		✔		✔	✔	✔	✔	✔	✔	✔	✔	✔
Definition includes apparent/ potential conflicts of interest		✔							✔ b					✔
Limitations on ministerial level officials having outside employment or businesses	✔	✔	✔	✔		✔	✔	✔	✔	✔	✔	✔	✔	✔
Disclosure rules for current office holders accepting post-employment positions/opportunities	✔													
Post–public office employment restrictions for ministerial level officials	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔
Limitations related to files/ matters on which worked or non-public information	✔	✔	✔		✔	✔	✔		✔	✔	✔	✔		✔
Limitations related to outside entities with which had dealings	✔		✔		✔		✔				✔	✔		✔
Limitations related to government agencies with which had dealings, such as seeking contracts on behalf of themselves or others	✔	✔	✔		✔		✔		✔	✔	✔	✔	✔	✔
Limitations on seeking or receiving contract or benefits awarded by existing minister or cabinet or government generally		✔	✔	✔	✔	✔		✔	✔	✔	✔	✔	✔	✔
Generic limitations (e.g., bar on improper use of past public office)	✔						✔							
Obligation on current office holders to avoid contributing to violations of post-employment restrictions of former office holders		✔	✔	✔		✔	✔	✔	✔	✔	✔	✔		✔
Complaints mechanism available for other public office holders	✔	✔	✔	✔		✔	✔	✔	✔	✔	✔	✔	✔	✔
Complaints mechanism available for public		✔	✔		✔			✔	✔			✔	✔	
Fines or other penalties for violations of post–public office employment rules		✔	✔	✔	✔	✔		✔	✔	✔		✔	✔	✔

a Note that the Quebec rules relating specifically to ministers were contained in a bill before the National Assembly at the time of writing. See National Assembly, 1st sess., 39th legislature, Bill 48, Code of ethics and conduct of the members of the National Assembly.

b Defined under Schedule B (Ministerial Code of Conduct) to the *Members and Public Employees Disclosure Act*.

Table 11-7: Provincial and Territorial Legislation

Canada	*Conflict of Interest Act*, SC 2006, c. 9, s. 2
British Columbia	*Members' Conflict of Interest Act*, RSBC 1996, c. 287
Alberta	*Conflicts of Interest Act*, RSA 2000, c. C-23
Saskatchewan	*Members' Conflict of Interest Act*, SS 1998, c. M-11.11
Manitoba	*The Legislative Assembly and Executive Council Conflict of Interest Act*, CCSM. c. L112
Ontario	*Members' Integrity Act*, 1994, SO 1994, c. 38
Quebec	At the time of writing, Bill 48, Code of ethics and conduct of the Members of the National Assembly, was before the National Assembly of Quebec.
New Brunswick	*Members' Conflict of Interest Act*, SNB 1999, c. M-7.01
Nova Scotia	*Members and Public Employees Disclosure Act*, SNS 1991, c. 4
Prince Edward Island	*Conflict of Interest Act*, RSPEI 1988, c. C-17.1
Newfoundland and Labrador	*House of Assembly Act*, RSNL 1990, c. H-10
Northwest Territories	*Legislative Assembly Executive Council Act*, SNWT 1999, c. 22.
Yukon	*Conflict of Interest (Members and Ministers) Act*, RSY 2002, c. 37
Nunavut	*Integrity Act*, SNu 2001, c. 7

Several observations can be drawn from a comparison of the ethics rules in these jurisdictions. First, the approach used by different jurisdictions to deal with post-employment matters varies. In her study, Dr. Turnbull contrasts the approach taken in Canada and the United States – the legislated codification of detailed ethics rules – with that employed in the United Kingdom and Australia. As noted above, the latter two rely on more diffuse ethics "codes" containing fewer specific admonishments than do the Canadian (and U.S.) rules. Dr. Turnbull characterizes the "code of conduct" approach as "soft law" and juxtaposes it with the "hard law" approach, "which uses legislation to discourage and penalize misconduct."[147]

Second, form may matter as much as substance. Putting ethics rules on a statutory footing gives them a more formal imprimatur, may allow closer integration between rules and the institutional structures created to apply them, and is necessary where criminal or quasi-criminal penalties are attached to violations of these rules.

Nevertheless, legislated standards are inflexible; they cannot necessarily be amended promptly to reflect changing circumstances or newly discovered shortcomings. Further, Dr. Turnbull argues that codification of ethics generally is inauspicious for ongoing public deliberations designed to create a "culture of ethics."[148]

Legislated rules also "legalize" standards, requiring a narrower and more precise drafting than statements of values or other, more general codes.[149] This legalization may add clarity, but it also may result in statutory interpretation and unintended consequences. I would include concerns expressed below about the extraterritorial reach of the *Conflict of Interest Act* rules in this category – the legislated rules raise this concern whereas more informal "soft law" standards may not.

Most important, legislated standards do not necessarily produce rules that "discourage and penalize misconduct" more than do "soft law" standards. I return to this point below, but as contrasted with the United States and many provincial jurisdictions, the enforcement dimension of post-employment rules in Canada's legislated conflict of interest rules can be described as rudimentary. Indeed, even when placed in juxtaposition to some jurisdictions lying unambiguously in the "soft law" camp, Canada's enforcement apparatus compares unfavourably.

OECD Post–Public Employment Principles

It is possible to extract a list of best practices from a close review of comparative post-employment rules from foreign jurisdictions. The OECD has done just this in its 2009 study where it proposed a number of specific "post–public employment principles."[150] The OECD's "checklist" is worth reproducing as follows:

> ***Problems arising primarily while officials are still working in government***
>
> 1. Public officials should not enhance their future employment prospects in the private and non-profit sectors by giving preferential treatment to potential employers.
> 2. Public officials should … disclose their seeking or negotiating for employment and offers of employment that could constitute conflict of interest [in a timely manner].
> 3. Public officials should … disclose their intention to seek and negotiate for employment and or accept an offer of employment in the private and non-profit sectors that could constitute conflict of interest [in a timely manner].
> 4. Public officials who have decided to take up employment in the private and non-profit sectors should, where feasible, be excused from current duties that could constitute a conflict of interest with their likely responsibilities to their future employer.
> 5. Before leaving the public sector, public officials who are in a position to become involved in conflict of interest should have an exit interview with the appropriate authority to examine possible conflict-of-interest situations and, if necessary, determine appropriate measures for remedy.

Problems arising primarily after public officials have left government

6. Public officials should not use confidential or other "insider" information after they leave the public sector.
7. Public officials who leave [the] public sector should be restricted in their efforts to lobby their former subordinates and colleagues in the public sector. An appropriate subject matter limit, time limit or "cooling-off" period may be imposed.
8. The post–public employment system should take into consideration appropriate measures to prevent and manage conflict of interest when public officials accept appointments to entities with which the officials had significant official dealings before they left the public sector. An appropriate subject matter limit, time limit or cooling-off period may be required.
9. Public officials should be prohibited from "switching sides" and represent[ing] their new employer in an ongoing procedure on a contentious issue for which they had responsibility before they left the public sector.

Duties of current officials in dealing with former public officials

10. Current public officials should be prohibited from granting preferential treatment, special access or privileged information to anyone, including former officials.

…

The OECD study then goes on to deal with the responsibilities of those employing former public officials

> Private firms and non-profit organisations should be restricted in using or encouraging officials who are seeking to leave or who have left government to engage in activities that are prohibited by law or regulation.[151]

The OECD study also identified a number of "pillars" in an effective post-public employment system. Of particular relevance for this Report were the following four pillars:

> [1] The restrictions, in particular the length of time limits imposed on the activities of former public officials[,] are proportionate to the gravity of the post-public employment conflict of interest threat that the officials pose.
> [2] The restrictions and prohibitions contained in the post-public employment system are effectively communicated to all affected parties.
> [3] The authorities, procedures and criteria for making approval decisions in individual post-public employment cases as well as for appeals against these decisions are transparent and effective.
> [4] The enforcement sanctions for post-public employment offences are clear and proportional, and are … consistently and equitably applied [in a timely manner].[152]

I note that these principles and pillars are the product of sustained scrutiny by the OECD and its invited experts. They are intended to "provide a point of reference against which policy makers … can review the strengths and weaknesses of their current post–public employment system and modernise it in light of their

specific context, including existing needs and anticipated problems."[153] This is exactly how I shall use them in this Report – as a series of considerations against which to view Canada's rules.

Areas of Concern in Post-Employment Rules

As measured against most of these best practice principles, Canadian federal post-employment rules stand up well. As I noted earlier, Canada's ethics regime is among the most rigorous of those considered by the Commission. However, strong as Canada's ethics regime may be, some of its rules could be better understood and applied. There is also a fundamental need for more robust implementation of these rules. In the sections that follow, I canvass each of these matters with an eye to the OECD principles and pillars and make recommendations for improvements to aspects of Canada's ethics regime that lie within the scope of the Commission's mandate.

Anticipating the Transition to Private Life

OECD Principles 1 and 4. Public officials should not enhance their future employment prospects in the private and non-profit sectors by giving preferential treatment to potential employers. Public officials who have decided to take up employment in the private and non-profit sectors should, where feasible, be excused from current duties that could constitute a conflict of interest with their likely responsibilities to their future employer.

Actual Conflicts of Interest

Section 10 of the *Conflict of Interest Act* instructs public office holders "not to be influenced in the exercise of an official power, duty or function by plans for, or offers of, outside employment." As discussed above, much turns on what is meant by "employment." This term recurs in section 24, which requires disclosure of firm offers and acceptances of outside employment.

I believe that these sections set out appropriate expectations and are consistent with principles 1 and 4. However, the current wording of the Act raises uncertainties about its applicability to a broader range of paid work, a point made by the ethics commissioner.[154] If employment is confined to formal employer/employee relationships, these sections are too narrow. I believe employment in this context should be defined broadly to include contracts for professional or other services. I note that the equivalent U.S. rules define "employment" expansively and helpfully as:

> Employment means any form of non-Federal employment or business relationship involving the provision of personal services by the employee … It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee.[155]

Given that one of the underlying purposes of the *Conflict of Interest Act* is to minimize the possibility of conflicts arising between the private interests and public duties of public office holders and to resolve those conflicts in the public interest should they arise (section 3(b)), I see no principled basis for excluding other types of contracts, including those for personal services. The same concerns arise whether one is gaining an advantage through employment or through a contract for services.

In advance of the discussion below, I should explain that amending the Act to incorporate a broad understanding of employment should dovetail with corrections to the post-employment restriction contained in section 35(1) of the Act, which may also currently reach only formal employer/employee relationships; that is, contracts *of* service.

In sum, I believe the *Conflict of Interest Act* should be amended to define employment broadly to include paid work of all sorts in the activities contemplated by sections 10, 24, and 35. A more expansive definition of employment should be added to section 2 and corresponding amendments made to other sections, such as section 35(1), to include this concept of employment among the relationships regulated by the provision.

5 RECOMMENDATION

Section 2 of the *Conflict of Interest Act* should be revised to add the definition, "employment shall mean, for the purposes of sections 10, 24(1), 24(2), 35(1), and 39(3)(b), any form of outside employment or business relationship involving the provision of services by the public office holder, reporting public office holder, or former reporting public office holder, as the case may be, including, but not limited to, services as an officer, director, employee, agent, lawyer, consultant, contractor, partner, or trustee."

Apparent Conflicts of Interest

A second concern relates to the *Conflict of Interest Act's* general focus on actual – as opposed to apparent – conflicts of interest. Nowhere does the Act proscribe apparent conflicts of interest.

Section 10 instructs public office holders not "to be influenced": in other words, not to succumb to impaired judgment. As Professor Kathleen Clark noted in her testimony, this is a difficult standard to prove, requiring the ethics commissioner to understand what motivates the public office holder.[156] Moreover, some cases will fall short of the standard of "being influenced" where a public office holder's conduct may raise doubts in the public. If, for instance, it came to light that a public office holder was handling a file pertinent to an outside entity with whom the public office holder

was at the time contemplating employment, the public would be suspicious, even if that file was in fact handled professionally and appropriately at all times.

The more generic provisions of the Act that invoke conflicts of interest do not address this situation. Section 6, for example, instructs public office holders not to "make a decision or participate in making a decision related to the exercise of an official power, duty or function if" he or she "knows or reasonably should know that, in the making of the decision, he or she would be in a conflict of interest." The provision relies on an objective standard in terms of what a public office holder should know – that is, it would apply even if a particular individual were subjectively but unreasonably oblivious to the conflict. Much hinges, however, on the definition of conflict of interest. That concept is defined by the Act to encompass actual conflicts – that is, the actual existence of an opportunity to further a private interest. It does not reach apparent conflicts – that is, circumstances where a reasonable observer would perceive a conflict situation to exist, *even if it does not*.

This omission may be problematic in my view. It is to be noted that the *Conflict of Interest Act* establishes a standard that, in this respect, is less demanding than its federal predecessors, or than what is applied in some provincial laws. The 1985 Ethics Code specified that "on appointment to office, and thereafter, public office holders shall arrange their private affairs in a manner that will prevent *real, potential or apparent* conflicts of interest from arising" (principle 7(d), emphasis added). The current MP Code, section 2, also refers to apparent conflicts of interest, asserting that MPs are expected to "to fulfill their public duties with honesty and uphold the highest standards so as to avoid real or apparent conflicts of interests" and are to "arrange their private affairs so that foreseeable real or apparent conflicts of interest may be prevented from arising."

The federal *Values and Ethics Code for the Public Service* – the instrument that applies to members of the federal executive who do not reach the level of "public office holders" under the *Conflict of Interest Act* – also charges individuals to avoid "apparent" conflicts of interest.[157]

Similarly, the BC *Members' Conflicts of Interest Act*, section 3, provides that "[a] member must not exercise an official power or perform an official duty or function if the member has a conflict of interest or an apparent conflict of interest." For its part, the Yukon *Conflict of Interest (Members and Ministers) Act*, section 2, specifies that a conflict of interest exists where, among other things, a member who is also a minister exercises an official power "and at the same time knows or ought to know that in the decision or function there is the opportunity, *or the reasonable appearance of an opportunity*, for the Member or Minister to further their own private interest" (emphasis added).[158]

Defining Apparent Conflicts of Interest

The distinction among real, potential, and apparent conflicts of interest was not clear in the prior POH Code and remains unclear in the present MP Code. The 1987 Parker Commission defined a *real* conflict of interest as a "situation in which a minister of the Crown has knowledge of a private economic interest that is sufficient to influence the exercise of his or her public duties and responsibilities." An *apparent* conflict of interest "exists when there is a *reasonable apprehension*, which reasonably well-informed persons could properly have, that a conflict of interest exists."[159] An apparent conflict of interest may exist even if there is, in fact, no actual conflict.

Although the final holding of the Parker Commission was ultimately challenged successfully in Federal Court on administrative law grounds,[160] the definition of apparent conflicts of interest it offered is amply justified by other authorities. The Supreme Court of Canada, for example, seems to have equated an "apparent" conflict of interest with the administrative law standard of "reasonable apprehension of bias."[161] The Federal Court of Appeal has applied what amounts to the same standard: "Would an informed person, viewing the matter realistically and practically and having thought the matter through, think it more likely than not that the public servant, whether consciously or unconsciously, will be influenced in the performance of his official duties by considerations having to do with his private interests?"[162]

In British Columbia, apparent conflict of interest is defined in the text of the *Members' Conflict of Interest Act* in a manner consistent with these other authorities:

> 2.(2) For the purposes of this Act, a member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest.

Justification for Inclusion of Apparent Conflicts of Interest

As the Attorney General noted in submissions to the Commission, during the enactment of the *Federal Accountability Act* (and the *Conflict of Interest Act*), witnesses raised the question of real versus apparent conflicts of interest. Then ethics commissioner Bernard Shapiro appeared to cast doubt on the concept of apparent conflicts:

> There is an argument, as I've said in one of my annual reports, of whether or not the Ethics Commissioner should deal altogether with apparent conflicts of interest or whether that's more of a political issue, which needs to be dealt with in another arena. I haven't satisfied myself about the appropriate answer to that question, but I do know that if you give me any particular individual, I will find an apparent conflict of interest with any particular policy matter if I look hard enough. But it will be apparent; it won't be real.[163]

Mr. Shapiro's position was not shared by his predecessor, former ethics counsellor Howard Wilson:

> The last [feature of the POH Code in force when Wilson was Ethics Counsellor] was that on appointment to office and thereafter public office-holders shall arrange their private affairs in a manner that will prevent real[,] potential or apparent conflicts of interest from arising. That deals fundamentally with the appearance of conflict, which is a reality. I do not think the way it is expressed in the proposed legislation, as I read it, covers this point. It misses the political reality that the appearance of conflict, whether or not there is any substance to it, is a matter that every politician has to address. The great strength of the code for public office-holders was that it recognized that explicitly.[164]

I note that amendments that would have incorporated the apparent standard into the *Conflict of Interest Act* were rejected by the House of Commons, and the Senate ultimately agreed with that rejection.[165] The motion rejecting these changes urged that inclusion of the apparent standard "would undermine the ability of public office holders to discharge their duties and substitute the Conflict of Interest and Ethics Commissioner for Parliament or the public as the final arbiter of an appearance of conflict by expanding the definition of 'conflict of interest' under the *Conflict of Interest Act* to include 'potential' and 'apparent' conflicts of interest."[166]

I am not persuaded by this reasoning. An expanded definition of conflict of interest would not alter the ethics commissioner's enforcement powers – no new penalties could be administered, and Parliament would be in no worse a position to arbitrate propriety than under the current system. Nor would the inclusion of apparent conflicts provide the ethics commissioner with discretion of a sort different from what she already possesses in relation to defining other, equally uncertain terms in the Act. The application of all these concepts depends on the judgment of the commissioner, and there seems little reason to fear calling on that judgment in relation to "apparent" conflicts.

A narrow definition of conflict of interest excluding apparent conflicts risks rendering the Act ineffectual in dealing with activities that, in the public eye, deserve scrutiny – that is, circumstances where a reasonably well-informed observer would perceive a conflict. I note that the purpose of ethics rules is not only to guard against actual instances where public office holders pursue their private interest at the expense of the public interest, but also to generate public confidence in the exercise of public power. Exclusion from the ambit of the Act of situations where a reasonable observer could conclude a conflict exists may grievously undermine public confidence in the federal ethics system. This is a point that the BC conflict of interest commissioner made in testimony before the Commission. Commissioner Fraser described the concept of apparent conflict of interest in the BC law as a "valuable tool" in his toolbox and said that the distinction drawn between real and

apparent conflicts "gives to the public a sense of confidence in the fair workings of our government machinery."[167] Dr. Levine, Dr. Greene, and Dr. Sossin were all of the view that apparent conflicts of interest should fall within the scope of the *Conflict of Interest Act*.

There does not appear to be any principled reason why lower-level members of the federal executive and regular MPs are obliged by the instruments that govern them to avoid apparent conflicts, but public office holders are not obliged to do so.

It is true that the "Ethical Guidelines for Public Office Holders" annex, included in the prime minister's *Accountable Government* document, specifies that

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

This language arguably elevates the expectations applied to public office holders to incorporate something approximating a "reasonably well-informed observer" standard. However, this document does not affect the *Conflict of Interest Act.* Nothing in the Act entitles the ethics commissioner to consider these guidelines in construing whether a public office holder acted in compliance with its provisions.*

In sum, I agree with Dr. Levine, Dr. Greene, and Dr. Sossin that the concept of "apparent" conflicts of interest should be expressly incorporated into the *Conflict of Interest Act*. I find that the BC definition (with slight modifications to accommodate the Act's context and to ensure that it reaches prospective and not simply past behaviour) provides an intelligible and workable standard.

6 RECOMMENDATION

The definition of "conflict of interest" in the *Conflict of Interest Act* should be revised to include "apparent conflicts of interest," understood to exist if there is a reasonable perception, which a reasonably well-informed person could properly have, that a public office holder's ability to exercise an official power or perform an official duty or function will be, or must have been, affected by his or her private interest or that of a relative or friend.

Disclosure by MP Leaving Office

A final issue related to preparation for private life involves the disclosure obligations that exist for an MP (as opposed to a public office holder governed by the *Conflict of Interest Act*). As noted above, under the MP Code, MPs may have outside employment. At the same time, income from these interests greater than $1,000 must be disclosed to the

* On this issue, I note that the MP Code, section 3.1, specifically authorizes the ethics commissioner to contemplate the "principles" enunciated in that instrument – which includes the expectation that apparent conflicts will be avoided – in investigating compliance with the more substantive obligations in the Code.

ethics commissioner at least annually. There is also a "material change" provision that requires disclosure within 60 days. Yet, the MP Code appears not to cover someone who, prior to the expiry of those 60 days, leaves office. In those circumstances, income may be received in the last 59 days in office that is never disclosed. It follows that any conflict of interest that has arisen during this period as a result of outside activities, income, and assets may never come to light. Yet, it is in this transitional period that MPs planning post-office careers may find themselves most vulnerable to such conflicts.

In these circumstances, I believe that the MP Code should include a supplemental obligation that departing MPs file an "exit" disclosure with the ethics commissioner, updating their annual disclosure report to their last day in office.

7 RECOMMENDATION

The House of Commons should amend the Conflict of Interest Code for Members of the House of Commons to oblige a departing member to file a section 20 disclosure statement current as of the member's last day in office. The amendment should require the member to file the statement within 60 days of the member's last day in office.

Disclosing Preparations for Private Life

OECD Principles 2 and 3. Public officials should … disclose their seeking or negotiating for employment and offers of employment [or their intention to seek and negotiate for employment] … that could constitute conflict of interest [in a timely manner].

Under the *Conflict of Interest Act*, section 24, a "reporting public office holder [which includes a minister] shall disclose in writing to the Commissioner within seven days all firm offers of outside employment." Any acceptance of "outside employment" must be disclosed, within seven days, to, among potential others, the ethics commissioner. As noted in Part II of this chapter, the ethics commissioner told the Commission that she views "firm offer" as meaning "a serious offer" that is "something less than a legally binding agreement" and "something more than preliminary discussions." It would follow, for example, "serious negotiations with respect to a defined position."[168]

Recommendation 5 would see the definition of employment under this section expanded to include other business relationships. Another key issue is whether disclosure should be triggered only when a firm offer has been received by the public office holder. The OECD principles clearly anticipate disclosure occurring before receipt of any "firm offers" or acceptances of these offers. In her expert testimony before the Commission, Professor Clark noted that U.S. law also requires disclosure at the point of "seeking employment," and not just on receipt of a firm offer. As noted above,

"seeking employment" under U.S. law includes engaging in negotiations or making an "unsolicited communication … regarding possible employment with that person."[169]

The U.S. approach has an appealing logic. If, as suggested above, the purpose of the disclosure provisions of the present *Conflict of Interest Act* is to limit the prospect that current public office holders will seek to ingratiate themselves with prospective employers (defined as suggested in Recommendation 5), identifying such prospective employers at the negotiation stage is a sensible precaution.

In the context of a consultancy retainer, uncertainty may arise as to when a particular retainer is concluded, or a "firm offer" of such a retainer is extended – especially if the parties act in a manner designed to minimize scrutiny. This uncertainty potentially vitiates the utility of the present Act's disclosure rules, a situation that could be avoided at least in part by broadening their reach.

I agree, therefore, with the views expressed by several of the experts before the Commission that amending the *Conflict of Interest Act* to cover the negotiation stage, in a similar way to U.S. law, would be a sensible improvement to the Canadian rules.

8 RECOMMENDATION

Section 24 of the *Conflict of Interest Act* should be amended to replace the reference to "firm offer" of employment with a requirement to disclose the identities of entities with whom a public office holder is seeking, negotiating, or has been offered employment, with the term "employment" as defined in Recommendation 5.

OECD Principle 5. Before leaving the public sector, public officials who are in a position to become involved in a conflict of interest should have an exit interview with the appropriate authority to examine possible conflict-of-interest situations and, if necessary, determine appropriate measures for remedy.

Section 32 of the *Conflict of Interest Act* specifies that, prior to a public office holder's final day in office, the ethics commissioner "shall advise the public office holder of his or her obligations" under the post-employment provisions of the Act. Canada's requirement is generally consistent with that applicable in other states. However, the Canadian approach does not oblige the departing public office holder to report. There is no mandatory disclosure of post-employment activities on leaving public office or throughout the post–public service cooling-off period. This is a matter to which I return below.

Ms. Dawson, the ethics commissioner, told the Commission that, in most cases, she does not find out that a reporting public office holder has left government until after the fact. At that point, she sends out a standard post-employment letter with a general description of the former public office holder's post-employment obligations. Under the current regime, therefore, the ethics commissioner is unable to perform her

obligations under section 32. It should be noted that mandatory disclosure of post-employment activities would address this shortcoming.

Post-Employment Side-Switching and Insider Information

OECD Principles 6 and 9. Public officials should not use confidential or other "insider" information after they leave the public sector. Public officials should be prohibited from "switching sides" and represent[ing] their new employer in an ongoing procedure on a contentious issue for which they had responsibility before they left the public sector.

The insider information rules applicable to former public office holders, found in the *Conflict of Interest Act*, encompass prohibitions on using insider information – that is, information "not available to the public" (subsection 34(2)) – and rules on side-switching (subsection 34(1)). I believe that the coverage of these rules – as I have interpreted them in Part II – is sufficient to meet the sorts of objectives reasonably captured by principles 6 and 9.

A concern in this area relates to the geographic reach of these provisions. The ethics commissioner took the view before the Commission that these rules apply to actions taken by the former public office holder internationally. In Part II, I noted the ambiguity in the present Act about its geographic scope. This ambiguity could result in a post-employment regime that is ineffectual if the conduct it proscribes occurs beyond Canada's territory. Geographically restricted post-employment rules in a global economy are obviously unsatisfactory and demand clarification.

9 RECOMMENDATION

The *Conflict of Interest Act* should expressly provide that its post-employment provisions extend to actions taken by former public office holders, whether those actions occur in Canada or elsewhere.

Post-Employment Approaches to Government

OECD Principle 7. Public officials who leave [the] public sector should be restricted in their efforts to lobby their former subordinates and colleagues in the public sector. An appropriate subject matter limit, time limit or "cooling-off" period may be imposed.

The Canadian federal rules address principle 7 through the cooling-off periods applied in subsection 35(2) under the *Conflict of Interest Act*. This rule bars representations to agencies with which the former reporting public office holder had "direct and significant official dealings" in the last year of office. As discussed at length in Part II of this chapter, the concept of "direct and significant official dealings" is not defined, raising the difficulties of interpretation addressed there.

There is logic in avoiding exhaustive definitions of such expressions. An exclusive definition inevitably would fall short in some dimension and risk implicitly authorizing behaviour that, *on* reflection, should be disallowed. Nevertheless, ambiguity creates its own risks, especially in a system (as exists at present) where former public office holders are effectively left to their own devices in interpreting the reach of the post-employment rules. Different former public office holders will doubtlessly construe the uncertain language in the *Conflict of Interest Act* differently, producing a potentially uneven application of the Act, corrected only if and when the ethics commissioner is in a position to apply these provisions systematically.

One alternative approach is to supplement the concept of "direct and significant official dealings" with more emphatic prohibitions focusing specifically on certain sorts of representations; not least, those dealing with contracts or benefits. This is, in effect, what several of the provinces and territories have done. Alberta prohibits a former minister from soliciting a *contract or benefit* from "a department of the public service or a Provincial agency with which the former Minister had significant official dealings during the former Minister's last year of service as a Minister," or, "on behalf of any other person, mak[ing] representations with respect to a contract with or benefit from a department of the public service or a Provincial agency."[170] Similarly, in Ontario, a former member of the executive council may not "make representations to the Government of Ontario on his or her own behalf or on another person's behalf with respect to such a contract or benefit."[171] British Columbia, Saskatchewan, New Brunswick, Prince Edward Island, Nunavut, and Yukon have very similar provisions.[172]

In this provincial and territorial approach, the scope of the representation limitation is clearer than in the *Conflict of Interest Act.* Specifically, the provincial and territorial rules depend less on the target of the representation than on the subject matter of that representation (that is, benefits or contracts).

Still, I do not believe that there is a strong argument for following the provincial and territorial practice on this issue. I note that the *Conflict of Interest Act* post-employment rules must also be read with an eye to the lobbying limitations in the *Lobbying Act*. The *Lobbying Act* stipulates a five-year prohibition on lobbying by the former public officials to whom it applies, and this stipulation is relatively straightforward and comprehensible. It covers representations made to all of the federal government, including in relation to contracts and grants, by a former minister as part of a consultancy retainer. As a consequence, the *Lobbying Act* captures most of the sorts of representations dealt with in provincial law, leaving the *Conflict of Interest Act* to deal with other situations.

I do not believe that copying this provincial and territorial approach has much to offer. Rather, I believe that the focus should be on developing greater clarity on the concept of "direct and significant official dealings," a topic I consider in the next section.

The Nature of Post–Public Service Activities

OECD Principle 8. The post–public employment system should take into consideration appropriate measures to prevent and manage conflict of interest when public officials accept appointments to entities with which the officials had significant official dealings before they left the public sector. An appropriate subject matter limit, time limit or cooling-off period may be required.

Subsection 35(1) of the *Conflict of Interest Act* imposes a cooling-off period on a contract of service with, acceptance of appointment to a board of directors of, or acceptance of an offer of employment with an entity with which the former reporting public office holder has "direct and significant official dealings." I have recommended in Recommendation 5 that the definition of employment be expanded in relation to this section. Three other issues concerning the cooling-off period provisions need to be addressed.

The "Direct and Significant Official Dealings" Quandary

As discussed above under principle 7 in relation to subsection 35(2) of the *Conflict of Interest Act*, the phrase "direct and significant official dealings" is ambiguous. However, unlike with principle 7 and section 35(2), there is no quasi-redundant rule, such as the five-year lobbying ban in the *Lobbying Act*, to minimize the consequences of this ambiguity for section 35(1). As a result, different former public office holders may construe the uncertain language in the *Conflict of Interest Act* differently. Also, public office holders should understand their obligations; at present, the standard against which they are to make decisions is ambiguous.

Clarification of this standard could be achieved in two ways, which are not mutually exclusive. First, "direct and significant official dealings" could be defined and/or supplemented. The equivalent provisions in both Alberta and Newfoundland and Labrador, for example, include definitions, albeit highly general ones.* In Alberta, the concept of "significant official dealings" applied in its law has been further refined by an interpretive bulletin issued by the Alberta ethics commissioner. The bulletin reads, in part:

1. Even though a Minister may not personally have dealings with an agency, person, or entity, he or she may direct staff within the department to take certain actions with respect to that entity. That direction by the Minister will be considered by this office to be a significant official dealing by the Minister with respect to that agency, person or entity.
2. Regular and routine contact between a department and an agency, person or entity will be considered a strong indication of official dealings with respect to that agency, person or entity.

* *Conflicts of Interest Act*, RSA 2000, c. C-23, s. 31(2): "For the purposes of subsection (1), a former Minister has had significant official dealings with a department of the public service, Provincial agency, person or entity if the former Minister, while in office, was directly and substantively involved with the department, Provincial agency, person or entity in an important matter." *House of Assembly Act*, RSNL 1990 c. H-10, s. 30(5): "'significant official dealings' means substantial involvement over a period of time of the former minister personally."

3. A department's regular input into policy in a specific area in which the entity operates will normally be considered significant official dealings with respect to that agency, person or entity.
4. The preparation and presentation of matters for Lieutenant Governor in Council approval will be considered significant official dealings with that agency, person or entity. Those dealings need not be prescribed in law; it is sufficient for the purposes of section 29 that the practice is administratively required.[173]

I believe that an analogous interpretation bulletin issued by the ethics commissioner would clarify expectations. It would serve the dual purpose of educating reporting public office holders about their obligations and providing more certainty for reporting public office holders when they face decisions about what will constitute legitimate post-employment activities.

10 RECOMMENDATION

The Conflict of Interest and Ethics Commissioner should issue an interpretive bulletin providing guidance on the meaning of "direct and significant official dealings" used in section 35 of the *Conflict of Interest Act*.

Obligations During the Post-Employment Period

Although the *Conflict of Interest Act* prohibits former reporting public office holders from engaging in certain business relationships after leaving office, the Act imposes no requirement on the part of current or former public office holders to report on their post–public office employment activities to the ethics commissioner.* At the expert policy forum, the ethics commissioner commented emphatically on the difficulty in tracking the actual post-employment activities of former public office holders under the legislation. Because the *Conflict of Interest Act* does not impose an ongoing duty to report, it is difficult for her to monitor the activities of former reporting public office holders during the cooling-off period.

The Canadian system depends on the judgment of the former public office holders to decide whether a given activity falls within the category of permissible post-employment; in other words, they must determine what constitutes a "direct and significant official dealing." The ethics commissioner may become involved only where a complaint is made or a potentially problematic situation comes to her attention through the media. At that point, the focus shifts to whether there has been non-compliance with the rules, with the possibility that the ethics commissioner will, in essence, "blacklist" the offending former public office holder.**

* However, a reporting public office holder who engages in certain lobbying under the *Lobbying Act* has a duty to disclose this activity to the ethics commissioner (*Conflict of Interest Act*, s. 37).

** Section 41 of the *Conflict of Interest Act* gives the ethics commissioner authority to order current public office holders to have no dealings with the former reporting public office holder.

There are, therefore, two important issues in the Canadian system: first, the extent to which decisions on whether given opportunities comply with post-employment rules should be left exclusively in the hands of former public office holders themselves; and second, the ability of the Canadian system to detect non-compliance with these rules.

On these issues, there is something to be learned from other systems that create more regular contact between former public office holders and an independent third party for the duration of cooling-off periods. In this respect, the UK's Advisory Committee on Business Appointments presents an interesting model. Although the United Kingdom has no legislated post-employment rules (and indeed, scant codified post-employment rules generally), it includes a mechanism that, first, externalizes scrutiny of prospective post-employment opportunities by involving an independent body, and, second, obliges an ongoing disclosure of post-employment opportunities to that body for a period of two years after a minister has left public office. In other words, it grapples (at least in part) with both of the issues raised above concerning the Canadian system. I return to this point under OECD pillar 3 below.

Geographic Reach

I also repeat here concerns about the geographic reach of the *Conflict of Interest Act*. The "entity" under section 35 that retains the former public office holder could well be a foreign corporation, and the former public officer may relocate to another country. Unless the *Conflict of Interest Act* reaches beyond Canada's borders, there will be inevitable questions as to whether the statute governs this scenario. Yet the policy reason for the cooling-off period remains: to minimize the prospect of ingratiation while the public office holder was in office.

Here too there is a clear need to clarify what the *Conflict of Interest Act* covers and ensure it would reach, for example, a consultancy retainer where the entity hiring the former reporting public office holder is a foreign corporation, but one nevertheless with whom the reporting public office holder had direct and significant official dealings while in office. Recommendation 9 above is directed at correcting this geographic shortcoming.

One objection to such a change may be that it would deny deployment of Canadian expertise on international issues. I do not agree. First, the denial of opportunity here is justified by the clear need to minimize the prospect of in-office ingratiation – it is no rebuttal to suggest that this need becomes less acute if the employing entity is foreign rather than Canadian. Second, as with all the post-employment rules, former public office holders caught by the rule can seek reasonable exemptions from the ethics commissioner. A former prime minister could, for example, seek a waiver of the cooling-off period from the ethics commissioner in order to work for the United Nations. Such a waiver may be granted by the commissioner if there is a public interest in doing so (section 39).

Reciprocal Obligations on Current Public Office Holders

OECD Principle 10. Current public officials should be prohibited from granting preferential treatment, special access or privileged information to anyone, including former officials.

Section 7 of the *Conflict of Interest Act* bars current public office holders from showing preferential treatment to anyone "based on the identity of the person" who represents them. However, there is no specific rule that regulates the treatment of former public office holders by current public office holders. There is, for instance, no onus placed on current public office holders dealing with former public office holders to consider the latter's compliance with post-employment rules. The Act simply provides:

> 41.(1) If the Commissioner determines that a former reporting public office holder is not complying with his or her obligations under this Part, the Commissioner may order any current public office holders not to have official dealings with that former reporting public office holder.

Thus, any obligation of existing public office holders is triggered only by an order of the ethics commissioner as a result of a finding of non-compliance by the former reporting office holder. Moreover, an order by the commissioner under section 41 limits dealings by any "current public office holders" – a fairly narrow class of senior executive officials under the *Conflict of Interest Act* – and not other government employees. At the same time, the limits extend to "official dealings"; as noted earlier, a somewhat uncertain concept.

In comparison, most of the provinces and territories have developed what can be called a "double obligation" model of enforcement. In addition to barring certain actions by former public office holders, they also impose obligations on existing public office holders not to contribute to a violation of post-employment rules. The British Columbia law is illustrative:

> 8.(1) The Executive Council, a member of the Executive Council or an employee of a ministry other than an employee of an agency, board or commission, must not knowingly
>
> (a) award or approve a contract with, or grant a benefit to, a former member of the Executive Council or former parliamentary secretary, until 24 months have expired after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office,
>
> (b) award or approve a contract with, or grant a benefit to, a former member of the Executive Council or former parliamentary secretary who has, during the 24 months after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office, made representations in respect of the contract or benefit, or
>
> (c) award or approve a contract with, or grant a benefit to, a person on whose behalf a former member of the Executive Council or former parliamentary

> secretary has, during the 24 months after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office, made representations in respect of the contract or benefit.

Similar rules exist in Alberta, Saskatchewan, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Nunavut, and Yukon.[174]

On this point, the federal Act does not compare favourably with the provincial and territorial approach. There is no compelling policy reason of which I am aware that justifies this omission. There are, however, arguments in favour of this "double enforcement" model. One is that, in such a system, there is no room for a "do not ask, do not tell" approach to post-employment rules by current public office holders. Current public office holders would presumably avoid putting themselves in situations where their own compliance with the rules is called into question. They would be attuned for this reason to the post-employment strictures on the former public office holders with whom they have dealings; thus, the likelihood of post-employment violations being detected and brought to the attention of the ethics commissioner would increase.

I acknowledge that it would be improper to ask current officials to decide whether a former public office holder is acting in keeping with post-employment rules. The *Conflict of Interest Act* could, however, be amended to require certification of compliance by the ethics commissioner where there are doubts as to the former public office holder's compliance.

11 RECOMMENDATION

The *Conflict of Interest Act* should be amended to bar a current public office holder from awarding or approving a contract with, or granting a benefit to, a person who, in the course of seeking that contract or benefit, appears to be in violation of his or her post-employment obligations under the Act without first obtaining advice from the Conflict of Interest and Ethics Commissioner that the former public office holder is in compliance with the Act. The Act should specify that the giving of this advice is among the commissioner's duties and powers.

Obligations on the Private Sector

OECD Paragraph 70. Private firms and non-profit organisations should be restricted in using or encouraging officials who are seeking to leave or who have left government to engage in activities that are prohibited by law or regulation.

Neither the federal *Conflict of Interest Act* nor its provincial equivalents incorporate provisions consistent with the OECD's recommendations in paragraph 70. However, under the *Lobbying Act*, subsections 5(2)(h.1) and 7(3)(h), if a former "designated" public office holder – that is, a senior-level official, including

a minister – engages in lobbying, the fact of the employee's former public office must be disclosed. A failure by the corporation or organization to disclose is an offence under the *Lobbying Act*, for which the responsible officer in the corporation or organization may be prosecuted.

Arguably, this disclosure requirement accomplishes the objectives of the OECD document in this area. It likely deters corporations or organizations from employing former "designated" public office holders in a manner violating the five-year lobbying ban; the fact of this violation would be transparent, because of the obligatory registration. If the corporation or organization seeks to hide the violation, it transgresses disclosure obligations and attracts legal liability.

Whether Canadian ethics law should reach further and impose other restrictions on those who retain or otherwise employ former public office holders in a manner that violates post-employment rules is a more complicated question. There is some precedent for this type of reciprocal penalty in Canadian ethics law. As noted in Part I of this chapter, section 41 of the *Parliament of Canada Act* bars MPs from receiving or agreeing to receive any compensation for services to any person "in relation to any bill, proceeding, contract, claim, controversy, charge, accusation, arrest or other matter before the Senate or the House of Commons or a committee of either House; or … for the purpose of influencing or attempting to influence any member of either House." Violation of this prohibition is an offence, disqualifying the MP from membership in the House of Commons or any position in the federal public administration for five years. At the same time, "[e]very person who gives, offers or promises to any member of the House of Commons any compensation" for the sorts of services described above is also liable to criminal prosecution and a term of imprisonment of up to one year if convicted (section 41(3)). The *Criminal Code* influence-peddling rules include a similar reciprocal penalty regime for both the public official who offers to peddle influence and the private person who seeks to procure that influence.

It is also notable that the Treasury Board *Contracting Policy* instructs government agencies to include "appropriate clauses to reflect the requirements of the *Conflict of Interest Act.*"[175] In response to a question from the Commission on the application of this policy, the Attorney General of Canada (in consultation with the Treasury Board) indicated that contractors are not required to certify compliance with the *Conflict of Interest Act*. However, the following standard clause appears in professional service contracts with the Government of Canada:

> 26. The Contractor acknowledges that individuals who are subject to the provisions of the Conflict of Interest Act, 2006, c. 9, s. 2, the Conflict of Interest Code for Members of the House of Commons, the Values and Ethics Code for the Public Service or all other codes of values and ethics applicable within specific organizations cannot derive any direct benefit resulting from the Contract.[176]

Similar language in contracts dating from the era of the Public Office Holder Code was construed by the Federal Court to preclude situations in which the contractor successfully procured the contract with the assistance of a former public office holder acting in contravention of his or her post-employment restrictions (for example, by using insider information).[177]

A contractual provision rendering it a breach of contract to rely (or, in the course of obtaining the contract, to have relied) on the services of a former public office holder acting in contravention of post-employment restrictions is a sensible element in federal contracting policy. Such provisions should be included in all government contracts and related procurement processes.

12 RECOMMENDATION

All federal contracts should include a contractual provision rendering it a breach of contract to rely (or, in the course of obtaining the contract, to have relied) on the services of a former public office holder acting in contravention of post-employment restrictions.

Whether it would be advisable for Canada to go beyond this contractual approach to include a formal sanctioning mechanism penalizing firms that participate in a former public office holder's violation of his or her post-employment obligations is questionable. In the United Kingdom, the prospect of reduced government business is regarded as deterring firms from retaining or otherwise employing the services of a former official who has not followed the post-employment process in operation in that country. The Ontario integrity commissioner made similar observations, noting that the employer of a non-compliant former public office holder is "in jeopardy of losing that contract and goodwill with government."[178] In Canada, this approach may be accomplished in part through section 41 of the *Conflict of Interest Act*, authorizing the ethics commissioner to order current public office holders not to have official dealings with a former public office holder found to be in violation of the post-employment rules.

Extending this "blacklisting" process to include entire firms that have relied on the non-compliant former public office holder would raise complicated questions of procedural fairness, likely requiring an enhanced quasi-judicial decision-making process within the office of the ethics commissioner. In light of the comments above on the existing *Lobbying Act* and the more straightforward contractual policy route, I do not believe that the added benefit of such blacklisting warrants the complications that putting it in place would likely cause.

Duration and Scope of Post-Employment Rules

OECD pillar 1. The restrictions, in particular the length of time limits imposed on the activities of former public officials[,] are proportionate to the gravity of the post-public employment conflict of interest threat that the officials pose.

Pillar 1 raises two issues for the Canadian system. First, are the existing cooling-off periods an appropriate length? Second, should there also be post-employment rules for parliamentarians as such?

On the first issue, I have no reason to question the length of the cooling-off period for former ministers. The two-year period for several of the post-employment strictures (for ministers) and the permanent limitation applied by the rules on side-switching and insider information seem proportionate to the injury they address. They are not greatly dissimilar to the periods applied in other jurisdictions, although practice in this area is far from uniform. In submissions to the Commission, Democracy Watch urged that the cooling-off period be increased to four years for the most senior public officials, arguing that this standard is required to avoid profiteering by former office holders.[179] However, in the absence of clear evidence that the two-year period for ministers is insufficient, I see no reason to change it.

It is true, of course, that there may be instances where these cooling-off limitations are unduly harsh, given the nature or duration of the public office holder's position. A minister in office briefly may very well be in a different position from one who has served for years, a point made by Professor Collenette in her testimony. I note, however, that in the *Conflict of Interest Act* regime, the ethics commissioner is empowered to abate or waive the cooling-off period, when consistent with the public interest (section 39).

On the second issue, I do not believe that post-employment restrictions on parliamentarians are required. As noted earlier, several U.S. post-employment rules apply to former members of Congress. That legislative body is, however, quite a different entity than the Canadian Parliament. Dr. Turnbull urges that the extension of such rules to legislators in the United States reflects the fact that Congress "is a 'lawmaking' chamber as opposed to a 'confidence' chamber, which gives its individual members considerably more freedom and autonomy." The relatively greater significance of U.S. members of Congress, Dr. Turnbull reasons, makes "sitting members of Congress the targets of outside influence from pressure groups, constituents, and lobbyists."[180] Those lobbyists could include former colleagues, able to wield influence with incumbent legislators. The U.S. rules, therefore, impose a cooling-off period on such representations.

Canadian MPs, in comparison, are subject to more robust party discipline and rarely exercise the autonomy of their U.S. counterparts. Even if inclined to do so, they are less likely to exercise their legislative functions in a manner reflecting outside influences, absent instruction from the party leader to do so. In these circumstances,

the need for post-employment rules for MPs (and senators) is less pressing.

I agree with Dr. Turnbull's assessment. The additional burden imposed by post-employment rules on MPs would likely be disproportionate to the gravity of any post-employment conflict of interest they may present.

Ethics Education and Training

OECD pillar 2. The restrictions and prohibitions contained in the post-public employment system are effectively communicated to all affected parties.

In proposing this pillar, the OECD emphasizes the importance of training and education. An additional prerequisite to communicating rules effectively to all parties is clarity on those rules.

Those two themes – education and clarity – kept emerging at the expert policy forum, and to a lesser extent in the expert studies produced for the Commission. A substantial portion of Dr. Levine's study, for example, focuses on the need to confirm the meaning of terms in the *Conflict of Interest Act*. This need has been one of my preoccupations in this Report. I believe the matter deserves systematic consideration, and policies on interpretive bulletins and ethics education should be carefully reviewed.

Interpretive Bulletins

Other jurisdictions have a practice of issuing interpretive bulletins. The ethics commissioners of Alberta and British Columbia, in particular, have put out bulletins refining their understanding of vital terms in the post-employment laws of those provinces. The BC conflict of interest commissioner explained that his office considers that such bulletins should immediately be in the "public domain, in the sense that members of the public should be able to determine for themselves, based on reported conduct, whether the bulletin has or has not been fulfilled, or at least the requirements of it fulfilled."[181] At the federal level, there is no interpretive bulletin for the post-employment rules; however, the ethics commissioner recently issued such a document on the rule concerning gifts in the *Conflict of Interest Act*.[182]

Although interpretive bulletins will likely not resolve all uncertainty, they can provide more clarity than exists otherwise. As Dr. Lorne Sossin told the Commission, bulletins or commentaries provide "yardsticks" or "signposts" that enable public office holders to understand their obligations. I believe the need for greater clarity in the federal law to be an urgent one for at least two reasons. First, unless and until corrections – as recommended in this Report – are made in the detection and enforcement mechanisms of the post-employment regime, Canada's post-employment system largely depends on self-enforcement. Individual former public office holders are largely left on their own to define the extent of their

post-employment obligations. Because there is no mandatory disclosure of post-employment activities by former public office holders, there is little opportunity for the public or the ethics commissioner to challenge the former public office holder's interpretation of his or her obligations.

The situation is exacerbated by the fact that the *Conflict of Interest Act* leaves undefined a number of important terms, such as a "direct and significant official dealing." For this reason, in Recommendation 10, I have asked the ethics commissioner to issue a bulletin on the interpretation of this term.

I note also the importance of the day-to-day advice given by the ethics commissioner to concretize sometimes opaque rules and values. Dr. Sossin made the point that this advice reinforces the ethics system if it is transparent and disseminated in a manner that allows others to learn from it. Personal information may be excised from this advice, but the scenarios prompting the advice and the response given should be made public, at least in summary form. The Ontario integrity commissioner applies such an approach in her annual reports, including brief summaries of selected sample inquiries and the advice given. This serves to raise the awareness of public office holders "as to the type of issues that may come up on a day-to-day basis."[183]

The ethics commissioner includes general discussions of her decisions in her annual report or such guidelines as she issues. However, she does not currently issue redacted summaries of the opinions she has issued. I believe that the ethics commissioner should do so.

13 RECOMMENDATION

In addition to issuing the interpretive bulletin referred to in Recommendation 10 on "direct and significant official dealings," the Conflict of Interest and Ethics Commissioner should issue interpretive bulletins on other uncertain provisions in the *Conflict of Interest Act* and publish redacted versions of his or her decisions and advice.

Outreach, Education, and Training

Interpretive bulletins and redacted opinions will assist public office holders in understanding their obligations as servants of the public. A culture of ethics can be sustained and enhanced through meaningful outreach, education, and training.

At the expert policy forum, Commissioners Dawson and Morrison emphasized the importance of education and outreach repeatedly, as did Ms. Sue Gray, the UK Cabinet Office's head of the Propriety and Ethics Team. In his presentation, Dr. Ian Greene argued that education is in fact a more important variable in promoting ethical behaviour than the ethics rules themselves. In his words: "[P]oorly drafted ethics rules can be mostly effective if there is an effective educative component, and carefully

drafted rules can be ineffective if there isn't an effective educative component."[184]

Dr. Paul Thomas urged that the vital role of ethics and education training not be lost in the rush to legalize ethics values and rules. Although legalized ethics rules may guard against "wrongdoing," education and training are needed to encourage "rightdoing" – the promotion of decision-making in the public interest that goes beyond mere compliance with rules.

The ethics commissioner plays the central role in ethics education and training for public office holders subject to the *Conflict of Interest Act* and for MPs under the MP Code. As the PMO advised, "briefings of ministers, ministerial staff and ministerial advisors regarding their obligations under the *Conflict of Interest Act* is provided by the Office of the Ethics Commissioner."[185]

In her appearances before the Commission, the ethics commissioner described in detail the outreach work she does. Much of her education work is reactive, in the sense that she responds to requests for advice from public office holders and MPs. Her more formal outreach activities include standard letters sent to new public office holders and briefings to ministerial staff and MPs. In the year prior to her appearance before the Commission, the ethics commissioner made five presentations to ministerial staff on obligations under the *Conflict of Interest Act*, including post-employment rules, as well as presentations to MPs organized through party caucuses. All these outreach activities are voluntary; no one is compelled to attend. The ethics commissioner estimated that roughly half of MPs and very few ministers have attended these sessions. Ministerial staff are often present in lieu of the minister.[186]

In Dr. Greene's view, the federal system would be strengthened by having the ethics commissioner take on a greater educative role. In Ontario, the public integrity commissioner meets personally with all elected members of the provincial parliament on an annual basis to review their annual disclosure form. At this mandatory meeting, the commissioner and MPP are able to have a "full and frank discussion" about the rules, the day-to-day issues MPPs face, and the realities of political life.[187]

The ethics commissioner's mandate covers a large number of individuals. Even if the commissioner were replaced with a committee of three, as Dr. Greene suggests, a substantial amount of time would be spent on these meetings.

Nonetheless, I believe that there must be a greater opportunity for those subject to the *Conflict of Interest Act* and the MP Code to interact with the ethics commissioner, or at least her staff. I believe that one-on-one meetings with staff in the office of the commissioner in the period leading up to the time that reporting public office holders are preparing their annual disclosure form, and MPs their own disclosures, would be highly desirable. The poor participation rates, cited above, suggest that conflict of interest training may rank low in the priorities of ministers. I do not discount the time constraints that make this participation difficult; however, the *Conflict of Interest Act* requirements are sweeping and complex. It is very much

in the interest of individual public office holders to discuss these complexities with the ethics commissioner to ensure their full understanding. On this point, I believe that there is room for leadership from the top. The prime minister's directives to his ministers in *Accountable Government* may reasonably include express instruction that ministers and their staff formally participate in *Conflict of Interest Act* training soon after their appointment.

In relation to the MP Code, similar directives may reasonably be expected from party leaders to their party members in the House of Commons.

14 RECOMMENDATION

As part of the expectations outlined in *Accountable Government: A Guide for Ministers and Secretaries of State*, that document should be amended to require ministers to participate themselves in ethics training conducted by the Conflict of Interest and Ethics Commissioner and to ensure that their staff also participates in that training. Party leaders should require their party's members of parliament to participate in equivalent training under the Conflict of Interest Code for Members of the House of Commons (MP Code).

15 RECOMMENDATION

The *Conflict of Interest Act* and the Conflict of Interest Code for Members of the House of Commons (MP Code) should be revised to ensure that annual disclosures made by reporting public office holders and post-election and annual update disclosures by MPs are supplemented with an in-person meeting with staff in the office of the Conflict of Interest and Ethics Commissioner. The number of staff in that office should be expanded to accommodate such meetings.

Approving and Monitoring Post-Employment Activities

OECD pillar 3. states that all the bases and criteria for approving decisions in individual post–public employment requests should be transparent, as should the procedures followed; appeals should be similarly handled.

Post-Employment Monitoring – Current Regime

As I noted at the beginning of this chapter, Canada's ethics regime is among the most rigorous considered by the Commission. Under my Terms of Reference, I have been directed to determine whether they are sufficient or whether there should be additional ethical rules or guidelines concerning the activities of politicians as they transition from office or after they leave office. For the most part, the adjustments I have recommended are modest clarifications or extensions of existing rules.

The OECD's pillar 3 identifies an important component of an effective post-

employment regime. Under Canada's ethics rules, there is no procedure for scrutiny of individual post–public employment cases. I believe a remedy must be found for this gap to ensure the Canadian post-employment rules are effective. With scrutiny assured, the rules will compare favourably to those of any of the jurisdictions the Commission has examined.

I think it is axiomatic that good rules are of little utility if poorly implemented. If a departing office holder enters into a consultancy retainer, it is unlikely that the ethics commissioner would learn of it under the post-employment regime in place today. The new rules under the *Conflict of Interest Act* seem to be no more conducive to this sort of detection than were the rules under the 1985 Conflict of Interest and Post-Employment Code for Public Office Holders.

I do not attribute to reporting public office holders any desire to avoid their obligations under the post-employment rules. However, the absence of a system to monitor the post-employment activities of former reporting public office holders appears to me to be a serious lacuna. As Mr. Mitchell noted while before the Commission, "rules without consequence can actually undermine ethical standards."[188] In its submissions to this Commission, Democracy Watch argued that the system itself "is the scandal."[189] Although this overstates the case, I agree that the system does not do enough to monitor post-employment activity during the cooling-off period.

In any human system, there will be instances of non-compliance, either willful or inadvertent. The core objective is to make these cases irregular by designing a system that encourages public office holders to seek advice and take guidance when necessary as they transition from public office to private life. The *Conflict of Interest Act* moves toward such a system in the rules governing current public office holders, not least through the public registry that includes information on the financial interests of public office holders (section 51).

Section 24 of the *Conflict of Interest Act* currently requires reporting public office holders to disclose all "firm offers" of outside employment. Once the office holders leave public life, however, there is only one reporting requirement during the one- or two-year cooling-off period. The former reporting public office holders must simply let the ethics commissioner know if they conduct any activities referred to in paragraph 5(1)(a) or (b) of the *Lobbying Act* – that is, lobbying.

Commissioner Dawson noted that, in the year prior to appearing before the Commission, a number of reporting office holders had approached her office for advice on how the cooling-off period may restrict their post-employment activities. However, she told the Commission that, in practice, former ministers had rarely sought her advice in the post-employment period. (It should be noted that there had been no significant turnover of ministers in the previous several years.) She is actively encouraging ministers and senior ministerial staff to stay in touch with her office

regarding any positions they may take during the cooling-off period. She had also followed up on media reports and information received from third parties regarding post-employment activities of former reporting public office holders, particularly during their cooling-off period. In those cases the post-employment rules, as far as she could tell, were not being contravened.

Commissioner Dawson summarized her experience with the post-employment regime in her presentation to the Commission:

> My office has attempted to apply the post-employment provisions with consistency of course and common sense, but there are some challenges. Few maintain any contact with my office because there is no general reporting requirement during the post-employment period. It is therefore difficult to assess whether they are meeting their post-employment obligations and more generally how effective these provisions are.[190]

The ethics commissioner has, in my view, very aptly summed up the essence of the problem.

Enhancing the Current Regime for Post-Employment Monitoring

The OECD's pillar 3 envisages a system of pre-approval – that is, a mechanism that is proactive rather than reactive. The experts appearing before the Commission asserted that an ethics system is designed, in part, to persuade the public of the probity of public office holders. I agree and believe that a system that guides ethical behaviour is more likely to meet this objective than is one that detects unethical actions after the fact through media reports and complaints to the ethics commissioner.

The UK Advisory Committee on Business Appointments (ACBA), described earlier in this chapter, is based on a proactive approach that uses an independent body to scrutinize prospective post-employment opportunities and obliges ongoing disclosure of post-employment opportunities to that body for two years after a minister has left public office. The ACBA is informed of positions being considered by the former public office holder before the position is accepted. If the former public office holder takes up the appointment, the ACBA's advice is published promptly. The system is transparent, and the ACBA's judgment is subject to criticism. This prospect presumably reduces any propensity to defer unduly to the career choices of former public office holders. Disclosure of the ACBA's decisions has an educative function as well; current or prospective public office holders are alerted to what is likely to contravene the UK's post-employment ethics rules.

In the UK system, the former public office holder's obligation to disclose is not a legal one; the obligation is imposed through the Ministerial Code and not through legislation. It is possible therefore that the former public office holder may fail to consult with the ACBA. Should this failure occur, the UK system depends on the same forms of detection currently relied on by the Canadian ethics commissioner. In the

UK system, however, silence from a former minister on his or her post-employment activities and a failure to disclose are in themselves events that draw attention in the media, and may trigger a follow up by the ACBA. In the Canadian system, the ethics commissioner has no basis on which to contact a former office holder unless a problem is brought to her attention by a parliamentarian or media reports.

I do not wish to exaggerate the virtues of an ACBA-style approach. However, such a system makes it difficult for a former reporting public office holder to unintentionally violate post-employment rules or exercise an error of judgment for want of independent advice. It increases the opportunity to prevent violations. It increases the opportunity to educate public office holders. It allows an independent third party to intercede in advance of potential mistakes. If the testimony of Ms. Gray from the UK Cabinet Office is any indication, this approach should be welcomed by public office holders themselves as a means of avoiding damage to their reputation from innocent mistakes or errors of judgment.

Implementation

There are two ways in which an ACBA-style approach could be integrated into the Canadian ethics regime. The first way would be for a suitable disclosure requirement to be legislated as an amendment to the *Conflict of Interest Act*. The second would be for the prime minister to instruct ministers and senior officials (through an ethics code instrument) that post-employment disclosure to the ethics commissioner is an expectation of office. The latter approach does not require legislative action to fill the gap in the current *Conflict of Interest Act* regime.

Unless there are to be sanctions for violating the disclosure rules (discussed below), either approach produces the same result – an expectation that disclosure will be made, and nothing more. Properly designed, however, that instruction would be very difficult to ignore. As in the United Kingdom, silence by a former minister would attract attention. I note, however, that one feature of the UK system almost certainly requires an amendment to the *Conflict of Interest Act*. The advice given by the ACBA to a former public office holder in the United Kingdom is made public if the former official takes up the employment in question. In Canada, the *Conflict of Interest Act*, section 43, appears to preclude the ethics commissioner releasing the advice he or she is empowered to give public office holders. That was certainly the interpretation given by the ethics commissioner in her appearance before the Commission.

In my view, there is a need to introduce greater transparency in the post-employment system. I recommend, therefore, that, as a first step, the prime minister issue a directive instructing ministers and senior officials to participate in the ACBA-style approach, and that initially the onus to release post-employment advice from the ethics commissioner be placed on the former public office holder. Subsequently, the system should be entrenched in amendments to the *Conflict of Interest Act* that will

permit the ethics commissioner to release this advice if the former public office holder accepts the employment in question.

In terms of content, the disclosure requirement under a Canadian variant of the ACBA would need to be responsive to the actual post-employment rules in the *Conflict of Interest Act*. As under the UK system, former reporting public office holders should be obliged to seek approval of employment (broadly defined) within the cooling-off period.

I note that these obligations would exist for those prime ministers and ministers who, on ceasing to be public office holders, remain as MPs. The post-employment strictures in the existing *Conflict of Interest Act* and the new disclosure requirements proposed here do not depend on the public office holder entering the private sector immediately – they apply from the moment the prime minister or minister stops being a public office holder, whether to enter the private sector or to continue as a sitting MP.

I do not believe it is practical to impose ongoing disclosure in relation to those other post-employment rules that do not have cooling-off periods – the indefinite prohibitions on "improper advantage," side-switching, and insider information. It would ask too much to have public office holders permanently subjected to disclosure requirements. These rules, moreover, concern behaviour that is more difficult to disclose for purposes of advance approval.

I also do not believe it necessary to create an ACBA-style system for the other rule in the *Conflict of Interest Act* that applies a cooling-off period – namely, the rule on approaches to government. As discussed in Part II of this chapter, there is an important overlap between the *Conflict of Interest Act* rule on approaches to government and the *Lobbying Act*. Since the latter already has a disclosure regime, there is limited value to extending the ACBA-style system to the *Conflict of Interest Act* rule on such approaches.

The Question of Structure

In this discussion, I have envisaged the ethics commissioner taking on the responsibilities exercised by the ACBA in the United Kingdom. As noted above, the ACBA members are broadly representative of those whose career paths they now scrutinize, including politicians selected by each of the main political parties in the United Kingdom. In our hearings, this "peer" style review was attractive to several of our witnesses, especially those with political backgrounds. There is obvious virtue in it in that the members of the ACBA will be familiar with the demands and realities of life in public office.

The ACBA would appear to be widely regarded as credible in the United Kingdom, although its traditionally non-representative membership has occasionally elicited commentary. Credibility, however, is something established both by design – ensuring a high level of independence and a high calibre of appointment – and by producing a

track-record of reasonable decision-making. The question in the Canadian context is whether grafting an ACBA-style body onto the current *Conflict of Interest Act* regime would be more useful than disruptive.

I agree with the ethics commissioner that there is no room for two separate entities to construe the reach of the *Conflict of Interest Act*'s post-employment rules. The prospect of contradictory interpretations is too great. To the extent, therefore, that the ACBA-style approval model advanced above depends on construal of the rules (and it inevitably would), there must be either an ACBA-style committee *or* an ethics commissioner, not both. This is true even if the ethics commissioner's role were confined to investigation of violations. It would be incongruous and dangerous for the ethics commissioner and an ACBA-style body to differ in their interpretation of the same rule while playing their different roles.

The ethics commissioner already enjoys independence, which is ensconced in legislation. Indeed, the ethics commissioner enjoys a security of tenure and financial and administrative independence that would appear to be greater than the ACBA's security and independence to date. I do not see any advantage in attempting to restructure the *Conflict of Interest Act* regime so as to accommodate a review committee.

16 RECOMMENDATION

(a) As a first priority, the prime minister should amend *Accountable Government: A Guide for Ministers and Secretaries of State* to include the following directives to reporting public office holders, as defined under the *Conflict of Interest Act*:

- **Reporting public office holders shall disclose to the Conflict of Interest and Ethics Commissioner (ethics commissioner)the nature of any post-office employment (as defined in Recommendation 5) prior to taking up that employment.**
- **Before commencing the employment, reporting and former reporting public office holders must receive advice from the ethics commissioner on the compatibility of the position with their post-employment obligations. In deciding whether and under what circumstances to take up this employment, they are expected to abide by the ethics commissioner's advice.**
- **The reporting public office holder must make the ethics commissioner's advice public prior to taking up the employment, and should ask the ethics commissioner to include the advice in the public registry created by the Act.**
- **These obligations on current and former reporting public office holders to disclose the employment, obtain advice, disclose the advice, and abide by this advice shall exist throughout the cooling-off periods set out in section 36 of the *Conflict of Interest Act* and shall be triggered for each new employment.**

(b) It is further recommended that the Conflict of Interest and Ethics Commissioner take such steps as are necessary to receive the disclosures and provide the advice

described above.

(c) The above changes should be codified in the *Conflict of Interest Act* as early as practicable. At that time, two additional changes should be made to the Act:

- **The Conflict of Interest and Ethics Commissioner should be permitted to disclose publicly the advice given to the current or former reporting public office holder, if that person takes up the employment in question.**
- **The Act should specifically permit current or former public office holders to request that the ethics commissioner reconsider prior advice given to take into account new facts or developments that the current or former public office holder believes should be before him or her.**

I also believe that there may be lessons to be drawn from the *Lobbying Act* that would address the single greatest potential weakness of a UK-style ACBA disclosure system – that is, the failure by a former public office holder to disclose at all.

Recommendation 16 is premised on the assumption that the prime minister is able to issue a directive in the *Accountable Government* document requiring former public office holders to treat disclosure as a post-employment obligation. This directive would be "soft law" in the sense that it would not be legally enforceable against former public office holders.

If, ultimately, as recommended, this soft law expectation were incorporated into the *Conflict of Interest Act*, an amendment to the Act could make failure to disclose in the manner discussed under Recommendation 16 an offence. Section 14 of the *Lobbying Act* makes failure to disclose lobbying activities a serious offence. Non-compliance with the post-employment rules in the *Conflict of Interest Act* should be dealt with seriously. The penalty regime under the *Conflict of Interest Act* for failing to disclose information contained in Recommendation 16 should be similar to that imposed on lobbyists pursuant to the *Lobbying Act*.

There is also the matter of an appeal from the Conflict of Interest and Ethics Commissioner's advice concerning two matters. First is the issue of post–public office employment and, second, the making of representations to government bodies. I believe commenting on the characteristics of such an appeal regime is beyond the scope of this Report. I would recommend, however, that an appeal process be considered together with the amendments to the *Conflict of Interest Act* proposed in this chapter.

17 RECOMMENDATION

The amendments of the *Conflict of Interest Act* to implement Recommendation 16 should be accompanied by concurrent amendments to make it an offence for a former public office holder to fail to meet the disclosure obligations described in Recommendation 16.

18 RECOMMENDATION

Consideration should be given to an appropriate appeal mechanism characterized by procedural fairness and transparency.

Enforcement

OECD pillar 4. The enforcement sanctions for post–public employment offences are clear and proportional, and are … consistently and equitably applied [in a timely manner].

A final issue is what to do when all else fails – that is, when the rules are violated despite all the measures discussed above. This is the question of enforcement and penalties.

As noted, section 41 of the *Conflict of Interest Act* allows the ethics commissioner to in essence "blacklist" an offending former public office holder and bar current office holders from further official dealings with that person. This provision constitutes the only penalty mechanism for the post-employment provisions under the Act. As the ethics commissioner's webpage notes, "[t]he post-employment section of the Act relies mainly on the voluntary compliance of former public office holders."[191] This situation contrasts sharply with that in many provinces and territories, where violation of post-employment rules is a regulatory offence attracting sometimes significant penalties. The Saskatchewan law is illustrative:

> 34.(9) A former member of the Executive Council who contravenes subsection (1) is guilty of an offence and liable, on summary conviction, to a fine of not more than $50,000.[192]

The laws of British Columbia, Alberta, Manitoba, Ontario, New Brunswick, Prince Edward Island, Nunavut, Yukon, and the Northwest Territories include analogous provisions, although the fines vary.[193]

I note also that the penalty regime under section 14 of the *Lobbying Act* is much more substantial than that under the *Conflict of Interest Act* and may include terms of imprisonment. It is not clear, however, that the harm caused by unregistered lobbying or a failure to observe the five-year lobbying ban by those to whom it applies is more harmful to the public interest than a former public office holder's side-switching or use of insider information.

Joe Wild, executive director of strategic policy with the Treasury Board, is a government expert on the *Conflict of Interest Act*. Mr Wild, who was present during one of the round-table discussions before the Commission, expressed the view that the absence of an enforcement regime in the *Conflict of Interest Act* reflected a preoccupation with preserving the ultimate authority of the prime minister to decide, among other things, who sits in cabinet. The reliance on the section 41 "blacklisting" approach is in

keeping with the tradition that places a premium on political punishment rather than criminal or administrative penalties.

The preference for such a political approach is, of course, a policy choice. It is not a circumstance in any way dictated by our constitutional order or political system of governance. The provinces, after all, share this constitutional and historical tradition and have opted for a very different approach to enforcing post-employment expectations. In doing so, they recognize that the circumstances of former public office holders are very different from those currently in public office, especially elected public office. Legislators enjoy parliamentary privileges, and both the federal and most provincial ethics laws recognize this fact by generally placing the obligation to punish legislators for violation of conflict laws in the hands of the legislature. Former public office holders are private citizens, who enjoy no such privileges. In these circumstances, no principle of public law stands in the way of legislated penalties imposed by way of a court proceeding.

It is also the case that the former public office holders are not affected by the enforcement regime in place to deal with violations of conflicts rules by current office holders – that is, the prospect of workplace sanctions for members of the executive or political fallout for politicians that puts their political careers in peril. As Dr. Turnbull and Dr. Sossin noted, former public office holders may be immune or indifferent to these consequences.

The more difficult question is whether the existing precedents for post-employment penalty regimes are useful. As Dr. Sossin noted, creating a criminal law penalty regime implies a certain process. Specifically, there is a real possibility that a criminal law enforcement regime would require a much more complex disclosure, monitoring, and enforcement regime, one that may change the existing relationship between the ethics commissioner and public office holders. The prospect of criminal penalties for violation of the post-employment regime may prompt concerns that the sort of mandatory disclosure system discussed above under the OECD pillar 3 would violate principles on self-incrimination. This sort of concern would certainly complicate the implementation of the reforms recommended by this Report.*

Nor is it clear that the provincial fines – ranging from $5,000 in British Columbia to $50,000 in Alberta, Ontario, and Saskatchewan – are anything more than arbitrarily set amounts. Although the stigma of a conviction should not be discounted, the fines may be significantly less than the profits generated from a violation of the post-employment

* Whether a self-reporting requirement offends the Charter right against self-incrimination in a regulatory scheme is a complicated question. It should be noted that such self-reporting already exists under section 37 of the *Conflict of Interest Act* in relation to lobbying. The self-reporting takes place as part of a regulatory scheme – the *Conflict of Interest Act* – and not as part of an investigation or prosecution under the *Lobbying Act*. It may be governed, therefore, by the jurisprudence on self-incrimination in the regulatory area, which is less protective of a right against self-incrimination than would be the case in a true criminal proceeding. See *R. v. Fitzpatrick*, [1995] 4 SCR 154.

rules and, as a result, of little deterrent value. Dr. Sossin urged that a system requiring disgorgement of profits could be more carefully calibrated to the actual injury caused by the violation than arbitrarily quantified fines. As noted above, the U.S. government may sue for profits stemming from violation of its post-employment rules. Section 13 of the BC statute also contains a disgorgement provision, entitling any person affected by a financial gain realized "in any transaction to which a violation of this Act relates" to sue for an order of restitution against the person who realized that gain. The BC ethics commissioner was unaware of any case in which this provision had been used.

On balance, I am not persuaded that introduction of a criminal offence for failure to observe the post-employment standards in the *Conflict of Interest Act* is warranted at this time. The full disclosure and transparency processes discussed under the OECD's pillar 3 would likely go a long way toward rendering the post-employment strictures more meaningful. Full implementation of contract compliance language in the federal contracting process – specifying that the participation of a former public office holder in violation of his or her post-employment requirements is a breach of contract – would provide supplemental deterrence. Those changes, along with the ethics commissioner's current "blacklisting" powers, the *Criminal Code* offences barring outright bribery and influence-peddling, and the *Lobbying Act* penalties for violating the five-year lobbying ban, would together constitute a formidable penalty regime.

Part IV – Conclusions

I have concluded that, in terms of substance, the *Conflict of Interest Act* and Conflict of Interest Code for Members of the House of Commons (MP Code) are now among the most legally rigorous standards of the jurisdictions scrutinized by this Commission and its experts. They have a reasonable breadth and are firmly codified in statutory law. Nevertheless, they have several shortcomings in how they govern a politician's transition from public to private life.

Specifically, I am concerned that the rules contain ambiguities that make it difficult for public office holders, as well as the public, to understand the extent of their legal obligations. There is a question as to whether an important number of the Act's most significant provisions apply to consultancy retainers or other forms of post-employment paid work short of formal employer/employee relationships. The geographic reach of public office holders' obligations is also in doubt.

As the ethics commissioner noted, there is no process to detect violations of post-employment rules by former public office holders or to enforce those rules. The addition of such a process will ensure that Canada's ethics regime ranks highly and is among the best in the world.

I believe it important that steps be taken to enhance Canada's ethical political culture, especially through greater ethics education and training of public office holders.

Dealing with the shortcomings I have identified will not require a wholesale renovation of the federal ethics system. Indeed, some of the concerns could be alleviated quickly by a code of conduct issued by the prime minister insisting on disclosure of post-employment activities and greater participation in ethics training. The ethics commissioner may address other concerns through interpretive bulletins. These steps should be taken as a first priority, and many of these changes should then be confirmed in legislated amendments to the *Conflict of Interest Act*. Other matters – including resolving doubts about the geographic reach of the Act and the sorts of paid work its post-employment regulations govern – require legislative amendment.

I urge parliamentarians to view these recommendations in a positive light. I have no reason to doubt the high calibre and dedication of Canada's public officials. It is in the interest of all parliamentarians and the Canadians they serve to make these legislative changes quickly. We all have an interest in sustaining public faith in the *Conflict of Interest Act* and the federal ethics regime generally.

I believe that the recommendations made here will allow government to deal more effectively with ethical considerations in the transition away from a position as a public office holder, while protecting the ability of public office holders to make a successful transition and earn a livelihood.

Notes

1 *Conflict of Interest Act* SC 2006, c. 9, s. 2.
2 *Conflict of Interest Code for Members of the House of Commons*, available online at http://www.parl.gc.ca/information/about/process/house/standingorders/appa1-e.htm
3 "Ethics Rules Undermine Democracy," received from Mr. B. Timmons. The Commission also received a large number of substantially identical letters raising general complaints about Canada's ethics and governance system.
4 *Federal Acountability Act*, SC 2006, c. 9.
5 *Conflict of Interest and Post-Employment Code for Public Office Holders* (Ottawa: Office of the Assistant Deputy Registrar General of Canada, 1985); *Parliament of Canada Act,* RSC 1985, c. P-1; *Criminal Code,* RSC 1985, c. C-46; *Lobbyist Registration Act*, RSC 1985, c. 44 (4th Supp.)
6 *Conflict of Interest Act*, SC 2006, c. 9, s. 2.
7 *Accountable Government: A Guide for Ministers and Secretaries of State* (2008, electronic serial), available online at http://pm.gc.ca/eng/media.asp?id=687
8 *Conflict of Interest Code for Members of the House of Commons,* available online at http://www.parl.gc.ca/information/about/process/house/standingorders/toc-E.htm
9 *Accountable Government*, 67.
10 *Lobbying Act*, s. 10.11, with cross-referencing to ss. 5 and 7.
11 *Parliament of Canada Act*, s. 81.
12 Ibid., s. 82.
13 *Conflict of Interest Act*, s. 28 *et seq.*
14 Ibid., s. 38 *et seq*.
15 Ibid., s. 52 *et seq*.
16 *Rizzo & Rizzo Shoes (Re)*, [1998] 1 SCR 27 at para. 21, quoting from Elmer Driedger, *Construction of Statutes* (2nd ed. 1983).
17 *Interpretation Act*, RSC c. I-21, s. 12.
18 *R. v. 974649 Ontario Inc.*, [2001] 3 SCR 575 at para. 18.

19 *Interpretation Act*, RSC c. I-21, s. 12.
20 Lori Turnbull, "Regulations on Post–Public Employment: A Comparative Analysis," in C. Forcese (ed), *Public Policy Issues and the Oliphant Commission: Independent Research Studies*, prepared for Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney (Ottawa: Minister of Public Works and Government Services Canada, 2010), 22 *et seq*. (hereinafter, Turnbull, "Regulations on Post–Public Employment").
21 *R.v.Hinchey,* [1996] 3 SCR 1128 at para. 18.
22 *Canada (Attorney General) v. Assh,* 2006 FCA 358 at para. 80.
23 *LGS Group Inc. v. Canada (Attorney General),* [1995] 3 FC 474 at para. 46 (FCTD).
24 Attorney General of Canada, "Submissions of the Attorney-General of Canada on the Draft Research Reports Prepared in Relation to Part II of the Inquiry" (29 May 2009), para. 42 (hereinafter, AG Submissions).
25 Kenneth Kernaghan, *Public Integrity and Post-Public Employment: Issues, Remedies and Benchmarks*, GOV/PGC/ETH (2007), 3 at 8.
26 *R. v. Cogger*, [1997] 2 SCR 845 at para. 22.
27 Ibid. at para. 24.
28 Ms. Mary Dawson, Transcript of Expert Policy Forum, June 17, 2009, p. 5440.
29 Gregory J. Levine, "Employment and Post-Employment Restrictions on Prime Ministers and Members of Parliament in Canada," in C. Forcese (ed), *Public Policy Issues and the Oliphant Commission: Independent Research Studies*, prepared for Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney (Ottawa: Minister of Public Works and Government Services Canada, 2010), 48.
30 Ms. Mary Dawson, Transcript of Expert Policy Forum, June 17, 2009, pp. 5441–42.
31 Ibid., pp. 5442–43.
32 *Lobbying Act*, s. 10.2.
33 Office of the Commissioner of Lobbying of Canada, *Lobbyist Code of Conduct,* available online at http://www.ocl-cal.gc.ca/eic/site/lobbyist-lobbyiste1.nsf/eng/nx00019.html
34 See Office of the Commissioner of Lobbying of Canada, *Consultant Lobbyists Registration Requirements Question & Answers*, Ques. 2, available online at http://ocl-cal.gc.ca/eic/site/lobbyist-lobbyiste1.nsf/eng/h_nx00279.html
35 Levine, "Employment and Post-Employment Restrictions on Prime Ministers and MPs," 56–57.
36 MP Code, s. 7.
37 Ibid., s. 2.
38 Commission of Inquiry into the Facts of Allegations of Conflict of Interest Concerning the Honourable Sinclair M. Stevens, *Report* (Ottawa: Minister of Supply and Services Canada, 1987) (Commissioner W.D. Parker) (hereinafter, Parker Commission *Report*).
39 Ibid.,p. 35.
40 MP Code, ss. 3(2) and 21(2).
41 Ibid., ss. 21(3).
42 Turnbull, "Regulations on Post-Public Employment," 15.
43 Ibid, 21.
44 Dr. Ian Greene, Transcript of Expert Policy Forum, June 16, 2009, p. 5235. See also Ms. Lynn Morrison, Transcript of Expert Policy Forum, June 17, 2009, p. 5444.
45 Turnbull, "Regulations on Post–Public Employment," 17.
46 Ms. Mary Dawson, Transcript of Expert Policy Forum, June 17, 2009, p. 5452.
47 Ibid., pp. 5452–53.
48 Ibid., p. 5453.
49 Levine, "Employment and Post-Employment Restrictions on Prime Ministers and MPs," 64.
50 British Columbia, Office of the Conflict of Interest Commissioner, "Post-Employment," *Ethics Bulletin* (February 2005, Issue 1), p.3, available on line at http://www.gov.bc.ca/oci/down/ethics_bulletin_1.pdf. The phrase "directly involved" appears in *Members' Conflict of Interest Act*, RSBC 1996, c. 287, ss. 8(7), a provision that actually regulates "side switching." Note that the Alberta ethics

commissioner has developed a similar interpretation in relation to Alberta's rules on post–public service employment in relation to entities with which the former minister had "significant official dealings." See the discussion in Part III.

51 Ms. Mary Dawson, Transcript of Expert Policy Forum, June 17, 2009, p. 5454.
52 Mr. Duff Conacher, Transcript of Expert Policy Forum, June 16, 2009, p. 5250.
53 Dr. Ian Greene, Transcript of Expert Policy Forum, June 16, 2009, pp. 5242–43.
54 *Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers*, 2004 SCC 45 at para. 54.
55 Turnbull, "Regulations on Post–Public Employment," 22–23.
56 *Conflict of Interest Act*, ss. 35(1), 36(1), 36(2).
57 See *Conflict of Interest Act*, ss. 14(6).
58 Ms. Mary Dawson, Transcript of Expert Policy Forum, June 17, 2009, p. 5453.
59 Kernaghan, *Public Integrity and Post-Public Employment*, 8.
60 Alberta, Office of the Ethics Commissioner, *Ethics Bulletin*, "Post-employment" (January 1997, vol. 5), available online at http://www.ethicscommissioner.ab.ca/oec/Ethics%20Bulletins/POSTEMPL.pdf.
61 See *Oxford English Dictionary* (online), "Dealing."
62 Turnbull, "Regulations on Post–Public Employment," 23–24.
63 Ibid., 24.
64 Ms. Mary Dawson, Transcript of Expert Policy Forum, June 17, 2009, pp. 5451–52.
65 Dr. Lori Turnbull, Transcript of Expert Policy Forum, June 15, 2009, p. 5017. See also Dr. Paul Thomas, Transcript of Expert Policy Forum, June 15, 2009, p. 5039.
66 Mr. David Mitchell, Transcript of Expert Policy Forum, June 22, 2009, p. 5561.
67 Dr. Lori Turnbull, Transcript of Expert Policy Forum, June 15, 2009, p. 5018.
68 Brent Timmons, Submission for the Expert Policy Forum: "Ethics Rules Undermine Democracy" at 4.
69 Donald Maletz and Jerry Herbel, "Beyond Idealism: Democracy and Ethics Reform" (2000) 30(1) *American Review of Public Administration* 37.
70 Turnbull, "Regulations on Post–Public Employment," 9.
71 Maletz and Herbel, "Beyond Idealism," 41.
72 Mr. Mel Cappe, Transcript of Expert Policy Forum, June 22, 2009, pp. 5524, 5526.
73 Turnbull, "Regulations on Post–Public Employment," 10, citing F. Anechiarico and J.B. Jacobs, *The Pursuit of Absolute Integrity: How Corruption Control Makes Government Ineffective* (Chicago: University of Chicago Press, 1996).
74 Mr. Joe Clark, Transcript of Expert Policy Forum, June 22, 2009, pp. 5558, 5569.
75 For a recent study on the pros and cons of ethics rules, see particularly, G. Calvin Mackenzie, with Michael Hafkin, *Scandal Proof: Do Ethics Laws Make Government Ethical?* (Washington DC: Brookings Institution Press, 2002).
76 Parliament, Special Joint Committee on a Code of Conduct, Sharon Sutherland, *Evidence*, 35th Parl., 1st Sess., available online at http://www.parl.gc.ca/35/Archives/committees351/sjcc/evidence/05_95-10-02/sjcc05_blk101.html
77 Beth A. Rosenson, "The Impact of Ethics Laws on Legislative Recruitment and the Occupational Composition of State Legislatures," (2006) 59(4) *Political Research Quarterly* 619–27.
78 Ibid., 625.
79 Dr. Gregory Levine, Transcript of Expert Policy Forum, June 15, 2009, pp. 5022 and 5023.
80 Professor Penny Collenette, Transcript of Expert Policy Forum, June 22, 2009, p. 5559.
81 Maletz and Herbel, "Beyond Idealism," 39.
82 Mr. Joe Clark, Transcript of Expert Policy Forum, June 22, 2009, p. 5534.
83 Mr David Mitchell, Transcript of Expert Policy Forum, June 22, 2009, p. 5573.
84 See Mr. David Mitchell, Transcript of Expert Policy Forum, June 22, 2009, p. 5602; Mr. Mel Cappe, Transcript of Expert Policy Forum, June 22, 2009, pp. 5613 and 5616.
85 Dr. Gregory Levine, Transcript of Expert Policy Forum, June 15, 2009, p. 5020.
86 Dr. Paul Thomas, Transcript of Expert Policy Forum, June 15, 2009, pp. 5023–24.
87 Dr. Gregory Levine, Transcript of Expert Policy Forum, June 15, 2009, p. 5022.
88 See Dr. Lori Turnbull, Transcript of Expert Policy Forum, June 15, 2009, pp. 5027–28.
89 Ms. Sue Gray, Transcript of Expert Policy Forum, July 28, 2009, pp. 5646, 5703–04.

90 Turnbull, "Regulations on Post–Public Employment," 5; Professor Penny Collenette, Transcript of Expert Policy Forum, June 22, 2009, p. 5520.
91 Mr. David Mitchell, Transcript of Expert Policy Forum, June 22, 2009, p. 5537.
92 Turnbull, "Regulations on Post–Public Employment," 32.
93 C. Demmke et al., *Regulating Conflicts of Interest for Holders of Public Office in the European Union*, A study carried out for the European Commission Bureau of European Policy Advisers (BEPA) (October 2007), available online at http://ec.europa.eu/dgs/policy_advisers/publications/docs/hpo_professional_ethics_en.pdf
94 Ibid., 11.
95 See, especially, OECD, *Avoiding Conflict of Interest in Post–Public Employment: Comparative Overview of Prohibitions, Restrictions and Implementing Measures in OECD Countries*, GOV/PGC/ETH(2006)3, available online at http://www.olis.oecd.org/olis/2006doc.nsf/ENGDATCORPLOOK/NT0000096A/$FILE/JT00197267.PDF
96 OECD, *Avoiding Conflict of Interest in Post-Public Employment*.
97 See, in particular, Kenneth Kernaghan, *Public Integrity and Post–Public Employment: Issues, Remedies and Benchmarks*, GOV/PGC/ETH(2007)3, available online at http://www.olis.oecd.org/olis/2007doc.nsf/ENGDATCORPLOOK/NT0000103E/$FILE/JT03226639.PDF and OECD, *Post–Public Employment: Good Practices for Preventing Conflict of Interest*, GOV/PGC/ETH(2008)3, available online at http://www.olis.oecd.org/olis/2008doc.nsf/ENGDATCORPLOOK/NT00005A0A/$FILE/JT03251478.PDF[hereinafter, "*OECD – Avoiding Conflict of Interest in Post–Public Employment*"].
98 OECD, *Post–Public Employment: Good Practices for Preventing Conflict of Interest*, GOV/PGC/GF(2009)3 at para. 3, available online at http://www.oecd.publicgovernanceforum.org/downloads/documents/GOV-PGC-GF-3_Post%20Public%20Employment.pdf [hereinafter, OECD – *Post-Public Employment: Good Practices.*]
99 OECD, *Post–Public Employment: Good Practices*, at para. 22.
100 OECD, *Avoiding Conflict of Interest in Post–Public Employment*, 5.
101 18 USC 207.
102 18 USC 216.
103 18 USC 207(a)(1).
104 18 USC 208(a)(1).
105 18 USC 208(b).
106 18 USC 208(b).
107 18 USC 207(c)(1).
108 White House, *Executive Order – Ethics Commitments by Executive Branch Personnel* (January 2009), available at http://www.whitehouse.gov/the_press_office/ Ethics-Commitments-By-Executive-Branch-Personnel (hereinafter, *White House Order*).
109 18 USC 207(d).
110 18 USC 207(f).
111 *White House Order*.
112 5 CFR 2635.604.
113 5 CFR 2635.603.
114 5 CFR 2635.603.
115 See U.S. Office of Government Ethics, *Conflict of Interest Prosecution Surveys (1990–2007)*, available online at http://www.usoge.gov/laws_regs/other_ethics_guidance/conflict_int_pros_surveys.aspx
116 House of Commons Public Administration Select Committee, *The Ministerial Code: The Case for Independent Investigation*, Seventh Report of Session 2005–06 (July 2006) at 3, available online at http://www.publications.parliament.uk/pa/cm200506/cmselect/cmpubadm/1457/145703.htm
117 UK Cabinet Office, *Ministerial Code* (July 2007), available at http://www.cabinetoffice.gov.uk/media/cabinetoffice/propriety_and_ethics/assets/ministerial_code_current.pdf
118 Post-employment activities of departing civil servants *must* be approved through various levels of approval, incorporating advice from the ACBA, as a function of their contractual obligations of employment. See discussion in House of Commons Public Administration Select Committee, The Business Appointment Rules, Sixth Report of Session 2006–07 (June 2007) at 3 *et seq.*, available at http://www.publications.parliament.uk/pa/cm200607/cmselect/cmpubadm/1087/1087.pdf

119 Ms. Sue Gray, Transcript of Expert Policy Forum, July 28, 2009, p. 5631.
120 Ibid., pp. 5641, 5651.
121 Advisory Committee on Business Appointments (ACBA), *Ninth Report 2006–2008*, p. 7, available online at http://www.acoba.gov.uk/media/acoba/assets/acobaninthreport2006_08.pdf
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123 Ibid., p. 5632.
124 Ibid., p. 5644.
125 ACBA, *Ninth Report 2006–2008*, p. 7.
126 Public Administration Select Committee, *Lobbying: Access and Influence in Whitehall*, First Report of Session 2008–09, Pt 1 (December 2008), para. 93, available online at http://www.publications.parliament.uk/pa/cm200809/cmselect/cmpubadm/36/36i.pdf
127 Ms. Sue Gray Presentation, Transcript of Expert Policy Forum, July 28, 2009, p. 5636.
128 Ibid., p. 5633.
129 Ibid., pp. 5649–50.
130 Ibid., p. 5664.
131 *Guidelines on the Acceptance of Appointments or Employment Outside Government by Former Ministers of the Crown*, paras. 1 and 3, available at http://www.acoba.gov.uk/media/acoba/assets/guidelines.pdf
132 Ms. Sue Gray, Transcript of Expert Policy Forum, July 28, 2009, pp. 5633–34.
133 Ibid., p. 5689.
134 Ibid., pp. 5671–72.
135 Ibid., p. 5635.
136 Ibid., p. 5639.
137 Ibid., p. 5634.
138 Ibid., p. 5642.
139 Ibid., p. 5635.
140 Ibid., pp. 5638–39.
141 Ibid., pp. 5652 *et seq*.
142 Ibid., pp. 5673–74.
143 Turnbull, "Regulations on Post–Public Employment," 4.
144 Australian Government, *Standards of Ministerial Ethics* (December 2007), para. 1.3, available online at http://www.dpmc.gov.au/guidelines/docs/ministerial_ethics.pdf
145 Ibid., para. 7.1.
146 Turnbull, "Regulations on Post–Public Employment," 30.
147 Ibid., 40.
148 Dr. Lori Turnbull, Transcript of Expert Policy Forum, June 15, 2009, pp. 5016–19.
149 See Dr. Ian Greene, Transcript of Expert Policy Forum, June 16, 2009, p. 5213; Mr. Joe Wild, Transcript of Expert Policy Forum, June 15, 2009, p. 5066.
150 OECD, *Post–Public Employment: Good Practices*, para. 69.
151 Ibid. , paras. 69, 70.
152 Ibid., para. 73.
153 Ibid., para. 62.
154 Ms. Mary Dawson, Transcript of Expert Policy Forum, June 17, 2009, p. 5441.
155 5 CFR 2635.603.
156 Professor Kathleen Clark, Transcript of Expert Policy Forum, June 16, 2009, p. 5234.
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12

Conclusion and Consolidated Findings and Recommendations

The importance of the integrity of government, and, more particularly, the integrity of those who govern, is the theme that resonates throughout this Report.

Canadians live in a democratic society in which the holders of public office attain the privilege of governing by virtue of being elected every four or so years. The electorate reposes its trust and confidence in every person elected to hold public office. In my view, therefore, Canadians are entitled to expect that the holders of public office will be guided in their professional and personal lives by an ethical standard that is higher and more rigorous than the norm.

Those expectations do not expire when the political career of a holder of public office comes to an end. In my view, the higher, more rigorous standard must necessarily endure while such a person makes the transition to the private sector and for a reasonable period of time thereafter. As Adlai E. Stevenson, an American diplomat and politician, observed: "Public confidence in the integrity of the Government is indispensable to faith in democracy; and when we lose faith in the system, we have lost faith in everything we fight and spend for." I agree with Mr. Stevenson and find his observations as apt today as they were when first uttered. To paraphrase a life lesson that I believe the holders of public office would do well to remember: From those in whom much is entrusted, much is expected.

In the first phase of the Commission's activities, the Factual Inquiry, I scrutinized Mr. Mulroney's activities as he made the transition from public office to private life. In considering Mr. Mulroney's conduct, I applied the standard that was accepted by him

when, in September 1985, he tabled the Conflict of Interest and Post-Employment Code for Public Office Holders (1985 Ethics Code) in the House of Commons, one year into his mandate as prime minister. The code specified that the conduct of public office holders must be so scrupulous that it can bear the closest public scrutiny.

From the inception of this Inquiry I have been keenly aware of, and sensitive to, the damage that can be done to the reputation of an individual as a result of findings of fact I may make, based on the evidence, in the course of writing my Report. I have taken great care to avoid inflicting that type of damage on anyone. My mandate, for valid reasons, prohibited me from making any finding as to civil or criminal liability on the part of anyone. I have been careful not to use language that would even hint at such a finding. In making these concluding remarks, I have reminded myself, once again, of the fact that Mr. Mulroney, who achieved much while prime minister, understandably places a high value on his reputation.

However, findings of fact cannot be the cause of damage to a person's reputation where the person's conduct itself has damaged his or her reputation. Moreover, I have a duty pursuant to the mandate given to me by the Governor in Council to make findings of fact in the course of answering the questions posed in the Terms of Reference. That is a duty from which I do not shirk.

For the reasons given in Chapter 9 of this Report, I found that the business and financial dealings between Mr. Schreiber and Mr. Mulroney were inappropriate. I also found that Mr. Mulroney's failure to disclose those business and financial dealings was inappropriate.

Simply put, Mr. Mulroney, in his business and financial dealings with Mr. Schreiber, failed to live up to the standard of conduct that he had himself adopted in the 1985 Ethics Code.

My mandate also required me to investigate how mail from Mr. Schreiber addressed to Prime Minister Harper was handled. I concluded that an analyst in the Privy Council Office made a human error when he processed Mr. Schreiber's letter of March 29, 2007, to Prime Minister Harper. I concluded there is no evidence of a desire by anyone in the PCO to conceal this letter from Prime Minister Harper.

In my Report, I made four recommendations for change in the PCO's handling of mail addressed to the prime minister. It is my hope that the government will adopt those recommendations, which are intended to enhance both the efficiency and the manner in which mail addressed to the prime minister is handled.

My Terms of Reference directed me to consider the current ethics regime and whether the ethical rules and guidelines now in place are sufficient. I was asked to determine whether there should be additional ethical rules or guidelines concerning the activities of politicians as they make the transition from office or after they leave office. In Chapter 11, Trust, Ethics, and Integrity, I discussed the current ethics regime and I noted that, in terms of substance, the *Conflict of Interest Act* and the Conflict of Interest Code for Members of the House of Commons are now among the most legally rigorous of the

jurisdictions scrutinized by this Commission and its experts. These documents have a reasonable breadth and are firmly codified in statutory law. Nonetheless, I identified several shortcomings in how they govern a politician's transition from public to private life. I made a number of recommendations that I believe will allow government to deal more effectively with ethical considerations at this transition point. These changes will ensure the confidence and trust of Canadians in their elected representatives and high-office holders. My recommendations, all of which I hope will be considered and implemented, include suggestions that have as their objective the "fine tuning" of the 2006 *Conflict of Interest Act* and the Conflict of Interest Code for Members of the House of Commons.

Although in this Conclusion I do not intend to conduct a complete review of the recommendations I have made as a result of the Policy Review, I will refer to some of them in particular.

I have recommended broadening the definition of "employment" in the *Conflict of Interest Act* to include any form of outside employment or business relationship involving the provision of services.

I have also recommended broadening the definition of "conflict of interest" to include an apparent conflict of interest.

My recommendations include one which states that post-employment provisions of the *Conflict of Interest Act* should extend to former public office holders, whether the activities in question occur in Canada or elsewhere.

I am satisfied there is a need for more thorough education and training for ministers and members of their staffs. I have recommended that ministers be required to participate in ethics training by the Conflict of Interest and Ethics Commissioner (ethics commissioner) and that the leaders of Canada's political parties require their party's members to participate in the same type of training.

As a first priority, I have recommended that the prime minister amend *Accountable Government: A Guide for Ministers and Secretaries of State* to include directives to reporting public office holders, as defined in the *Conflict of Interest Act*. These directives will require the public office holders to report more extensively and to disclose any post–public office employment; to seek advice from the ethics commissioner before commencing post–public office employment; and to disclose publicly the advice received from the ethics commissioner before taking up the employment. The foregoing provisions, if adopted, will endure through the cooling-off periods set out in the *Conflict of Interest Act* and will be triggered for each new employment. I have also recommended that these changes be codified in the *Conflict of Interest Act*, and that the ethics commissioner have the discretion to disclose publicly his or her advice to the public office holder if that person takes up the employment in question.

I have also recommended concurrent amendments to the Act to make it an offence for a former public office holder to fail to meet the new disclosure obligations.

Finally, I wish to draw attention to the fact that no politicians or political parties

applied to participate in the Policy Review. I was and am disappointed by their failure to do so, particularly given the importance of the ethics questions I was asked to consider. I hope that the response on the part of Canada's elected politicians to the recommendations I have made respecting ethics and conflict of interest will be much more positive.

Consolidated Findings and Recommendations

All the findings and recommendations as they appear throughout my Report have been consolidated in Volumes 1 and 3. I have organized the consolidated findings and recommendations by chapter. I have shown page references to the chapter locations in square brackets at the end of each finding and recommendation so that the reader may refer to the related evidence, discussion, analysis, and other conclusions.

In my Report, I answered the questions set out in the Terms of Reference in Chapters 5 through 11. I have organized the findings and recommendations in the same order as they were referenced in the chapters in the Report. I note that the recommendations relate exclusively to the policy issues I was asked to address in Questions 14 and 17 of the Terms of Reference, which were addressed in Chapters 10 and 11 of my Report.

Findings

Chapter 5 – The Relationship

Question 1 What were the business and financial dealings between Mr. Schreiber and Mr. Mulroney?

FINDINGS

I find that Mr. Schreiber was a man with whom Mr. Mulroney had met numerous times on official business, particularly over the latter years of his tenure as prime minister of Canada. I find that nothing inappropriate occurred during the meetings that Mr. Schreiber had with Mr. Mulroney during Mr. Mulroney's tenure as prime minister.

However, in consideration of the evidence as a whole, including the evidence of Paul Tellier and Norman Spector, I find that the degree of access to Mr. Mulroney enjoyed by Mr. Schreiber was, in and of itself, both excessive and inappropriate. To Mr. Mulroney's knowledge, Mr. Schreiber's sole objective in meeting with him as prime minister was to advance the cause of the Bear Head Project. At no time during this period was Mr. Schreiber registered as a lobbyist under Canada's rules. The meetings were all arranged by either Elmer MacKay or Fred Doucet, or both of them, both being good friends of Mr. Mulroney. For a substantial period of time that Mr. Doucet was arranging access with Mr. Mulroney on behalf of

Mr. Schreiber, he (Mr. Doucet) was employed by Mr. Schreiber as a lobbyist for Bear Head Industries. I find that both Mr. MacKay and Mr. Doucet took advantage of their friendship with Mr. Mulroney in arranging access to him for Mr. Schreiber. Notwithstanding the fact that both Mr. MacKay and Mr. Doucet were old friends of Mr. Mulroney, I find that Mr. Mulroney could have and should have brought – but did not bring – an end to the inappropriate, excessive access granted to Mr. Schreiber.

I find that the business dealings between Mr. Schreiber and Mr. Mulroney evolved as a direct result of the relationship that was established between Mr. Schreiber and Mr. Mulroney while Mr. Mulroney was the prime minister of Canada. I find further that those business dealings led to the unwritten and undocumented agreement entered into between them on August 27, 1993, within approximately two months of Mr. Mulroney's leaving the office of prime minister of Canada. Pursuant to that agreement, the two men entered into financial dealings involving three payments of substantial amounts of money in cash made by Mr. Schreiber to Mr. Mulroney. [See pages 131–32.]

Chapter 6 – The Agreement

Question 2 *Was there an agreement reached by Mr. Mulroney while still a sitting prime minister?*

Question 3 *If so, what was that agreement, when and where was it made?*

FINDINGS

I note that Mr. Schreiber withdrew funds and had cash ready to give to Mr. Mulroney at the August 27, 1993, meeting at the Mirabel Hotel. This fact lends some credence to the claim that the two men did discuss some sort of continuing relationship during their meeting at Harrington Lake. However, having considered all the evidence on the issue of what transpired, or did not transpire, at the meeting at Harrington Lake on June 23, 1993, I find that no agreement was reached between Mr. Schreiber and Mr. Mulroney on that date. In my view, the truth as to what occurred can be found in the evidence Mr. Schreiber gave when he was cross-examined by Mr. Pratte and in the interview Mr. Schreiber gave to Mr. Kaplan on March 31, 2004.

Mr. Schreiber's testimony was that, at Harrington Lake, they had an agreement "to work together in the future." Mr. Mulroney was adamant in his testimony that there was no agreement to work together in the future. Even if I accept Mr. Schreiber's evidence on this point, the vagueness of the proposition and the lack of particularity and details do not support a finding that a formal agreement was reached while Mr. Mulroney was still prime minister.

I find that, although Mr. Schreiber hoped to obtain Mr. Mulroney's support with respect to the Bear Head Project after Mr. Mulroney left office, they neither discussed that issue nor reached any agreement about it on June 23, 1993, at Harrington Lake. I disbelieve Mr. Schreiber's evidence that Mr. Mulroney told him he (Mr. Mulroney) could help with the Bear Head Project once Ms. Campbell became the prime minister. Moreover, it is abundantly clear, on a close examination of Mr. Schreiber's evidence when he was cross-examined by Mr. Pratte, that he and Mr. Mulroney did not reach any agreement that day at Harrington Lake, while Mr. Mulroney was still the sitting prime minister of Canada – and I so find.

As I have concluded, in answer to Question 2 of the Terms of Reference, that no agreement was reached by Mr. Mulroney while still a sitting prime minister, I need not answer Question 3 (If so, what was that agreement, when and where was it made?). [See pages 223–24.]

Question 4 Was there an agreement reached by Mr. Mulroney while still sitting as a Member of Parliament or during the limitation periods prescribed by the 1985 ethics code?

Question 5 If so, what was that agreement, when and where was it made?

FINDINGS

Based on all the evidence, it is reasonable to conclude that Mr. Schreiber would have wanted to retain someone of Mr. Mulroney's stature on the international stage to promote the sale, in an international market, of military vehicles produced by Thyssen through Bear Head in Canada.

In answer to Questions 4 and 5 of the Terms of Reference, based on the evidence as a whole, I find that Mr. Mulroney entered into an agreement with Mr. Schreiber while he was still sitting as a member of parliament. I find that the agreement was made on August 27, 1993, at the hotel at Mirabel Airport near Montreal. Further, I find that, pursuant to that agreement, Mr. Schreiber retained the services of Mr. Mulroney to promote the sale in the international market of military vehicles produced by Thyssen. [See page 228.]

Question 6 What payments were made, when and how and why?

FINDINGS

Mr. Schreiber made three payments to Mr. Mulroney. The payments were made in cash that was concealed in envelopes and consisted of $1,000 bills in Canadian currency. I find that Mr. Mulroney was paid at least $225,000 in $1,000 bills. On the basis of the evidence before me, or, perhaps, more appropriately on the basis of the dearth of credible evidence before me, it is impossible for me to draw a

conclusion as to the total amount paid by Mr. Schreiber to Mr. Mulroney.

I find that the payments were made on the following dates and at the following places:

- August 27, 1993 – a suite at the hotel at Mirabel Airport near Montreal;
- December 18, 1993 – a room at the Queen Elizabeth Hotel, Montreal, where coffee is served; and
- December 8, 1994 – a suite at the Pierre Hotel in New York City.

The payments were made pursuant to a retainer agreement entered into by Mr. Schreiber and Mr. Mulroney at the hotel at Mirabel Airport on August 27, 1993. The payments were made in cash as part of a scheme on the part of both Mr. Schreiber and Mr. Mulroney to avoid creating a paper trail, thereby concealing the fact that a relationship existed between them which included the payment of money. [See page 230.]

Question 8 What services, if any, were rendered in return for the payments?

FINDINGS

Although Mr. Mulroney may have met with Messrs. Mitterrand, Yeltsin, Baker, and Weinberger, the evidence falls short of convincing me that he had any discussions with them related to the promotion of a concept involving the purchase by the United Nations of military vehicles produced by Thyssen. I have also said I am unable to conclude that Mr. Mulroney spoke to the Chinese leaders as asserted by him. There is an absence of independent evidence that Mr. Mulroney provided any services pursuant to the international mandate that I have found was the reason for the payment of monies he received from Mr. Schreiber.

Given the above, I am not able to find that any services were ever provided by Mr. Mulroney for the monies paid to him by Mr. Schreiber. [See page 233.]

Chapter 7 The Source of Funds and What Happened to the Cash

Question 7 What was the source of the funds for the payments?

FINDINGS

I find that the funds paid to Mr. Mulroney by Mr. Schreiber came from the Britan account; that the funds in the Britan account came from the Frankfurt account; and that the source of the funds in the Frankfurt account consisted of a portion of the commissions paid to Mr. Schreiber by Airbus Industrie.

For the reasons articulated in Chapter 7, I find that the source of the funds paid by Mr. Schreiber to Mr. Mulroney was Airbus Industrie. I also find that there

is no evidence to demonstrate that Mr. Mulroney had any knowledge as to the source of the funds paid to him by Mr. Schreiber. Based on the evidence adduced before me, it is impossible to conclude otherwise. [See page 256.]

Question 9 Why were the payments made and accepted in cash?

FINDINGS

On the basis of all the evidence I have heard and read, I find that Mr. Schreiber paid Mr. Mulroney in cash; that Mr. Mulroney accepted and thereafter maintained the payments in cash; and that neither Mr. Schreiber nor Mr. Mulroney documented any of the three transactions in any manner whatsoever until 2000, when Mr. Mulroney made his voluntary tax disclosure.

I find that the reason for the payments and acceptance of the payments in cash on the part of both Mr. Schreiber and Mr. Mulroney was to conceal their business and financial dealings and the fact that the cash transactions between them had occurred. [See page 258.]

Question 10 What happened to the cash; in particular, if a significant amount of cash was received in the U.S., what happened to that cash?

FINDINGS

I find that Mr. Mulroney spent all of the cash he received, including that received in New York, on himself or family members. I find that the money received in New York and placed in the safety deposit box in New York was spent in the United States. [See page 259.]

Chapter 9 – Appropriateness

Question 11 Were these business and financial dealings appropriate considering the position of Mr. Mulroney as a current or former prime minister and Member of Parliament?

Question 12 Was there appropriate disclosure and reporting of the dealings and payments?

FINDINGS

Question 11 of the Terms of Reference directed me to determine whether the business and financial dealings between Mr. Schreiber and Mr. Mulroney were appropriate considering the position of Mr. Mulroney as a current or former prime minister and member of parliament. In answer to this question, I find that Mr. Mulroney's conduct in his business dealings with Mr. Schreiber was not appropriate; and that Mr. Mulroney's conduct in his financial dealings with Mr. Schreiber was not appropriate.

With respect to Question 12, disclosure and reporting, I find that Mr. Mulroney failed to take any steps to document the dealings and payments when he entered into his agreement with Mr. Schreiber on August 27, 1993, or when he received the two subsequent payments on December 18, 1993, and December 8, 1994. What he could have done was simple. First, he could have arranged for the agreement with Mr. Schreiber to be in writing. Second, he could have issued receipts for the cash he received and entered the fact of the receipt of cash on the books of his company, Cansult – a company incorporated for the very purpose of operating Mr. Mulroney's consulting business. Third, he could have deposited the cash he received from Mr. Schreiber into an account at a bank or other financial institution – an action that would, I suggest, have been in accord with business acumen and with standard business practice.

I find that Mr. Mulroney did not declare a reserve under the *Income Tax Act* regarding the cash he received on any of the seven occasions when he could have done so. I am not saying he was legally obligated to do so. However, I rely on his decision not to do so to support my finding that there was not appropriate disclosure and reporting of the payments.

I find that Mr. Mulroney acted inappropriately in failing to disclose his dealings with Mr. Schreiber and the payments he received when he gave evidence at his examination before plea in 1996.

I find that Mr. Mulroney failed to heed the advice of Luc Lavoie, his spokesperson, when Mr. Lavoie advised him to go public regarding his relationship with Mr. Schreiber. In doing so, Mr. Mulroney failed to take advantage of an opportunity to disclose appropriately his dealings with Mr. Schreiber and the payments he received.

I find that Mr. Mulroney acted inappropriately in misleading William Kaplan when he (Mr. Kaplan) was preparing to write *Presumed Guilty: Brian Mulroney, the Airbus Affair and the Government of Canada* (1998), a book in which he intended to defend Mr. Mulroney's reputation.

I also find that, when Mr. Kaplan was in the process of writing his series of articles for the *Globe and Mail* in November 2003, Mr. Mulroney acted inappropriately in the manner in which he attempted to persuade Mr. Kaplan not to publish the articles. I find that the foregoing actions of Mr. Mulroney were clearly a calculated attempt on his part to prevent Mr. Kaplan from publicly disclosing Mr. Mulroney's dealings with Mr. Schreiber and the cash payments he had received from him.

In summary, I find that Mr. Mulroney's conduct in failing to disclose and report on his dealings with and payments from Mr. Schreiber was not appropriate. **[See pages 363–64.]**

Question 13 Were there ethical rules or guidelines which related to these business and financial dealings? Were they followed?

FINDINGS

Section 7(b) of the 1985 Conflict of Interest and Post-Employment Code for Public Office Holders (1985 Ethics Code) provides, "[P]ublic office holders have an obligation to act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law." I find that Mr. Mulroney contravened section 7(b) of the 1985 Ethics Code.

Section 7(d) of the 1985 Ethics Code requires public office holders to arrange their affairs so as to prevent "real, potential or apparent conflicts of interest." Section 36 of the 1985 Ethics Code states that a public office holder shall not accord preferential treatment to friends or to organizations in which their friends have an interest, and shall take care not to be placed under "an obligation to any person or organization that might profit from special consideration on the part of the public office holder." Mr. Mulroney, by agreeing to meet with Mr. Schreiber, accorded special treatment to a friend – Mr. Doucet – in relation to the Bear Head Project, an official matter that was under consideration by various government departments from 1988 through 1994. Mr. Doucet, who lobbied on behalf of Mr. Schreiber, would have benefited from that access. I believe that an appearance of conflict of interest was created, and that Mr. Mulroney acted contrary to his obligations under section 7(d) and section 36. [See page 376.]

Chapter 10 – Correspondence

Question 15 What steps were taken in processing Mr. Schreiber's correspondence to Prime Minister Harper of March 29, 2007?

Question 16 Why was the correspondence not passed on to Prime Minister Harper?

FINDINGS

There was an oversight by the analyst who handled the March 29, 2007, letter from Mr. Schreiber to Prime Minister Harper in that he did not follow the established procedure of bringing the letter to the attention of a writer or senior editor before directing it to file without reply. This oversight precluded the possibility that a writer or senior editor could have directed that the letter be sent to the Prime Minister's Correspondence Unit (PMC). There is no evidence that the Prime Minister's Office (PMO) or the PMC ever gave any instructions to the Executive Correspondence Unit (ECU) concerning Mr. Schreiber's mail or the issues addressed by Mr. Schreiber in his mail. There is no evidence that there was

a desire by anyone in the ECU to conceal from the PMO or the PMC any letters from Mr. Schreiber, including the March 29, 2007, letter. [See page 416.]

Mr. Schreiber's September 26, 2007, letter and its enclosures, which included the March 29, 2007, letter to Prime Minister Harper, were not passed on to Prime Minister Harper because the manager of the Prime Minister's Correspondence Unit (PMC) decided it should be treated the same way as the three letters written by Mr. Schreiber that had previously been sent to the PMC. In those three cases, the direction from the executive assistant to the deputy chief of staff and from the executive assistant to the chief of staff was to close the file with no response. [See page 420.]

Question 17 Should the Privy Council Office have adopted any different procedures in this case?

Question 17 of the Terms of Reference directs me to determine whether the Privy Council Office should have adopted any different procedures in this case. I interpret my Question 17 mandate as asking whether, in respect to the handling of all of Mr. Schreiber's correspondence to Prime Minister Harper, the PCO should have adopted any different procedures, and my answer is found in Recommendations 1 to 4, set forth below.

Recommendations

Chapter 10 – Correspondence

In Chapter 10, I reviewed the correspondence handling procedures of the Privy Council Office. I concluded that the Privy Council Office has a system that generally meets the objectives required. However, a number of problems with the handling of Mr. Schreiber's mail led me to make four recommendations arising out of my findings in answer to Questions 15 and 16.

Treatment of General Mail

1 RECOMMENDATION

The Privy Council Office should revise its procedures as to the handling of correspondence addressed to the prime minister. The revisions should include the following:

(a) The categories of general mail where no acknowledgement or reply is sent to the writer should be reduced to exclude "religious"; "overtaken by events"; "writer is an inmate in a penitentiary"; and "concerns a legal case."

(b) An acknowledgement of receipt should be sent to a first-time writer on a

particular subject. Where appropriate, the first-time writer on a particular subject should be advised if his or her letter has been forwarded to a minister or department. Where a person writes again, discretion should be exercised to determine whether a further reply should be sent.

(c) Letters dealing with legal matters should be treated in a consistent manner. A writer corresponding for the first time about a legal case should receive a standard acknowledgement on the impossibility of intervening in a private legal matter; an acknowledgement of receipt with advice that his or her letter has been forwarded to the minister of justice; or other appropriate response. Where a person writes again about a legal matter, discretion should be exercised to determine whether a further reply should be sent. [See page 430.]

Mail Forwarded to the Prime Minister's Office

2 RECOMMENDATION

When the Privy Council Office (PCO) classifies general mail as political in nature, and has forwarded the mail to the Prime Minister's Correspondence Unit (PMC) for a decision on whether the Prime Minister's Office (PMO) wishes to handle it, a procedure should be established for the PMO to communicate back to the PCO, advising whether the PMO wishes to handle mail from the writer in future. As part of this procedure, if the PMO indicates that it does not wish to handle mail from the writer, the original mail and WebCIMS file should be transferred back to the PCO, to be dealt with appropriately. [See page 433.]

3 RECOMMENDATION

The Executive Correspondence Unit and the Prime Minister's Correspondence Unit should develop procedures to ensure that, when a letter is forwarded to the Prime Minister's Office, the writer receives at least an acknowledgement of receipt if it is the first letter from the writer, or receives another response as appropriate. [See page 433.]

Procedures When Closing a File Without Response

4 RECOMMENDATION

The Privy Council Office should develop a written procedure to be followed by analysts before a letter is directed to file without reply. The procedure should incorporate the appropriate level of consultation with more senior employees. [See page 434.]

Chapter 11 – Trust, Ethics, and Integrity

In Chapter 11, I discussed the current ethics regime. I noted that, in terms of substance, the *Conflict of Interest Act* and the Conflict of Interest Code for Members of the House of Commons (MP Code) are now among the most legally rigorous of the jurisdictions scrutinized by this Commission and its experts. They have a reasonable breadth and are firmly codified in statutory law. Nonetheless, I identified several shortcomings in how they govern a politician's transition from public to private life. I made a number of recommendations that I believe will allow government to deal more effectively with ethical considerations at this transition point. My recommendations are consolidated below.

***Question 14** Are there ethical rules or guidelines which currently would have covered these business and financial dealings? Are they sufficient or should there be additional ethical rules or guidelines concerning the activities of politicians as they transition from office or after they leave office?*

Expanded Definition of "Employment"

5 RECOMMENDATION

Section 2 of the *Conflict of Interest Act* should be revised to add the definition, "employment shall mean, for the purposes of sections 10, 24(1), 24(2), 35(1), and 39(3)(b), any form of outside employment or business relationship involving the provision of services by the public office holder, reporting public office holder, or former reporting public office holder, as the case may be, including, but not limited to, services as an officer, director, employee, agent, lawyer, consultant, contractor, partner, or trustee." [See page 529.]

Apparent Conflicts of Interest

6 RECOMMENDATION

The definition of "conflict of interest" in the *Conflict of Interest Act* should be revised to include "apparent conflicts of interest," understood to exist if there is a reasonable perception, which a reasonably well-informed person could properly have, that a public office holder's ability to exercise an official power or perform an official duty or function will be, or must have been, affected by his or her private interest or that of a relative or friend. [See page 533.]

Disclosure by MP Leaving Office

7 RECOMMENDATION

The House of Commons should amend the Conflict of Interest Code for Members of the House of Commons to oblige a departing member to file a section 20 disclosure statement current as of the member's last day in office. The amendment should require the member to file the statement within 60 days of the member's last day in office. [See page 534.]

Disclosure of Offers, Etc., of Employment

8 RECOMMENDATION

Section 24 of the *Conflict of Interest Act* should be amended to replace the reference to "firm offer" of employment with a requirement to disclose the identities of entities with whom a public office holder is seeking, negotiating, or has been offered employment, with the term "employment" as defined in Recommendation 5. [See page 535.]

Obligations Inside and Outside Canada

9 RECOMMENDATION

The *Conflict of Interest Act* should expressly provide that its post-employment provisions extend to actions taken by former public office holders, whether those actions occur in Canada or elsewhere. [See page 536.]

Issuance of Interpretive Bulletin on Direct and Significant Official Dealings

10 RECOMMENDATION

The Conflict of Interest and Ethics Commissioner should issue an interpretive bulletin providing guidance on the meaning of "direct and significant official dealings" used in section 35 of the *Conflict of Interest Act*. [See page 539.]

Reciprocal Obligations on Current Public Office Holders

11 RECOMMENDATION

The *Conflict of Interest Act* should be amended to bar a current public office holder from awarding or approving a contract with, or granting a benefit to, a person who, in the course of seeking that contract or benefit, appears to be in violation of his or her post-employment obligations under the Act without first obtaining advice from the Conflict of Interest and Ethics Commissioner that the former public office holder is in compliance with the Act. The Act should specify that the giving of this advice is among the commissioner's duties and powers. [See page 542.]

Obligations in Contracts with the Federal Government

12 RECOMMENDATION

All federal contracts should include a contractual provision rendering it a breach of contract to rely (or, in the course of obtaining the contract, to have relied) on the services of a former public office holder acting in contravention of post-employment restrictions. [See page 544.]

Additional Interpretive Bulletins

13 RECOMMENDATION

In addition to issuing the interpretive bulletin referred to in Recommendation 10 on "direct and significant official dealings," the Conflict of Interest and Ethics Commissioner should issue interpretive bulletins on other uncertain provisions in the *Conflict of Interest Act* and publish redacted versions of his or her decisions and advice. [See page 547.]

Education, Training, and Outreach

14 RECOMMENDATION

As part of the expectations outlined in *Accountable Government: A Guide for Ministers and Secretaries of State*, that document should be amended to require ministers to participate themselves in ethics training conducted by the Conflict of Interest and Ethics Commissioner and to ensure that their staff also participates

in that training. Party leaders should require their party's members of parliament to participate in equivalent training under the Conflict of Interest Code for Members of the House of Commons (MP Code). [See page 549.]

15 RECOMMENDATION

The *Conflict of Interest Act* and the Conflict of Interest Code for Members of the House of Commons (MP Code) should be revised to ensure that annual disclosures made by reporting public office holders and post-election and annual update disclosures by MPs are supplemented with an in-person meeting with staff in the office of the Conflict of Interest and Ethics Commissioner. The number of staff in that office should be expanded to accommodate such meetings. [See page 549.]

Amendments and Consequential Steps by Ethics Commissioner

16 RECOMMENDATION

(a) As a first priority, the prime minister should amend *Accountable Government: A Guide for Ministers and Secretaries of State* to include the following directives to reporting public office holders, as defined under the *Conflict of Interest Act*:

- Reporting public office holders shall disclose to the Conflict of Interest and Ethics Commissioner (ethics commissioner) the nature of any post-office employment (as defined in Recommendation 5) prior to taking up that employment.
- Before commencing the employment, reporting and former reporting public office holders must receive advice from the ethics commissioner on the compatibility of the position with their post-employment obligations. In deciding whether and under what circumstances to take up this employment, they are expected to abide by the ethics commissioner's advice.
- The reporting public office holder must make the ethics commissioner's advice public prior to taking up the employment, and should ask the ethics commissioner to include the advice in the public registry created by the Act.
- These obligations on current and former reporting public office holders to disclose the employment, obtain advice, disclose the advice, and abide by this advice shall exist throughout the cooling-off periods set out in section 36 of the *Conflict of Interest Act* and shall be triggered for each new employment.

(b) It is further recommended that the Conflict of Interest and Ethics Commissioner take such steps as are necessary to receive the disclosures and provide the advice described above.

(c) The above changes should be codified in the *Conflict of Interest Act* as early as practicable. At that time, two additional changes should be made to the Act:

- The Conflict of Interest and Ethics Commissioner should be permitted to disclose publicly the advice given to the current or former reporting public office holder, if that person takes up the employment in question.
- The Act should specifically permit current or former public office holders to request that the ethics commissioner reconsider prior advice given to take into account new facts or developments that the current or former public office holder believes should be before him or her. [See pages 554–55.]

17 RECOMMENDATION

The amendments of the *Conflict of Interest Act* to implement Recommendation 16 should be accompanied by concurrent amendments to make it an offence for a former public office holder to fail to meet the disclosure obligations described in Recommendation 16. [See page 555.]

18 RECOMMENDATION

Consideration should be given to an appropriate appeal mechanism characterized by procedural fairness and transparency. [See page 556.]

Appendices

Appendix 1: Order in Council and Amendments

CANADA

PRIVY COUNCIL • CONSEIL PRIVÉ

P. C. 2008-1092
June 12, 2008

Whereas Karlheinz Schreiber has made various allegations with respect to his business and financial dealings with the Right Honourable Brian Mulroney, P.C., including those made in an affidavit sworn on November 7, 2007 and those made with respect to an agreement allegedly reached on June 23, 1993;

Whereas certain of the allegations with respect to the Right Honourable Brian Mulroney's tenure as Prime Minister, although unproven, go beyond the private interests of the parties, and raise questions respecting the integrity of an important office of the Government of Canada;

Whereas, by Orders in Council P.C. 2007-1719 of November 14, 2007 and P.C. 2008-600 of March 19, 2008, David Johnston of St. Clements, Ontario, was appointed as Independent Adviser to the Prime Minister, to conduct an independent review of the allegations respecting financial dealings between Karlheinz Schreiber and the Right Honourable Brian Mulroney, P.C.;

Whereas on January 9, 2008 and April 4, 2008, David Johnston submitted a first and second *Report of the Independent Advisor into the Allegations Respecting Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney* on the appropriate mandate for a public inquiry into those allegations;

Whereas David Johnston concluded that "any public inquiry should be a focused inquiry into specific matters of legitimate public interest", and, in his view, "the issue of public concern in this matter remains compliance with the constraints on holders of high public office and the adequacy of the current constraints";

Whereas David Johnston concluded that certain of the allegations have already been the subject of prior examination or investigation;

And whereas David Johnston concluded that the questions set out in his report of January 9, 2008 are relevant questions for a commission of inquiry;

.../2

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Prime Minister, hereby directs that a Commission do issue under Part I of the *Inquiries Act* and under the Great Seal of Canada appointing the Honourable Jeffrey J. Oliphant as Commissioner to conduct an inquiry into certain allegations respecting business and financial dealings between Karlheinz Schreiber and the Right Honourable Brian Mulroney, P.C., (the "Inquiry"), which Commission shall:

(*a*) direct the Commissioner to investigate and report on the following questions relating to the business and financial dealings between Karlheinz Schreiber and the Right Honourable Brian Mulroney, P.C.:

1. What were the business and financial dealings between Mr. Schreiber and Mr. Mulroney?

2. Was there an agreement reached by Mr. Mulroney while still a sitting prime minister?

3. If so, what was that agreement, when and where was it made?

4. Was there an agreement reached by Mr. Mulroney while still sitting as a Member of Parliament or during the limitation periods prescribed by the 1985 ethics code?

5. If so, what was that agreement, when and where was it made?

6. What payments were made, when and how and why?

7. What was the source of the funds for the payments?

8. What services, if any, were rendered in return for the payments?

9. Why were the payments made and accepted in cash?

10. What happened to the cash; in particular, if a significant amount of cash was received in the U.S., what happened to that cash?

.../3

11. Were these business and financial dealings appropriate considering the position of Mr. Mulroney as a current or former prime minister and Member of Parliament?

12. Was there appropriate disclosure and reporting of the dealings and payments?

13. Were there ethical rules or guidelines which related to these business and financial dealings? Were they followed?

14. Are there ethical rules or guidelines which currently would have covered these business and financial dealings? Are they sufficient or should there be additional ethical rules or guidelines concerning the activities of politicians as they transition from office or after they leave office?

15. What steps were taken in processing Mr. Schreiber's correspondence to Prime Minister Harper of March 29, 2007?

16. Why was the correspondence not passed on to Prime Minister Harper?

17. Should the Privy Council Office have adopted any different procedures in this case?

(*b*) direct the Commissioner to conduct the Inquiry under the name of the Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney;

(*c*) authorize the Commissioner to adopt any procedures and methods that he considers expedient for the proper and efficient conduct of the Inquiry, including the holding of hearings in private, at any times and in any places in or outside of Canada;

(*d*) authorize the Commissioner, for the proper and efficient conduct of the Inquiry,

.../4

(i) to consider findings, as he considers appropriate, of other examinations or investigations that may have been conducted into any of the questions set out in paragraph (*a*), and to give them any weight, including accepting them as conclusive; and

(ii) to conduct any additional examinations or investigations as he considers appropriate, into any matter that is relevant to the questions set out in paragraph (*a*), such as any agreement, dealing, payment or declaration;

(*e*) authorize the Commissioner to grant to any person who satisfies him that they have a substantial and direct interest in the subject matter of the Inquiry an opportunity for appropriate participation in it;

(*f*) authorize the Commissioner to recommend to the Clerk of the Privy Council that funding be provided, in accordance with terms and conditions approved by the Treasury Board, to ensure the appropriate participation of any person granted standing under paragraph (*e*), to the extent of the person's interest, if the Commissioner is of the view the person would not otherwise be able to participate in the Inquiry;

(*g*) authorize the Commissioner to rent any space and facilities that may be required for the purposes of the Inquiry, in accordance with Treasury Board policies;

(*h*) authorize the Commissioner to engage the services of any experts and other persons referred to in section 11 of the *Inquiries Act*, at rates of remuneration and reimbursement approved by the Treasury Board;

(*i*) direct the Commissioner to use the automated document management program specified by the Attorney General of Canada and to consult with records management officials within the Privy Council Office on the use of standards and systems that are specifically designed for the purpose of managing records;

.../5

(*j*) direct the Commissioner, in respect of any portion of the Inquiry conducted in public, to ensure that members of the public can, simultaneously in both official languages, communicate with the Commission and obtain from it services, including any transcripts of proceedings that have been made available to the public;

(*k*) direct the Commissioner to follow established security procedures, including the requirements of the Government Security Policy, with respect to persons engaged under section 11 of the *Inquiries Act* and the handling of information at all stages of the Inquiry;

(*l*) direct the Commissioner to perform his duties without expressing any conclusion or recommendation regarding the civil or criminal liability of any person or organization;

(*m*) direct the Commissioner to perform his duties in such a way as to ensure that the conduct of the Inquiry does not jeopardize any ongoing investigation or criminal proceeding, and to consult with the government institution responsible for any ongoing investigation or proceedings about any jeopardy that could result from the conduct of the Inquiry;

(*n*) direct that nothing in the Commission shall be construed as limiting the application of the provisions of the *Canada Evidence Act*;

(*o*) direct the Commissioner to submit, on or before June 12, 2009, a report or reports, simultaneously in both official languages, to the Governor in Council; and

(*p*) direct the Commissioner to file the papers and records of the Inquiry with the Clerk of the Privy Council as soon as reasonably possible after the conclusion of the Inquiry.

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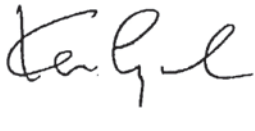

CANADA
PRIVY COUNCIL • CONSEIL PRIVÉ

P. C. 2008-1958
December 23, 2008

Her Excellency the Governor General in Council, on the recommendation of the Prime Minister, hereby directs that a Commission do issue under Part I of the *Inquiries Act* and under the Great Seal of Canada amending the commission in relation to the Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney, issued pursuant to Order in Council P.C. 2008-1092 of June 12, 2008, by replacing paragraph (*o*) with the following:

(*o*) the Commissioner to submit, on or before December 31, 2009, a report or reports, simultaneously in both official languages, to the Governor in Council; and

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CLERK OF THE PRIVY COUNCIL–LE GREFFIER DU CONSEIL PRIVÉ

CANADA

PRIVY COUNCIL • CONSEIL PRIVÉ

P. C. 2009-1822
November 5, 2009

Her Excellency the Governor General in Council, on the recommendation of the Prime Minister, hereby directs that a commission do issue under Part I of the *Inquiries Act* and under the Great Seal of Canada amending the commission in relation to the Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney, issued pursuant to Order in Council P.C. 2008-1092 of June 12, 2008, as amended by P.C. 2008-1958 of December 23, 2008, by replacing paragraph *(o)* with the following:

> *(o)* the Commissioner to submit, on or before May 31, 2010, a report or reports, simultaneously in both official languages, to the Governor in Council; and

CERTIFIED TO BE A TRUE COPY–COPIE CERTIFIÉE CONFORME

CLERK OF THE PRIVY COUNCIL–LE GREFFIER DU CONSEIL PRIVÉ

Appendix 2

Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney

Commission d'enquête concernant les allégations au sujet des transactions financières et commerciales entre Karlheinz Schreiber et le très honorable Brian Mulroney

COMMISSION OF INQUIRY INTO CERTAIN ALLEGATIONS RESPECTING BUSINESS AND FINANCIAL DEALINGS BETWEEN KARLHEINZ SCHREIBER AND THE RIGHT HONOURABLE BRIAN MULRONEY

RULES OF PROCEDURE AND PRACTICE

1. The Commission proceedings will be divided into two parts. The first part, the "Factual Inquiry", will focus on questions relating to the business and financial dealings between Karlheinz Schreiber and the Right Honourable Brian Mulroney as set out in paragraph (a) sections 1 through 16 of the Terms of Reference.

2. The Commissioner will conduct hearings in relation to the Factual Inquiry as set out in Part I of these Rules.

3. The second part of the Inquiry is a "Policy Review" directed at making recommendations for ethical rules or guidelines concerning the activities of politicians as they transition from office or after they leave office and regarding procedures followed by the Privy Council Office as specified in paragraph (a) sections 14 and 17 of the Terms of Reference. The Commissioner will conduct consultations in relation to the Policy Review as set out in Part II of these Rules.

4. Whenever practicable, applications should be made in writing on notice to the parties and intervenors, as defined in these Rules. The Commissioner may determine in any case whether the length of notice provided, if any, was reasonable. Applicants will be expected to justify notice periods of less than seven clear days. Parties and intervenors wishing to receive notice of applications shall provide the Commission with an e-mail address for delivery. The e-mail addresses will be posted on the Commission's web site. Notice to a party will be sufficient if e-mailed to the e-mail address provided on the Commission's web site.

PART I
FACTUAL INQUIRY

A. GENERAL

5. The Commissioner may amend these Rules or dispense with compliance with them as he deems necessary to ensure that the Inquiry is thorough, fair and timely.

6. All parties, intervenors, witnesses and their counsel shall be deemed to undertake to adhere to these Rules, and may raise any issue of non-compliance with the Commissioner.

7. The Commissioner shall deal with a breach of these Rules as he sees fit including, but not restricted to, revoking the standing of a party, and imposing restrictions on the further participation in or attendance at (including exclusion from) the hearings by any party, intervenor, counsel, individual, or member of the media.

8. Subject to the provisions of the *Inquiries Act* (Canada), the conduct of and the procedure to be followed on the Inquiry is under the control and discretion of the Commissioner.

9. In these Rules, the term "documents" is intended to have a broad meaning, and includes the following formats: written, electronic, audiotape, videotape, digital reproductions, photographs, maps, graphs, microfiche and any data and information recorded or stored by means of any device.

B. STANDING – FACTUAL INQUIRY

10. Commission counsel, who will assist the Commissioner to ensure the orderly conduct of the Factual Inquiry, have standing throughout the Factual Inquiry. Commission counsel have the primary responsibility for representing the public interest at the Factual Inquiry, including the responsibility to ensure that all matters that bear upon the public interest are brought to the Commissioner's attention.

11. A person may be granted full or partial standing as a party by the Commissioner if the Commissioner is satisfied that the person is directly and substantially affected by the matters investigated in the Factual Inquiry or portions thereof. Persons with party standing are referred to as parties in these Rules.

12. The Commissioner may grant intervenor standing to persons who satisfy the Commissioner that they have a genuine concern about issues raised by the Factual Inquiry mandate and have a particular perspective or expertise that may assist the Commissioner. Persons with intervenor standing are referred to as intervenors in these Rules.

13. The Commissioner will determine on what terms and in which parts of the Factual Inquiry a party or intervenor may participate, and the nature and extent of such participation.

14. Applicants for standing will be required to provide written submissions explaining why they qualify for standing, and how they propose to contribute to the Factual Inquiry. Applicants for standing will also be given an opportunity to appear in person before the Commissioner in order to explain why standing ought to be granted to them.

15. The Commissioner may direct that a number of applicants share in a single grant of standing.

C. FUNDING – FACTUAL INQUIRY

16. The Commissioner may recommend funding for a party or intervenor to the extent of their interest, where in the Commissioner's view, the party or intervenor would not otherwise be able to participate in the Factual Inquiry.

17. A party or intervenor seeking funding shall apply to the Commissioner in writing, demonstrating that he or she does not have sufficient financial resources to participate in the Factual Inquiry without such funding.

18. Where the Commissioner's funding recommendation is accepted, funding shall be in accordance with terms and conditions approved by the Treasury Board respecting rates of remuneration and reimbursement and the assessment of accounts.

D. PRE-HEARING WITNESS INTERVIEWS

19. Commission counsel may interview any person who has information or documents that have any bearing upon the subject matter of the Factual Inquiry. A person may be interviewed more than once. Persons who are interviewed are entitled, but not required, to have legal counsel present. No person or organization is required to submit to such interviews.

20. If the witness agrees to be interviewed, he or she may elect to have the interview proceed on the basis that:

    (a) a written transcript of the interview shall be made, in which case, the transcript will be subject to disclosure and use as described in Rule 21(a); or

    (b) a summary of the gist of the witness' expected testimony, based on the interview ("Summary"), shall be made, in which case the Summary shall be subject to disclosure as described in Rule 21(b).

21. If Commission counsel determines that a person will be called as a witness following an interview:

    (a) that has been transcribed, Commission counsel will provide a transcript of the interview to the witness, the parties and the intervenors having an interest in the subject matter of the witness' evidence, before the witness testifies before the Commission. At the Part I hearing, the transcript may be used for cross-examination on prior inconsistent statements;

    (b) that has not been transcribed, Commission counsel will provide a copy of the Summary to the witness, the parties and the intervenors having an interest in the subject matter of the witness' evidence, before the witness testifies before the Commission.

22. Commission counsel will provide to the parties and intervenors the names of all other persons who were interviewed by Commission counsel but who will not be called as witnesses.

23. Transcripts of interviews shall only be released to a party or intervenor upon execution of a confidentiality undertaking by such party or intervenor, and his or her counsel.

E. EVIDENCE

24. The Commissioner may receive any evidence that he considers helpful in fulfilling the mandate of the Inquiry whether or not such evidence would be admissible in a court of law.

25. The Commissioner may consider findings, as he considers appropriate, of other examinations or investigations that may have been conducted into any of the questions set out in paragraph (a) of the Terms of Reference, and to give them any weight, including accepting them as conclusive.

(a) Production of Documentary Evidence

26. As soon as possible after being granted standing, all parties and intervenors shall provide to the Commission all documents in their possession or under their control having any bearing on the subject matter of the Factual Inquiry.

27. Where a party or intervenor objects to the production of any document on the grounds of privilege, the document shall be produced in its original unedited form to Commission counsel who will review and determine the validity of the privilege claim. Production of the document for this purpose will not constitute a waiver of any applicable privilege. The objecting party, intervenor and/or counsel may be present during the review process. In the event the party or intervenor claiming privilege disagrees with Commission counsel's determination, the Commissioner, on application, may either inspect the impugned document(s) and make a ruling, or may direct the issue to be resolved by the Federal Court.

28. Upon the request of Commission counsel, parties and intervenors shall provide originals of relevant documents.

29. Documents received from a party, intervenor, or any other organization or individual, shall be treated as confidential by the Commission unless and until they are made part of the public record or the Commissioner otherwise declares. This does not preclude Commission counsel from producing a document to a proposed witness prior to the witness giving his or her testimony, as part of the investigation being conducted, or in respect of to an interview pursuant to Rule 19.

(b) Witnesses

30. All Government entities, agencies and officials and all witnesses shall cooperate fully with the Commission and shall make available all documents and witnesses relevant to the mandate of the Commission.

31. Witnesses who testify will give their evidence at a hearing under oath or upon affirmation.

32. Commission counsel may issue and serve a subpoena or summons upon each witness before he or she testifies. A witness may be called more than once.

33. Witnesses are entitled to have their own counsel present while they testify. Counsel for a witness will have standing for the purpose of that witness' testimony to make any objections thought appropriate and for other purposes set out in these Rules.

34. Parties and intervenors are requested to advise Commission counsel of the names, addresses and telephone numbers of all witnesses they wish to have called and, if possible, to provide summaries of the information the witnesses may have.

35. If the proceedings are televised, applications may be made for an order that the evidence of a witness not be televised or broadcast.

(c) Oral Examination

36. In the ordinary course Commission counsel will call and question witnesses who testify at the Inquiry. Counsel for a party may apply to the Commissioner to lead a particular witness' evidence in-chief. If counsel is granted the right to do so, examination shall be confined to the normal rules governing the examination of one's own witness in court proceedings, unless otherwise directed by the Commissioner.

37. Commission counsel have a discretion to refuse to call or present evidence.

38. The order of examination in the ordinary course will be as follows:

    (a) Commission counsel will lead the evidence from the witness. Except as otherwise directed by the Commissioner, Commission counsel are entitled to ask both leading and non-leading questions. Commission counsel have an obligation to ascertain the truth and are free to test and challenge the witness or evidence (cross-examination);

    (b) Parties will then have an opportunity to cross-examine the witness to the extent of their interest. The order of examination will be determined by the parties and, if they are unable to reach agreement, by the Commissioner;

    (c) After the examinations in paragraph (b), counsel for a witness may then examine the witness. Except as otherwise directed by the Commissioner, counsel for the witness is entitled to ask both leading and non-leading questions;

    (d) Commission counsel will have the right to re-examine last.

39. After a witness has been sworn or affirmed at the commencement of giving evidence, no counsel other than Commission counsel may speak to a witness about the evidence that he or she has given until the evidence of such witness is complete except with the permission of the Commissioner. Commission counsel

may not speak to any witness about his or her evidence while the witness is being cross-examined by other counsel.

40. When Commission counsel indicate that they have called the witnesses whom they intend to call in relation to a particular issue, a party may then apply to the Commissioner for leave to call a witness whom the party believes has further evidence relevant to that issue. If the Commissioner is satisfied that the evidence of the witness is needed, Commission counsel shall call the witness, subject to Rule 36.

(d) Use of Documents at Hearings

41. In advance of a witness' testimony, Commission counsel will endeavour to provide to the parties and the intervenors having an interest in the subject matter of the proposed evidence documents associated with the witness upon execution of a confidentiality undertaking by such party or intervene, and his or her counsel. Such undertakings will be of no force regarding any document or information once it has become an exhibit. The Commissioner may, upon application, release any party or intervenor in whole or in part from the provisions of the undertaking in respect of any particular document or other information.

42. Parties shall provide Commission counsel with any documents that they intend to file as exhibits or otherwise refer to during the hearings at the earliest opportunity, and in any event shall provide such documents to Commission counsel no later than two business days before the document will be referred to or filed at the hearing.

43. Before using a document for purposes of cross-examination, counsel shall provide a copy to the witness and to all parties having an interest in the subject matter of the proposed evidence not later than two business days prior to the commencement of that witness' testimony.

(e) Personal Confidentiality

44. Upon application, the Commissioner may make an order for a grant of "Personal Confidentiality", aimed at protecting the identity of a witness. For the purposes of the Factual Inquiry, Personal Confidentiality shall include the right of the witness to have his or her identity disclosed only by way of non-identifying initials, and, if the Commissioner so rules, the right to testify before the Commission *in camera*, together with any other privacy measures which the Commissioner grants.

45. Upon application, the Commissioner may make an order to conduct hearings *in camera* when he is of the opinion that intimate financial, personal or other matters are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure outweighs the desirability of adhering to the general principle that the hearings should be open to the public.

46. A witness who is granted Personal Confidentiality will not be identified in the public records and transcripts of the hearing except by non-identifying initials, and the public transcripts may be redacted to exclude any identifying details. Any reports of the Commission using the evidence of witnesses who have been

granted Personal Confidentiality will use non-identifying initials only, and may exclude reference to identifying details.

47. Media reports relating to the evidence of a witness granted Personal Confidentiality shall avoid references that might reveal the identity of the witness. No photographic or other reproduction of the witness shall be made either during the witness' testimony or upon his or her entering and leaving the site of the Inquiry.

48. Any witness who is granted Personal Confidentiality may either swear an oath or affirm to tell the truth using the non-identifying initials given for the purpose of the witness' testimony.

49. Any party, intervenor or witness may apply to the Commissioner to have intimate financial or personal information that is not relevant to the subject matter of the Inquiry redacted from documents proposed to be introduced into evidence and may apply to the Commissioner to have the issue heard at an *in camera* hearing.

50. All media representatives shall be deemed to undertake to adhere to the rules respecting Personal Confidentiality. A breach of these Rules by a media representative shall be dealt with by the Commissioner as he sees fit.

(f) Access to Evidence

51. All evidence shall be categorized and marked P for public sittings and C for sittings *in camera.*

52. Copies of the P transcript of evidence will be made available on the Inquiry's website. One copy of the P transcript and the P exhibits of the public hearings will be made available for public review at the Commission offices.

53. Only those persons authorized by the Commission, in writing, shall have access to C transcripts and exhibits.

PART II
POLICY REVIEW

A. GENERAL

54. The Policy Review will proceed in four phases:

(a) The Commission will publish a consultation paper (the "Consultation Paper"). The Consultation Paper will examine ethical rules or guidelines that would currently cover the business and financial dealings concerning the activities of politicians as they transition from office or after they leave office, and procedures of the Privy Council Office applicable in the circumstances in this case, which might serve as a basis for an assessment of whether they are sufficient or whether there should be additional ethical rules, guidelines or procedures applicable in such situations.

(b) The Commission will receive submissions in writing from members of the public (the "Public Submissions") dealing with any matter related to the Policy Review including comments on any matter raised in the Consultation Paper and including specific proposals for the recommendations to be made by the Commissioner.

(c) The Commissioner, in his discretion, may authorize the commissioning of expert research papers, and/or the convening of Expert Policy Forums for use in the preparation of the recommendations to be made by the Commissioner.

(d) The Commissioner will convene public and private consultations (the format of which may vary) to hear submissions from parties and intervenors on the matters raised in the Policy Review.

B. CONSULTATION PAPER

55. The Commission will publish the Consultation Paper on the Commission's web site.

C. PUBLIC SUBMISSIONS

56. Any member of the public and any party or intervenor may make a Public Submission, in writing, to the Commission dealing with any matter related to the Policy Review including comments on any matter raised in the Consultation Paper.

57. The Commissioner will set a deadline by which all Public Submissions must be received.

D. EXPERT POLICY FORUMS

58. Where the Commissioner convenes Expert Policy Forums for use in the preparation of the recommendations to be made by the Commissioner, the Commissioner may modify the Rules for oral examination of witnesses applicable to Part I – Factual Inquiry as he deems appropriate, so as to allow persons with standing in relation to the Policy Review to participate appropriately in relation to the evidence of the panel in question.

E. CONSULTATIONS

59. Once all Public Submissions have been reviewed, the Commissioner will convene a public consultation or consultations relating to the major topics addressed in the Policy Review. The format of the public consultations will be tailored to the topics discussed, and may vary.

60. The Commissioner will determine whether, on what terms and on what basis persons who have submitted a written Public Submission may participate in the public consultations.

61. The public consultations shall be recorded.

62. At his discretion, the Commissioner may also conduct private consultations.

F. STANDING – POLICY REVIEW

63. A person may be granted full or partial standing as a party by the Commissioner if the Commissioner is satisfied that the person is directly and substantially affected by the mandate of the Policy Review or portions thereof. Persons with party standing are referred to as parties in these Rules.

64. The Commissioner may grant intervenor standing to persons who satisfy the Commissioner that they have a genuine concern about issues raised by the Policy Review and have a particular perspective or expertise that may assist the Commissioner. Persons with intervenor standing are referred to as intervenors in these Rules.

65. The Commissioner will determine on what terms and in which parts of the Policy Review a party or intervenor may participate, and the nature and extent of such participation.

66. Persons who apply for standing will be required to provide written submissions explaining why they wish standing, and how they propose to contribute to the Policy Review. Persons who apply for standing will also be given an opportunity to appear in person before the Commissioner in order to explain the reasons for their application.

67. The Commissioner may direct that a number of applicants share in a single grant of standing.

G. FUNDING – POLICY REVIEW

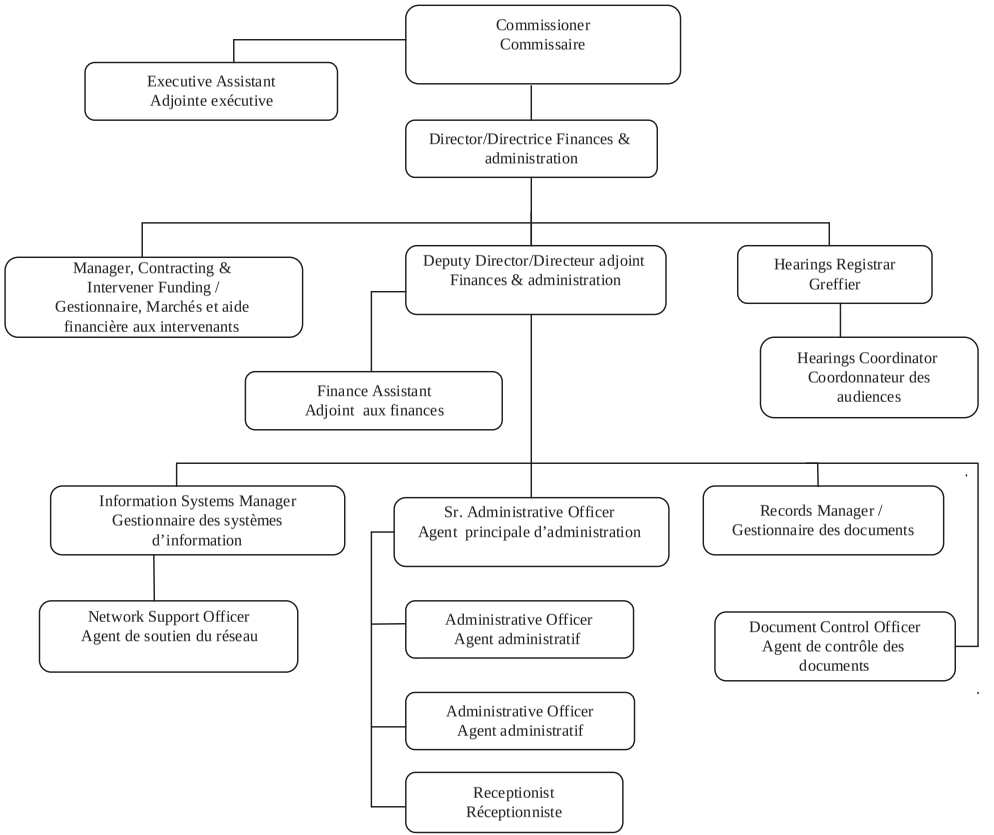
68. The Commissioner may recommend funding for a party or intervenor to the extent of their interest, where in the Commissioner's view the party or intervenor would not otherwise be able to participate in the Policy Review.

69. A party or intervenor seeking funding shall apply to the Commissioner in writing, demonstrating that he or she does not have sufficient financial resources to participate in the Policy Review without such funding.

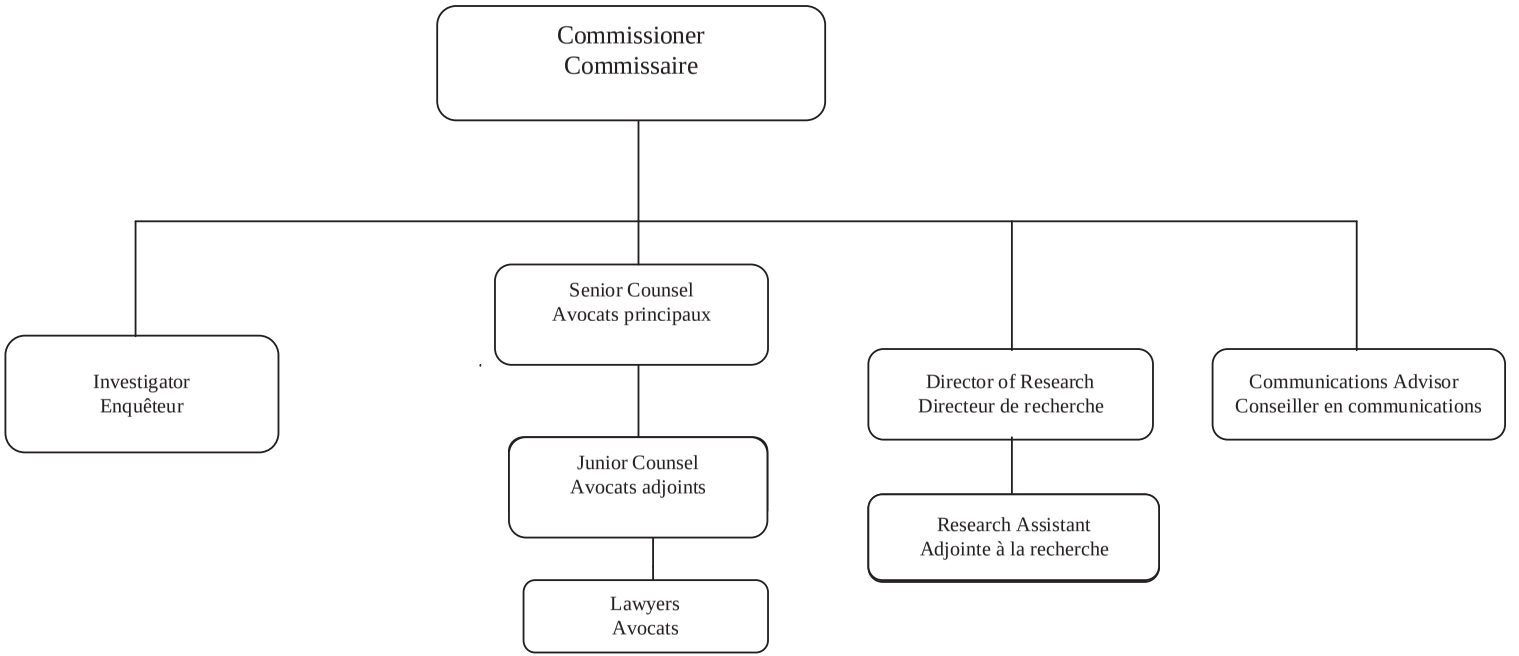
70. Where the Commissioner's funding recommendation is accepted, funding shall be in accordance with terms and conditions approved by the Treasury Board respecting rates of remuneration and reimbursement and the assessment of accounts.

Appendix 3: Commission Organization Charts

Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney
Commission d'enquête concernant les allégations au sujet des transaction financières et commerciales entre Karlheinz Schreiber et le très honorable Brian Mulroney



Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney
Commission d'enquête concernant les allégations au sujet des transaction financières et commerciales entre Karlheinz Schreiber et le très honorable Brian Mulroney



Appendix 4: Sample Confidentiality Undertakings

Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney

Commission d'enquête concernant les allégations au sujet des transactions financières et commerciales entre Karlheinz Schreiber et le très honorable Brian Mulroney

CONFIDENTIALITY UNDERTAKING
(Commission Counsel, Staff and Service Providers)

I acknowledge that during the course of my engagement by the Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney (the "Commission") I may become privy to documents and information that are confidential to the Commission, including but not limited to documents and information produced to and in the course of the Inquiry and information about the operation, strategy or deliberations of the Inquiry, the Commissioner and or Commission counsel (collectively, "Confidential Information"). For the purposes of this Undertaking, "documents" is intended to have a broad meaning, and includes the following formats: written, electronic, audiotape, videotape, digital reproductions, photographs, maps, graphs, microfiche and any data and information recorded or stored by means of any device.

Confidential Information does not include information that is in the public domain (provided that I was not responsible, directly or indirectly, for the fact that such Confidential Information has entered the public domain without the Inquiry's express consent); or that I am required to disclose pursuant to, but only to the extent required by, law or an order issued by a court of competent jurisdiction.

I undertake that I will not, directly or indirectly, use any Confidential Information during or after the Inquiry except as required to carry out my duties for the Inquiry, and will not in any event or at any time use any Confidential Information for my own benefit. I further undertake to hold any and all Confidential Information in absolute confidence at all times. I shall not reproduce or disclose any Confidential Information during or after the term of my engagement by the Inquiry.

_____
Date of Execution

_____ _____
Print Name Signature

Oliphant Commission
427 Laurier Avenue West, Suite 400
P.O. Box 2740 Station D
Ottawa Canada K1P 5W7
Phone: (613) 995-0756
Fax: (613) 995-0785

Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney

Commission d'enquête concernant les allégations au sujet des transactions financières et commerciales entre Karlheinz Schreiber et le très honorable Brian Mulroney

CONFIDENTIALITY UNDERTAKING
(Experts)

I undertake to the Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney (the "Commission") that any and all documents or information that are produced to me in connection with the Commission's proceedings (collectively, "Commission Documents") will not be used by me for any other purpose other than those proceedings. I further undertake that I will not disclose any Commission Documents to anyone, including the draft versions of any expert report prepared by me for the Commission. In this Undertaking, "documents" is intended to have a broad meaning, and includes the following formats: written, electronic, audiotape, videotape, digital reproductions, photographs, maps, graphs, microfiche and any data and information recorded or stored by means of any device. I will keep under my control at all times all Commission Documents that have been disclosed to me.

I understand that this Undertaking will have no force or effect with respect to any Commission Document that becomes part of the public proceedings of the Commission, or to the extent that the Commissioner may release me from the Undertaking contained herein with respect to any Commission Document. For greater certainty, a Commission Document shall become part of the public proceedings only upon it being made an exhibit at a public session of the Inquiry.

With respect to those Commission Documents that remain subject to this Undertaking at the end of the Inquiry, I further understand that all such Commission Documents will be collected from me by Commission counsel who disclosed them to me and I agree to surrender forthwith upon request by Commission counsel all such Commission Documents to him or her.

_____
Date of Execution

_____
Print name of Expert

_____
Signature of Expert

_____
Print name of person witnessing the execution of this Undertaking

_____
Signature of person witnessing the execution of this Undertaking

Oliphant Commission
427 Laurier Avenue West, Suite 400
P.O. Box 2740 Station D
Ottawa Canada K1P 5W7
Phone: (613) 995-0756
Fax: (613) 995-0785

CONFIDENTIALITY UNDERTAKING
(Parties, Intervenors and Witnesses Represented By Counsel)

I undertake to the Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney (the "Commission") that any and all documents or information that are produced to me in connection with the Commission's proceedings (collectively, "Commission Documents") will not be used by me for any other purpose other than those proceedings. I further undertake that I will not disclose any Commission Documents to anyone. In this Undertaking, "documents" is intended to have a broad meaning, and includes the following formats: written, electronic, audiotape, videotape, digital reproductions, photographs, maps, graphs, microfiche and any data and information recorded or stored by means of any device. I will keep under my control at all times all Commission Documents that have been disclosed to me.

I understand that this Undertaking will have no force or effect with respect to any Commission Document that becomes part of the public proceedings of the Commission, or to the extent that the Commissioner may release me from the Undertaking contained herein with respect to any Commission Document. For greater certainty, a Commission Document shall become part of the public proceedings only upon it being made an exhibit at a public session of the Inquiry.

With respect to those Commission Documents that remain subject to this Undertaking at the end of the Inquiry, I further understand that all such Commission Documents will be collected from me by the lawyer acting as my counsel who disclosed them to me and I agree to surrender forthwith upon request by my counsel all such Commission Documents to him or her.

_____
Date of Execution

_____	_____
Print name of Party, Intervenor or Witness	Signature of Party, Intervenor or Witness
_____	_____
Print name of person witnessing the execution of this Undertaking	Signature of person witnessing the execution of this Undertaking

CONFIDENTIALITY UNDERTAKING
(Counsel to Parties, Intervenors and Witnesses)

I am counsel of record to _____.

I undertake to the Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney (the "Commission") that I will use any and all documents or information that are produced to me in connection with the Commission's proceedings (collectively, "Commission Documents") exclusively for duties performed in respect of those proceedings. I will keep under my control at all times all Commission Documents that have been provided to me, except for disclosure to persons as provided for herein.

I further undertake that I will not disclose any Commission Documents to anyone for whom I do not act, and will only disclose Commission Documents to a person for whom I act upon the person giving the written undertaking annexed hereto. In the event I act for a coalition, I will disclose Commission Documents to any person who is a member of that coalition only upon the person giving the written undertaking annexed hereto.

In this Undertaking, "documents" is intended to have a broad meaning, and includes the following formats: written, electronic, audiotape, videotape, digital reproductions, photographs, maps, graphs, microfiche and any data and information recorded or stored by means of any device.

I understand that this Undertaking will have no force or effect with respect to any Commission Document that becomes part of the public proceedings of the Commission, or to the extent that the Commissioner may release me from the Undertaking contained herein with respect to any Commission Document or information. For greater certainty, a Commission Document shall become part of the public proceedings only upon it being made an exhibit at a public session of the Inquiry.

With respect to Commission Documents that remain subject to this Undertaking at the end of the Inquiry, I undertake that I will, within 10 days after the delivery of the Commission report by the Commissioner to the Governor in Council, either destroy all such Commission Documents and provide a certificate of destruction to the Commission or return all such Commission Documents to the Commission.

I further undertake that I will, within 10 days of the conclusion of the hearings in Part I – Factual Inquiry, collect for destruction or return to the Commission all Commission Documents from anyone to whom I have disclosed any Commission Documents. If for any reason I am unable to

collect such Commission Documents within the time specified, I will forthwith advise the Commission in writing.

Date of Execution

Print Counsel's name

Counsel's Signature

Date of Execution

Print Counsel's name

Counsel's Signature

Date of Execution

Print Counsel's name

Counsel's Signature

Date of Execution

Print Counsel's name

Counsel's Signature

Date of Execution

Print Counsel's name

Counsel's Signature

CONFIDENTIALITY UNDERTAKING
(Parties, Intervenors and Witnesses Not Represented By Counsel)

I undertake to the Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney (the "Commission") that any and all documents or information that are produced to me in connection with the Commission's proceedings (collectively, "Commission Documents") will not be used by me for any other purpose other than those proceedings. I further undertake that I will not disclose any Commission Documents to anyone. In this Undertaking, "documents" is intended to have a broad meaning, and includes the following formats: written, electronic, audiotape, videotape, digital reproductions, photographs, maps, graphs, microfiche and any data and information recorded or stored by means of any device. I will keep under my control at all times all Commission Documents that have been disclosed to me.

I understand that this Undertaking will have no force or effect with respect to any Commission Document that becomes part of the public proceedings of the Commission, or to the extent that the Commissioner may release me from the Undertaking contained herein with respect to any Commission Document. For greater certainty, a Commission Document shall become part of the public proceedings only upon it being made an exhibit at a public session of the Inquiry.

With respect to those Commission Documents that remain subject to this Undertaking at the end of the Inquiry, I further understand that all such Commission Documents will be collected from me by Commission counsel and I agree to surrender forthwith upon request by Commission counsel all such Commission Documents to him or her.

_____
Date of Execution

_____	_____
Print name of Party, Intervenor or Witness	Signature of Party, Intervenor or Witness
_____	_____
Print name of person witnessing the execution of this Undertaking	Signature of person witnessing the execution of this Undertaking

CONFIDENTIALITY UNDERTAKING
GOVERNMENT OF CANADA
(Parties, Intervenors and Witnesses)

I undertake to the Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney (the "Commission") that any and all documents or information that are produced to me in connection with the Commission's proceedings (collectively, "Commission Documents") will not be used by me for any other purpose other than those proceedings. I further undertake that I will not disclose any Commission Documents to anyone. In this Undertaking, "documents" is intended to have a broad meaning, and includes the following formats: written, electronic, audiotape, videotape, digital reproductions, photographs, maps, graphs, microfiche and any data and information recorded or stored by means of any device. I will keep under my control at all times all Commission Documents that have been disclosed to me.

I understand that this Undertaking will have no force or effect with respect to any Commission Document that becomes part of the public proceedings of the Commission, or to the extent that the Commissioner may release me from the Undertaking contained herein with respect to any Commission Document. For greater certainty, a Commission Document shall become part of the public proceedings only upon it being made an exhibit at a public session of the Inquiry.

With respect to those Commission Documents that remain subject to this Undertaking at the end of the Inquiry, I further understand that all such Commission Documents will be collected from me by the lawyer acting as my counsel who disclosed them to me and I agree to surrender forthwith upon request by my counsel all such Commission Documents to him or her.

This undertaking is signed subject to undersigned's obligations under the Access to Information Act, Privacy Act and Library and Archives of Canada Act.

_____
Date of Execution

_____	_____
Print name of Party, Intervenor or Witness	Signature of Party, Intervenor or Witness
_____	_____
Print name of person witnessing the execution of this Undertaking	Signature of person witnessing the execution of this Undertaking

Appendix 5: Exhibit List

Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney/ Commission d'enquête concernant les allégations au sujet des transactions financières et commerciales entre Karlheinz Schreiber et le très honorable Brian Mulroney			
Exhibit List/Liste des pièces			
Exhibit/ Pièce	**Date**	**Filed by/ Deposée par**	**Description**
P-1	Mar. 30, 2009	E. Roitenberg	Binder containing 14 documents in support of the testimony of William McKnight.
P-2	Mar. 30, 2009	G. Battista	Binder containing 30 documents in support of the testimony of Marc Lalonde.
P-3	March 30, 2009	G. Pratte	Binder containing 42 documents in support of the testimony of Marc Lalonde.
P-4	March 31, 2009	E. Roitenberg	Binder containing 6 documents in support of the testimony of Elizabeth Moores.
P-5	March. 31, 2009	P. Vickery	Binder containing 5 documents in support of the testimony of Elizabeth Moores.
P-6	March. 31, 2009	E. Roitenberg	Binder containing 13 documents in support of the testimony of Derek Burney.
P-7(1)	April 14, 2009	R. Wolson, Q.C.	Binder containing 104 documents (tab 1 to 104) in support of the testimony of Karlheinz Schreiber.
P-7(2)	April 14,2009	R. Wolson, Q.C.	Binder containing 42 documents (tab 105 to 147) in support of the testimony of Karlheinz Schreiber.
P-7(3)	April 14,2009	R. Wolson, Q.C.	Binder containing 33 miscellaneous documents in support of the testimony of K. Schreiber.
P-7(4)	April 14,2009	R. Wolson, Q.C.	Binder containing 44 letters between B.Mulroney and K.Schreiber in support of the testimony of K. Schreiber.
P-7(5)	April 14,2009	R. Wolson, Q.C.	Binder of 25 documents (letters between S. Harper & K. Schreiber in support of the testimony of K. Schreiber
P-8	April 15,2009	R. Wolson, Q.C.	Summary of interview of Karlheinz. Schreiber held on March 24, 2009. **(Originally filed as "C" by Richard Wolson, Q.C. - April 14, 2009)**
P-9	April 16, 2009	G. Pratte	Binder containing 47 documents filed in support of the cross-examination of K. Schreiber.
P-10	April 16, 2009	G. Pratte	Letter to A. MacEachen from K. Schreiber dated June 13, 1995.
P-11	April 16, 2009	G. Pratte	Letter to K. Schreiber from Allan MacEachen dated August 10, 1995.
P-12	April 16, 2009	G. Pratte	Article from Greg McArthur of the Globe and Mail dated November 8, 2007.
P-13	April 17, 2009	R. Houston	Agenda of K. Schreiber for the period of November 10 to 29, 1994.
P-14	April 20, 2009	N. Brooks	Binder containing 6 documents filed in support of the testimony of Patrick MacAdam.
P-15	April 20, 2009	N. Brooks	Report of the P.C.O. on the Executive Correspondence Procedures and the handling of letters from K. Schreiber to P.M. Stephen Harper from June 2006 to September 2007 - Including Appendix 7 & Appendix 8
P-16	April 20, 2009	N. Brooks	Report of the P.M.O. on the Prime Minister's correspondence unit procedures & the handling of letters from K. Schreiber to S. Harper from June 2006 to September 2007.
P-17	April 20, 2009	N. Brooks	Binder containing 31 documents in support of the testimony of Donald Smith and Sheila Powell.
P-18	April 21, 2009	E. Roitenberg	Binder containing 53 documents in support of the testimony of Gregory Alford.
P-19	April 21, 2009	F. Grondin	Binder containing 7 documents in support of the cross-examination of Gregory Alford.
P-20	April 21, 2009	G. Battista	Agenda of Prime Minister Mulroney for the month of June 1993.
P-21	April 21, 2009	G. Battista	Binder containing 17 documents in support of the testimony of Harry Swain.
P-22	April 22, 2009	E. Roitenberg	Letter to E. Greenspan from R. Hladun dated January 26, 2000.
P-23	April 22, 2009	E. Roitenberg	Letter to Daniel Henry (CBC) from R. Hladun dated March 17, 2005.
P-24	April 22, 2009	E. Roitenberg	Memo to S. Wakin from R. Hladun of March 24, 2005 re: e-mail from K. Schreiber sent to H. Cashore.
P-25	April 23, 2009	R. Wolson, Q.C.	Binder containing 23 Tabs - documents in support of Mr. William Kaplan's testimony

Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney/
Commission d'enquête concernant les allégations au sujet des transactions financières et commerciales entre Karlheinz Schreiber et le très honorable Brian Mulroney

Exhibit List/Liste des pièces

Exhibit/ Pièce	Date	Filed by/ Deposée par	Description
P-26	April 23, 2009	Guy Pratte	Statement of Claim, dated November 20, 1995, unofficial translation, filed in Superior Court of Quebec
P-26 (a)	April 23, 2009	Guy Pratte	Original Statement of Claim, November 20, 1995, filed in Superior Court of Quebec
P-27	April 23, 2009	Guy Pratte	Globe and Mail, edition November 20, 1995, quoting Harvey Yarosky, a member of Mr. Mulroney's legal team
P-28	April 23, 2009	G. Battista	Documents in support of Mr. Paul Terrien's testimony - Binder containing Tabs 1 - 3
P-29	April 27, 2009	R. Wolson, QC	Documents in support of Mr. Fred Doucet's Testimony - Binder 1 of 2 containing Tab 1 - Tab 60
P-30	April 27, 2009	R. Wolson, QC	Documents in support of Mr. Fred Doucet's Testimony - Binder 2 of 2 containing Tab 1 - Tab 17
P-31	April 29, 2009	R. Wolson, QC	Documents in support of The Right Honourable Kim Campbell's testimony - 1 Binder containing Tabs 1 - 8
P-32	April 29, 2009	E. Roitenberg	Documents in support of The Honourable Perrin Beatty's testimony - 1 Binder containing Tabs 1 - 29
P-33	April 30, 2009	N. Brooks	Documents in support of Mr. Norman Spector's testimony - 1 Binder containing Tabs 1-44
P-34	April 30, 2009	N. Brooks	Hand written notes from Mr. Gillespie - meeting held on November 2, 1990 **(Originally filed as "G" by Nancy Brooks - April 30, 2009)**
P-35	May 4, 2009	G.Battista	Documents au soutien du témoignage de Luc Lavoie - Volume 1 de 1 - Onglets 1 - 21
P-36	May 4, 2009	F. Grondin	Émission Spéciale - 15h31 - LE 18 NOVEMBRE 1996 RDI canal 19 Montréal Réseau de l'information - CONFÉRENCE DE PRESSE DES AVOCATS DE BRIAN MULRONEY
P-37	May 4, 2009	E. Roitenberg	Documents in support of The Honourable Elmer MacKay's testimony - Binder containing Tabs 1-56
P-38	May 5, 2009	E. Roitenberg	Documents in support of Senator Lowell Murray's testimony - 1 Binder containing Tabs 1-47
P-39	May 5, 2009	G. Battista	Documents in support of Mr. Paul Tellier's testimony - 1 Binder containing Tabs 1-44
P-40	May 6, 2009	E. Roitenberg	Navigant Consulting - Funds Tracing Report
P-41	May 6, 2009	E. Roitenberg	Navigant Consulting - Slide Presentation
P-42	May 6, 2009	E. Roitenberg	Documents Relied Upon - Appendix 3 to Navigant Consulting Report - 2 Binders containing Tabs 1 - 38
P-43	May 12, 2009	Guy Pratte	Documents in support of The Right Honourable Brian Mulroney - Binder 1 containing Tabs 1 - 69
P-44	May 12, 2009	Guy Pratte	Documents in support of The Right Honourable Brian Mulroney - Binder 2 containing Tabs 70 - 127
P-45	May 12, 2009	Guy Pratte	Documents in support of The Right Honourable Brian Mulroney - Binder 3 containing Tabs 1 - 20
P-46	May 12, 2009	Guy Pratte	Additional Documents - Examination of The Right Honourable Brian Mulroney - containing Tabs 1 - 26
P-47(A)	May 12, 2009	Guy Pratte	Sales brochure - light vehicle "Thyssen Henschel, Henschel Defense Technology - TH495 Infantry Combat Vehicle (ICV)
P-47 (B)	May 12, 2009	Guy Pratte	Sales brochure - dark vehicle "Thyssen- Henschel, Henschel Defense Technology - TH495
P-47 (C)	May 12, 2009	Guy Pratte	Thyssen Project in Canada (August 26, 1993)
P-47 (D)	May 12, 2009	Guy Pratte	Statement of Claim dated August 20, 1993 before the Ontario Court of Justice

Exhibit List/Liste des pièces

Exhibit/ Pièce	Date	Filed by/ Deposée par	Description
P-48	May 13, 2009 June 3, 2009	Guy Pratte E. Roitenberg	Transcript Examination for Discovery - The Right Honourable Brian Mulroney - document entitled "Interrogatoire avant défense" Le Très Honorable Brian Mulroney - Le 17 avril 1996 **(Originally filed as "B" by Richard Wolson, Q.C. - April 14, 2009)** Transcript Examination for Discovery - The Right Honouraable Brian Mulroney - document entitled "Interrogatoire avant défense" Le Très Honorable Brian Mulroney - Le 19 avril 1996 **(Originally filed as "B" by Richard Wolson, Q.C. - April 14, 2009)**
P-49	May 13, 2009	Guy Pratte	Notice of Assessment and amended income tax returns, for The Rt. Hon. Brian Mulroney, for the years '96, '97 and '98, documents entitled "Avis de nouvelle cotisation et Déclaration de revenus des particuliers"
P-50	May 14, 2009	R. Wolson, Q.C.	Documents in support of The Rt. Honourable Brian Mulroney's testimony - Compendium of Contacts
P-51	May 19, 2009	R. Wolson, Q.C.	Documents in support of The Rt. Hon. Brian Mulroney's testimony - Compendium of telephone contacts
P-52	May 20, 2009	F. Grondin	Documents in support of the cross-examination of Wayne Adams, Canada Revenue Agency
P-53	May 20, 2009	F. Grondin	Analysis/Commentary - Canada Tax Service - McCarthy, Tetrault, Analysis, 12 (1) 9a), (b) Date: 2005-11-30
P-54	May 20, 2009	F. Grondin	2002 CTJ 4 p.1239 The Taxation of Prepaid Income (Joseph Frankovic)
P-55	May 21, 2009	N. Brooks	Summary of Interview of Jean-Pierre Kingsley - Interview held on April 24, 2009
P-56	May 21, 2009	N. Brooks	Transcript of the interview of the Honourable Jean Charest held on March 9, 2009
P-57	May 21, 2009	N. Brooks	Canada Border Services Agency - Handwriting Analysis Report - Letter May 5, 2009, and Curriculum Vitae of Samiah Ibrahim - Forensic Document Examiner-**(Originally filed as "I" by R. Wolson, Q.C. - May 7, 2009)**
P-58	May 21, 2009	G. Battista	The Financial and Estate Planning Council of Montrreal - Dealing with Revenue Canada, Taxation on Voluntary Disclosures, January 19, 1998
P-59	May 21, 2009	.G Battista	Présentation sur les divulgations volontaires, 14 juin 2000, Jean-Louis Lussier, Agence des douanes et du revenu du Canada
P-60	May 21, 2009	G. Battista	Présentation sur les divulgations volontaires, Yvon Tétreault, chef de service, Service d'enquête sur les fraudes "A" , Revenu Québec, 19 septembre 2000
P-61	May 21, 2009	E. Roitenberg	Documents in support of Mr. Fred Bild's testimony
P-62	June 3, 2009	E. Roitenberg	Binders 1-3 - Eurocopter Transcript - Karlheinz H. Schreiber Testimony **(Originally filed as "A" by Richard Wolson, Q.C. - April 14, 2009)**
P-63	June 3, 2009	E. Roitenberg	Summary of Gist of Interview of William Kaplan, conducted on March 3, 2009 by Richard Wolson, Q.C. **(Originally filed as E" by Richard Wolson, Q.C. April 21, 2009)**
P-64	June 3, 2009	E. Roitenberg	Interview of Mr. Fred Doucet held in Ottawa, March 10, 2009 **(Originally filed as "F" by Richard Wolson, Q.C. April 27, 2009)**
P-65	June 3, 2009	E. Roitenberg	Résumé de l'entrevue avec Luc Lavoie (Freanch and English copy) **(Originally filed as "H" by Giuseppe Battista May 4, 2009)**
P-66	June 3, 2009	E. Roitenberg	Agreed Statement of Facts - John H. Sims, Deputy Attorney General of Canada, Department of Justice
P-67	June 3, 2009	E. Roitenberg	Interview of Stanley Hartt - conducted by telephone Tuesday, May 5, 2009 by Nancy Brooks
P-68	June 10, 2009	G. Battista	Report by the Canada Revenue Agency Pertaining to the Voluntary Disclosures Program for the Period Between 1993 - 2000.

Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney

Commission d'enquête concernant les allégations au sujet des transactions financières et commerciales entre Karlheinz Schreiber et le très honorable Brian Mulroney

NOTICE

The Honourable Jeffrey Oliphant has been appointed as Commissioner to conduct an inquiry into certain allegations respecting business and financial dealings between Karlheinz Schreiber and the Right Honourable Brian Mulroney. The Commissioner will convene hearings to assist him in investigating and reporting on the policy matters (the "policy review") that are included in the Commission's terms of reference. The terms of reference are available at www.oliphantcommission.ca

Applications by interested individuals, groups, governments and agencies for standing and funding for the policy review will be heard commencing at 9:30 a.m. on January 21, 22 and 23, 2009 at Victoria Hall, Bytown Pavilion, 111 Sussex Drive, Ottawa, Ontario. No evidence will be heard at the hearing.

Applicants for standing must demonstrate that they have a **direct and substantial interest** in the subject matter of the policy review. Applicants for funding must demonstrate that they do not have sufficient financial resources to participate in the policy review without such funding.

In order to be considered, applicants must submit applications for standing and funding in writing to the Inquiry either by delivering a copy by mail, courier or fax to the Commission offices at the address set out below, or by e-mail to inquiry.admin@oliphantcommission.ca, no later than 5:00 p.m. on Thursday January 15, 2009.

Those interested in applying for standing or funding should refer to the Commission's web site at www.oliphantcommission.ca for more information.

Oliphant Commission
427 Laurier Avenue West, Suite 400
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Canada

Commission of Inquiry into Certain Allegations
Respecting Business and Financial Dealings
Between Karlheinz Schreiber and
the Right Honourable Brian Mulroney

Commission d'enquête concernant les allégations
au sujet des transactions financières et commerciales
etre Karlheinz Schreiber et
le très honorable Brian Mulroney

PUBLIC NOTICE

The Honourable Justice Jeffrey Oliphant has been appointed as Commissioner to conduct an inquiry into certain allegations respecting business and financial dealings between Karlheinz Schreiber and the Right Honourable Brian Mulroney. The Commissioner will convene hearings to assist him in investigating and reporting on the factual matters (the "factual inquiry") included in the Commission's terms of reference. The terms of reference are available at www.oliphantcommission.ca

Applications by interested individuals, groups, governments and agencies for standing and funding will be heard commencing at 09:30 a.m. on October 2, Oct. 3, Oct. 6 and Oct. 7, 2008 at Victoria Hall, Bytown Pavilion, 111 Sussex Drive, Ottawa, Ontario. No evidence will be heard at this time.

Applicants for standing must demonstrate that they have a direct and substantial interest in the subject matter of the factual inquiry. Applicants for funding must demonstrate that they do not have sufficient financial resources to participate in the factual inquiry without such funding.

In order to be considered, applicants must submit applications for standing and funding in writing to the Inquiry either by delivering a copy by mail, courier or fax to the Commission offices at the address set out below, or by e-mail to inquiry.admin@oliphantcommission.ca, no later than 5 p.m. on Wednesday, September 24, 2008.

Persons with any information relating to the subject matter of the factual inquiry, including documents, the name and contact information for any person, or any other information relevant to the mandate of the Commission, are requested to submit such information to the Inquiry either by mail or fax to the Commission offices at the address set out below, or by e-mail to inquiry.admin@oliphantcommission.ca, as soon as possible.

Those interested in applying for standing or funding should refer to the Commission's website at www.oliphantcommission.ca for more information.

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Canada

Notice of Hearing on Standards of Conduct

A hearing will take place on Wednesday and Thursday, January 7 and 8, 2009 at the Bytown Pavilion, 111 Sussex Drive, Ottawa, Ontario, to receive submissions from the parties to the Inquiry concerning the standards that the Commissioner should apply in determining certain matters set out in paragraph (a) of the Inquiry's Terms of Reference.

The hearing will begin at 9 a.m. on Wednesday, January 7, 2009.

The Terms of Reference require the Commissioner to address certain standards of conduct as set out in paragraph (a), questions 11, 12 and 13 of the Terms of Reference, which read as follows:

> 11. Were these business and financial dealings appropriate considering the position of Mr. Mulroney as a current or former prime minister and Member of Parliament?
>
> 12. Was there appropriate disclosure and reporting of the dealings and payments?
>
> 13. Were there ethical rules or guidelines which related to these business and financial dealings? Were they followed?

Question 13 requires the Commissioner to make a finding whether there were "ethical rules and guidelines" which related to the business and financial dealings and, if so, whether they were followed. The Commissioner will be receiving evidence on these matters at the hearing in Part I, which is tentatively scheduled to start on February 9, 2009.

The Commissioner must also assess whether the business and financial dealings were "appropriate", considering Mr. Mulroney's position as a current or former prime minister or Member of Parliament. The Commissioner must determine as well whether there was "appropriate" disclosure and reporting of the dealings and payments. The Commissioner will be required to identify the applicable norms and standards in interpreting whether Mr. Mulroney's conduct was "appropriate" in the circumstances. Submissions are requested from the participants concerning the question of what "appropriate" means in the context of the terms of reference, questions 11 and 12.

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Participants who wish to make oral submissions at the hearing to be held on January 7 and 8, 2009 must, by no later than 5:00 p.m. EST on Friday, December 5, 2008, submit by e-mail to the Inquiry, at **inquiry.admin@oliphantcommission.ca**, and serve on other participants a written outline of their submissions. Participants who wish to respond in writing to other participants' outlines may do so, by e-mail to the Inquiry and to other participants, no later than 12:00 noon EST on Wednesday, December 17, 2008.

Following receipt of the written submissions, the Commissioner will issue a directive allocating time for oral submissions to each participant who has made written submissions.

November 12, 2008

Appendix 7

OPENING STATEMENT BY JUSTICE OLIPHANT AT HEARINGS OF STANDING/FUNDING APPLICATIONS

THURSDAY, OCTOBER 2, 2008

WELCOME

Good Morning. Bonjour Mesdames et Messieurs.

Welcome to the first session of this Inquiry. The purpose of today's hearing is to hear applications for standing and funding for Part One of the Inquiry. Part One will focus on factual questions relating to the business and financial dealings between Karlheinz Schreiber and the Right Honourable Brian Mulroney as set out in paragraph (a) sections 1 through 16 of the Terms of Reference. Before we begin with the applications for standing and funding, I would like to make some preliminary remarks.

INTRODUCTION

My name is Jeff Oliphant. I am a Judge of the Court of Queen's Bench of Manitoba, having been on that court for 23 years, approximately 18 of which I served as Associate Chief Justice.

By virtue of Order-in-Council 2008-1092, the Government of Canada appointed me to conduct an Inquiry under Part I of the *Inquiries Act* into certain allegations respecting certain business and financial dealings between Karlheinz Schreiber and the Right Honourable Brian Mulroney.

La Gouverneure générale en conseil m'a chargé de mener une enquête concernant les allégations au sujet des transactions financières et commerciales entre Karlheinz Schreiber et le très honorable Brian Mulroney.

THE INQUIRY

By virtue of two earlier Orders-in-Council, Dr. David Johnston, the President and Vice-Chancellor of the University of Waterloo, was appointed as a Special Advisor to the Prime Minister to conduct an independent review of certain allegations made about the business and financial dealings as between Messrs. Mulroney and Schreiber and to provide reports to the Prime Minister with his recommendations on the appropriate mandate for a public inquiry into those allegations.

Dr. Johnston submitted two reports. Dans ses rapports, Dr. Johnston a conclu que la question d'intérêt public dans la présente affaire reste la nécessité d'établir s'il y a eu violation des règles imposées aux titulaires de haute charge publique, et si ces règles sont adéquates sous leur forme actuelle.

Dr. Johnston a conclu aussi que certaines de ces allégations ont déjà fait l'objet d'examens ou d'enquêtes.

Dr. Johnston concluded that the public interest issue to which the allegations of financial dealings give rise is the integrity of Government and whether there was

a breach of the existing constraints on the activities of holders of high government office or, if not, whether there is a need for further constraints on former high office holders after they leave office. He recommended, further, that the inquiry be a focused inquiry into specific matters of legitimate public interest rather than a further, extensive examination of matters already considered by others.

The Terms of Reference of this Inquiry reflect the recommendations made by Dr. Johnston in his reports.

The mandate of the Inquiry is fixed by the Terms of Reference. As noted earlier, the Terms of Reference reflect the recommendations of Dr. Johnston that this be a focused inquiry, and incorporate the 17 questions as formulated by Dr. Johnston. Having reviewed the Terms of Reference carefully, I have concluded that this Inquiry is to focus upon the financial and business dealings of Messrs. Mulroney and Schreiber in relation to the Bear Head Project and the payments made to Mr. Mulroney by Mr. Schreiber in 1993 and 1994.

This Inquiry will be conducted in two parts. During Part One, I will hear testimony regarding the factual matters raised in the Terms of Reference.

Part Two will deal with the policy issues identified in the Terms of Reference.

The applications for standing and funding concerning Part Two of the Inquiry will not be dealt with today. They will be heard at a later date.

At this time, I propose to conduct all hearings in public. Following the Part One and Part Two hearings, I will prepare and submit my report to the government. Hopefully, that report will shine a light upon the factual issues that are of interest to both the public and the government and will make useful recommendations regarding the policy issues that have been referred to me.

RULES OF PROCEDURE AND PRACTICE

Each public inquiry establishes its own rules. As the Commissioner of this public inquiry, I have the authority to set the procedures and practices that will be followed by the Inquiry. My goal is to ensure that the process we follow will be fair. Commission counsel have drafted a set of procedural rules. Those draft procedural rules appear on the Commission's website.

I will invite those parties who are granted standing to make submissions respecting anything in the draft rules that they believe should be changed. After receiving comments on the draft rules from parties who are granted standing, I will finalize the rules. The final rules will be posted on the Commission's website.

WHAT AN INQUIRY IS

Let me briefly say what an Inquiry is and what it is not.

While this Inquiry has broad powers of subpoena, it is not a court of law. A public inquiry is not a trial. A public inquiry is meant to investigate and report upon matters of substantial public interest. I am not empowered to find anyone guilty of a criminal offence or liable for a civil law matter, nor does my mandate permit me to make any award of damages as may occur in a civil lawsuit.

I am committed to conducting this Inquiry independent of government. Having been a judge for 23 years, I am mindful of the fact that the need for me to be independent of the government in my capacity as Commissioner of this Inquiry is as crucial as the requirement that in a democracy, the judicial branch must be independent from the Executive and Legislative branches of government. Judicial independence as well as my being independent from government as Commissioner is for the benefit of the public.

I am also committed to conduct this Inquiry in a manner that is seen to be impartial and fair to all concerned. While it is true that this Commission cannot make findings of liability, either civil or criminal, I am sensitive to the fact that it

has the capacity to have an adverse impact on reputations. That is why I want to be fair to all who appear before this Commission as parties or witnesses.

That is also why, to the extent possible, I intend the Part One hearings of this Commission to be open and public. Enabling public access to the hearings of the Inquiry contributes, in my opinion, to both impartiality and fairness.

I have assembled an outstanding legal team to assist me with the work of this Commission. Richard Wolson, Q.C. of Winnipeg is the lead counsel. He is supported by three senior counsel, Nancy Brooks of Ottawa, Evan Roitenberg of Winnipeg and Giuseppe Battista of Montreal

I am pleased to see members of the media here today because not everyone can physically be present to attend the public hearings. It is through the media that most members of the public will learn what is transpiring on a day-to-day basis.

Given the nature and importance of these proceedings, during the course of this Inquiry, it would be improper for me to speak to the media. Commission counsel will not be granting interviews on any matters under investigation. Any media requests for information are to be directed to the commission's communications consultant, Barry McLoughlin.

I can assure members of the media that where appropriate, I will do whatever I am able to ensure that you have timely access to all public documents that are filed with and form part of the record of this Commission and to such other information to which you are entitled.

In terms of providing the public access to the workings of the Commission, we have established a website. The Commission's website can be found at www.oliphantcommission.ca.

STANDING HEARINGS

Today, I will be hearing applications to determine which individuals or organizations will be granted what is known as "standing" in Part One of the Inquiry, which will deal with the factual issues. I may grant an applicant one of two types of standing: party standing or intervenor standing.

For party standing, an applicant must demonstrate that it will be directly and substantially affected by the matters to be investigated in Part One of the Inquiry. I can grant either full or partial party standing, depending on the extent of the applicant's interest.

I may grant intervenor standing if the applicant satisfies me it has a genuine concern about issued raised by the factual inquiry and it has a particular perspective or expertise that may assist me in carrying out my mandate.

After I have heard all of the applications for standing, I will give each of the applicants an opportunity to comment upon whether they think any other applicant should or should not be granted standing.

Under the Terms of Reference, I am authorized to make a recommendation that funding be provided in accordance with terms and conditions approved by Treasury Board. Those terms and conditions have been posted on the Commission website. I will hear today from any applicant who wishes to apply for funding.

If I am unable to decide today whether or not standing ought to be granted to any one or more of the applicants, I will reserve my decision and provide to the parties, as soon as possible, a written decision on standing and, if applicable, on funding. I will ensure that the media and the public will be made aware of any decision on the day it is released. The decisions will be posted on the Commission's website.

We will now move to that part of today's proceedings where I will hear from applicants for standing and funding.

Appendix 8: Treasury Board, Rules for Participant Funding

September 19, 2008

Terms and Conditions
Contribution Program for Participant Funding
Commission of Inquiry into Certain Allegations
Respecting Business and Financial Dealings
Between Karlheinz Schreiber and the Right Honourable Brian Mulroney

Definitions

1. For the purposes of this Contribution Program, the following definitions apply:

   (a) **Commission** means the Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney.

   (b) **Commissioner** means the Honourable Jeffrey J. Oliphant.

   (c) **Participant** means a person or persons that have a substantial and direct interest in the subject matter of the Commission to whom the Commissioner has granted standing.

   (d) **Recipient** means a Participant recommended by the Commissioner to receive funding.

Purpose

2. The purpose of the Contribution Program is to provide, in accordance with the criteria set out herein, necessary funding to ensure that any Participant has access to legal counsel, but not to indemnify Participants of all costs incurred.

Authorities

3. The Commissioner is authorized by P.C. 2008-1092 of June 12, 2008 to make recommendations to the Clerk of the Privy Council for the provision of financial assistance to a Participant, who, in the Commissioner's view, would not otherwise be able to participate in the Commission.

4. The authority to initiate expenditures, commit funds and make payments will be determined in accordance with the Delegation of Financial Signing Authorities Chart of the Privy Council Office.

Exclusion

5. The Contribution Program excludes Participants who are receiving funding for the purposes of the Commission of Inquiry under the Treasury Board *Policy on Legal Assistance and Indemnification*.

Criteria

6. Participants seeking funding shall apply to the Commissioner in writing, within the specified time frame.

7. Participants seeking funding must satisfy the Commissioner that they do not have sufficient financial resources to participate in the Commission without financial assistance for legal counseling.

Eligible Expenditures

8. Eligible expenditures are restricted solely to legal costs, subject to the maximum aggregate number of hours recommended by the Commissioner and the limits set out herein, and exclude any other types of costs incurred by a Recipient.

(a) Legal Costs

(i) Counsel fees are paid in accordance with the fee schedule for the services of Participant Counsel set out below for services such as the preparation for and attendance at hearings, interviews, meetings and other occasions arranged or deemed necessary by the Commissioner, as well as both the preparation of submissions and the review of materials requested by the Commissioner. Inter-city travel time is paid at one-half the hourly rate.

Years from Call to Bar (calculated in calendar year)	**Maximum Hourly Rate** (limited daily to ten times the hourly rate)
Student / paralegal	$ 50
0-2	$ 75
3-4	$ 85
5-6	$ 95
7-8	$ 105
9-10	$ 115
11-12	$ 125
13-14	$ 135
15-16	$ 145
17-18	$ 155
19-20	$ 165
20 plus	$ 200

(iii) Inter-city travel expenses are paid in accordance with the Treasury Board Travel Directive.

(b) Limits

(i) Payment of counsel fees under the Contribution Program is limited to a maximum of 10 hours per day. Inter-city travel time is not included in the daily maximum.

(ii) Payment of counsel fees under the Contribution Program is, except in extraordinary circumstances, limited to one Senior Counsel and one Junior Counsel per Participant. For the purposes of this Program, the maximum rate allowable for Junior Counsel shall not exceed the authorized rate payable to a lawyer with 8 years of practice since becoming a member of the Bar.

(iii) Payment of counsel fees related to attendance at hearings under the Contribution Program is limited to the hearing days involving the interest of the particular Participant as determined by the Commissioner. Participants may claim legal costs for only one Counsel to attend any particular day of hearings unless otherwise authorized by the Commissioner.

(iv) Payment of counsel fees under the Contribution Program cannot exceed 100% of the total costs of legal services incurred by the Recipient when taking into account related funding from all sources. Recipients shall inform the Commissioner in writing as soon as possible of any other sources of funds they receive or will receive to pay for their legal costs in relation to the Commission.

(c) Application for Standing – Maximum Counsel Fees

Legal costs related to a person's application for standing may be claimed only if standing is granted. Funding shall not exceed a total of 10 hours for both preparation and attendance before the Commissioner. In extraordinary circumstances, funding may be granted to a maximum of 20 hours for both preparation and attendance before the Commissioner.

(d) Overpayments

Any overpayments are considered a debt due to the Crown and must be repaid by the Recipient. Interest will be charged on overdue repayments.

Recommendations

9. The Commissioner shall make his recommendations in writing to the Clerk of the Privy Council for review.

10. The Commissioner shall base his recommendations on the degree of participation appropriate to the Participant's interest.

11. The Commissioner shall, in making his recommendations, include the following elements to ensure that such recommendations are in compliance with the Terms and Conditions of the Contribution Program.

    (a) A confirmation that the person or persons were granted standing;
    (b) A confirmation that the Commissioner is satisfied that the person or persons would not be able to participate in the Commission without funding for legal counsel;
    (c) The number of junior and/or senior counsel, the number of hours, and the type of activities authorized;
    (d) Whether or not disbursement costs and travel costs will be reimbursed to the Participant's counsel.

12. The Commissioner shall not make his or her recommendations public before they have been reviewed by the Clerk of the Privy Council.

Contribution Agreements

13. A contribution agreement between the Privy Council Office and a Participant for whom funding has been recommended by the Commissioner must be prepared and signed prior to any payments being made.

Method of Payment

14. Prior to forwarding a claim for payment to the Privy Council Office, the Commissioner shall review accounts and certify in writing that the costs incurred are consistent with:

    (a) The interests of Participants as identified by the Commissioner;
    (b) The eligible expenditures;
    (c) The contribution agreement.

15. Recipients shall meet and continue to meet the specific terms and conditions of the individual contribution agreements prior to payments being made.

16. Payments are issued, on behalf of the Recipient, directly to the relevant legal counsel based on detailed statements of account, as validated by the Recipient.

17. Payments are made in accordance with the Treasury Board *Policy on Transfer Payments*.

18. Advance payments will not be made under this Contribution Program. Contributions are paid on the basis of eligible costs already incurred by a Recipient on presentation of invoices from legal counsel.

Due Diligence

19. The Commissioner, in tandem with the Clerk of the Privy Council, is responsible for ensuring that all departmental systems, procedures and resources for ensuring due diligence in approving payments under the Contribution Program and in verifying eligibility, management and administration of the Contribution Program are in place.

Audit Arrangements

20. Contribution agreements and related payments, in accordance with the requirements of Treasury Board *Policy on Transfer Payments*, are subject to audit to ensure that all conditions, both financial and non-financial have been met. Nothing in this audit provision shall require the Recipient or his Counsel to disclose solicitor-client communications to comply with an audit. The Crown may request an assessment of all accounts related to the Recipient's representation at the Commission, pursuant to the applicable rules and/or legislation for the taxing of bills in the jurisdiction in which the legal counsel is licensed to practice law.

21. In accordance with section 7.3.7 of the Treasury Board *Policy on Transfer Payments*, an independent "similar review" will be conducted on termination of the Commission to assess the progress made further to the lessons learned and the areas for improvement that were identified following the 2006 review of the contribution programs for the Arar and Gomery commissions.

22. The payment of any money under this Contribution Program is subject to an appropriation by Parliament for that fiscal year during which payment pursuant to this Contribution Program would be made and to the continuation of the Commission. In the event that departmental funding

levels are changed by Parliament, contribution payments under this Program may be reduced or cancelled.

Cost of Managing the Program

23. The funds for the contributions and the cost of managing the Contribution Program will be charged to the budget of the Commission.

Duration

24. The Contribution Program is effective for the duration of the Commission.

Appendix 9: Rulings on Applications for Standing and Funding in Part I

Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney

Commission d'enquête concernant les allégations au sujet des transactions financières et commerciales entre Karlheinz Schreiber et le très honorable Brian Mulroney

November 13, 2008

RULING AND RECOMMENDATIONS ON APPLICATION FOR FUNDING BY FRED DOUCET IN PART I OF THE INQUIRY

[1] At the hearing on October 2, 2008, I allowed an application for full party standing made by Fred Doucet ("Mr. Doucet") on the basis of his direct and substantial interest in the matters being investigated in Part I ("the Factual Inquiry") of this Commission of Inquiry.

[2] In his application, Mr. Doucet had also applied for funding for the Factual Inquiry pursuant to Rule 17 of the Draft *Rules of Procedure and Practice* of the Commission. I reserved my decision on that aspect of Mr. Doucet's application. The following are my reasons for deciding to recommend that funding be provided to Mr. Doucet.

[3] By virtue of paragraph (f) of the Terms of Reference set out in Order-in-Council 2008-1092 establishing the Commission, I am given the authority to recommend to the Clerk of the Privy Council that funding be provided to any person granted standing. Such recommendation must be in accordance with the terms and conditions approved by the Treasury Board to ensure the appropriate participation to any person granted standing. Before recommending funding, I must be of the view that the person would not otherwise be able to participate in the Inquiry. In my view, in order for a party with full party standing to participate in the Commission of Inquiry, that participation must be meaningful.

[4] Rules 16 to 18, inclusive, of the Commission's Draft *Rules of Procedure and Practice* provide for applications for funding such as that made by Mr. Doucet. They state:

> 16. The Commissioner may recommend funding for a party or intervenor to the extent of their interest, where in the Commissioner's view the party or intervenor would not otherwise be able to participate in the Factual Inquiry.
>
> 17. A party or intervenor seeking funding shall apply to the Commissioner in writing, demonstrating that he or she does not have sufficient financial resources to participate in the Factual Inquiry without such funding.
>
> 18. Where the Commissioner's funding recommendation is accepted, funding shall be in accordance with terms and conditions approved by the Treasury Board respecting rates of remuneration and reimbursement and the assessment of accounts.

[5] In support of his application for funding, Mr. Doucet filed with the Commission an affidavit sworn October 1, 2008.

[6] The uncontradicted evidence before me on this application is that Mr. Doucet is presently 69 years of age. He suffers from a heart condition for which he is being treated by a cardiologist and is on heavy medication.

[7] Mr. Doucet has carried on business as a government relations and business consultant for twenty years. The income Mr. Doucet presently earns from his business is substantially less than it was at one time. Mr. Doucet estimates that his business income in 2008 will be 25% less than it was in 2007. He projects that in 2009, his business income may well drop to zero.

[8] In addition to the income derived from his business, Mr. Doucet has pension income of $50,000.00 per year from government service, university teaching and the Canada Pension Plan. In addition to his pension income, Mr. Doucet has investment income that is intended for his retirement. It has not escaped my attention that, presently, there is a high degree of uncertainty

regarding investment portfolios. That uncertainty has arisen as a result of the present economic situation, particularly in the United States, but also in Canada, particularly as it pertains to the market. I accept, as Mr. Doucet states in his affidavit, that the financial crisis has caused significant uncertainty regarding the investments he intended for his retirement.

[9] The evidence satisfies me that Mr. Doucet had extensive dealings with both the Right Honourable Brian Mulroney and Karlheinz Schreiber over an extended period of time. His participation during the course of the Factual Inquiry will be both necessary and involved.

[10] I have concluded that Mr. Doucet has an important role to play in the course of the Factual Inquiry both as a witness and as a party with standing.

[11] Based on the submission made on behalf of Mr. Doucet and the evidence adduced in support of his application for funding, the need for Mr. Doucet to be fully represented by capable, competent counsel is obvious. Just as obvious to me is the need to provide Mr. Doucet with funding because without that funding, he would, in my opinion, be unable to participate, in any meaningful way, in the Factual Inquiry.

[12] On September 11, 2008, the Privy Council Office established Terms and Conditions for the Contribution Program for Participant Funding for this Commission of Inquiry. A copy of the Terms and Conditions which are binding upon me is attached as Schedule "A" to this decision.

[13] Pursuant to paragraph 11 of the Terms and Conditions, I confirm that Mr. Doucet has been granted standing and is a participant, as that term is defined under the Terms and Conditions, in the Factual Inquiry.

[14] I also confirm that Mr. Doucet has established to my satisfaction that he would not be able to participate in the Factual Inquiry without funding for legal counsel.

[15] Under the Treasury Board Terms and Conditions, payment of counsel fees related to the attendance at hearings is limited to the hearing days involving the interest of Mr. Doucet as determined by me. I therefore recommend that Mr. Doucet be reimbursed for counsel fees related to the attendance of counsel on hearing days involving the interest of Mr. Doucet. I have recommended a maximum of 100 hours for Mr. Doucet's counsel to be present during the Part I hearings.

[16] It is crucial that legal counsel be given ample time to prepare properly for the Factual Inquiry. I have therefore recommended a maximum of 50 hours of preparation time.

[17] I note that in his affidavit, Mr. Doucet says his counsel will be assisted from time to time by an articling student-at-law. I recommend a maximum of 30 hours for an articling student-at-law for preparation time at the rate set forth in the Treasury Board Terms and Conditions.

[18] In addition to recommending payment of legal fees for counsel for Mr. Doucet, I recommend that all reasonable disbursements and travel costs be reimbursed to Mr. Doucet's counsel.

[19] I will remain open to the possibility of amending these recommendations as circumstances dictate, on application.

Jeffrey J. Oliphant
Commissaire

DECISION ON APPLICATION FOR STANDING AND FUNDING OF THE BLOC QUEBECOIS IN PART I OF THE INQUIRY

The applicant, the Bloc Québécois ("the Bloc"), has applied for standing as an intervenor and for funding to enable it to participate in Part I of the Inquiry ("the Factual Inquiry") being conducted by this Commission.

The Terms of Reference for the Inquiry are set forth in Order-in-Council 2008-1092. Amongst other things, those Terms of Reference authorize the Commissioner:

> (c)...to adopt any procedures and methods that he considers expedient for the proper and efficient conduct of the Inquiry, including the holding of hearings in private, at any times and in any places in or outside of Canada;
>
> (f) ...to recommend to the Clerk of the Privy Council that funding be provided, in accordance with terms and conditions approved by the Treasury Board, to ensure the appropriate participation of any person granted standing under paragraph (e), to the extent of the person's interest, if the Commissioner is of the view the person would not otherwise be able to participate in the Inquiry;

The Draft Rules of Procedure and Practice of the Commission include the following:

> 12. The Commissioner may grant intervenor standing to persons who satisfy the Commissioner that they have a genuine concern about issues raised by the Factual Inquiry mandate and have a particular perspective or expertise that may assist the Commissioner. Persons with intervenor standing are referred to as intervenors in these Rules.
>
> 13. The Commissioner will determine on what terms and in which parts of the Factual Inquiry a party or intervenor may participate, and the nature and extent of such participation.

The Commission's Draft Rules of Procedure and Practice also provide for applications for funding. Those Rules state:

> 16. The Commissioner may recommend funding for a party or intervenor to the extent of their interest, where in the Commissioner's view the party or intervenor would not otherwise be able to participate in the Factual Inquiry.
>
> 17. A party or intervenor seeking funding shall apply to the Commissioner in writing, demonstrating that he or she does not have sufficient financial resources to participate in the Factual Inquiry without such funding.
>
> 18. Where the Commissioner's funding recommendation is accepted, funding shall be in accordance with terms and conditions approved by the Treasury Board respecting rates of remuneration and reimbursement and the assessment of accounts.

The Bloc, in support of its application for standing as an intervenor in the Factual Inquiry, submits that it has a real interest or a particular expertise in the matters being investigated by this Commission including, by way of examples, the actions of a former Prime Minister and the interaction between lobbyists and members or former members of government.

Although the application by the Bloc is for standing as an intervenor in the Factual Inquiry, more than once its counsel referred to meeting the test for an applicant applying for full standing, as opposed to intervenor status, before the Commission. The Bloc has failed, in my view, to demonstrate that it has a direct and substantial interest in the matters that are the subject of this Inquiry. That said, the test to be met by an applicant for full standing, as alluded to more than once by counsel for the Bloc, is not the applicable test when one is applying for standing as an intervenor.

As Me Pratte, counsel for Mr. Mulroney, pointed out in his submission in response to that of counsel for the Bloc, in order to obtain standing as an intervenor, an applicant such as the Bloc must demonstrate that it has both a genuine concern about issues to be investigated in the course of the Factual Inquiry and that it has a particular perspective or expertise that may assist the Commissioner. Rule 12, as noted above, employs the conjunctive "and", not the disjunctive "or".

In my view, it is not sufficient that the Bloc has demonstrated a real and abiding concern regarding the matters being investigated by this Commission thereby meeting first part of the applicable two-fold test. Both parts of that test must be met.

In order to achieve standing as an intervenor, the Bloc also bears the onus of meeting the second part of the two-fold test, namely, that it may assist me as Commissioner because of a particular perspective or expertise it possesses regarding those matters being investigated during the course of the Factual Inquiry.

Having carefully considered the submissions of counsel for the Bloc and for Mr. Mulroney, I have concluded that the Bloc has not met the second part of the test because it failed to demonstrate to my satisfaction that it has a particular perspective or expertise that may be of assistance to me in the course of Part I of this Inquiry.

For all of the foregoing reasons, the application of the Bloc Québécois for standing as an intervenor in Part I of the Inquiry is dismissed.

Because I have dismissed the Bloc's application for standing, it is not necessary for me to deal with its application for funding.

Signed this 9th day of October, 2008.

Jeffrey L. Oliphant

Commissioner

Appendix 10: Rulings on Applications for Standing and Funding in Part II

Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney

Commission d'enquête concernant les allégations au sujet des transactions financières et commerciales entre Karlheinz Schreiber et le très honorable Brian Mulroney

RULING ON APPLICATION BY KARLHEINZ SCHREIBER FOR STANDING FOR PART II (THE POLICY REVIEW)

INTRODUCTION

[1] Karlheinz Schreiber has applied for full standing as a party to Part II (Policy Review) of this Inquiry.

[2] Mr. Schreiber filed a written submission and his counsel, Richard Auger, made an oral submission in support of the application.

[3] In a ruling issued contemporaneously with this ruling (the "Jefford Ruling"), I set forth the principles, both general and specific, by which I am guided in deciding applications for standing with respect to Part II (Policy Review). Those same principles apply to Mr. Schreiber's application for standing.

ANALYSIS AND CONCLUSIONS

[4] Mr. Schreiber, to whom I granted full standing as a party to Part I (Factual Inquiry), is, in my opinion so intrinsically involved in almost all, if not all, of the matters covered by the mandate of the Commission that I conclude he is entitled to be granted full standing as a party to Part II (Policy Review).

[5] Depending upon the outcome of Part I (Factual Inquiry), my report may include findings of misconduct against Mr. Schreiber as referred to in s. 13 of the *Inquiries Act*, R.S.C. 1985, c. I-11. If such findings may be made, as submitted by Mr. Schreiber through counsel, it follows that Mr. Schreiber may be directly and

substantially affected by the Policy Review and ought to be granted full standing as a party to Part II so that he can fully participate with respect to the Policy Review.

[6] Moreover, on another basis, Mr. Schreiber has satisfied me he is directly and substantially affected by the mandate of the Policy Review. That is because even if there are no findings of misconduct made against him, there are, in my view, consequences that may flow from the Policy Review that may have a serious impact on, or implicate, the interests of Mr. Schreiber.

[7] While Mr. Schreiber may not have particular expertise with respect to the issues raised in Part II (Policy Review), he has satisfied me that he does have a particular perspective that may assist me, especially, I might say, with the issues pertaining to the manner in which the Prime Minister's correspondence is handled by the Prime Minister's Office and the Privy Council Office.

[8] I therefore grant to Mr. Schreiber full standing as a party with respect to Part II (Policy Review).

Signed this 2nd day of January, 2009.

Jeffrey James Oliphant,
Commissioner

RULING ON APPLICATION FOR STANDING FOR PART II (POLICY REVIEW) BY THE ATTORNEY GENERAL OF CANADA

INTRODUCTION

[1] The Attorney General of Canada (the "Attorney General") has applied for full standing as a party to Part II (Policy Review) of this Inquiry.

[2] The Attorney General filed a written submission with the Inquiry. At the oral hearing on January 21, 2009, I indicated that I need not hear oral submissions from counsel for the Attorney General. At the conclusion of the oral hearing that day, I indicated that the application of the Attorney General for full party standing was allowed. These reasons explain my decision.

[3] In a ruling (the "Jefford Ruling") issued contemporaneously with this ruling, I set forth the principles, both general and specific, by which I am guided in deciding applications for standing with respect to Part II (Policy Review). Those same principles apply to the application of the Attorney General.

ANALYSIS AND REVIEW

[4] In order to obtain standing as a party to Part II (Policy Review), it is necessary that I be satisfied that the Attorney General is directly and

substantially affected by the mandate of at least a portion of the Policy Review part of this Inquiry.

[5] The Attorney General will be representing the interests of the Government of Canada, its several departments and agencies at the Part I (Factual Inquiry). During the Part II (Policy Review) of the Inquiry, the Attorney General will represent the Government as a whole, as well as affected departments and agencies. Further, the Attorney General may also represent individual Crown servants, both present and former, who may have knowledge of facts, events, policies and procedures that may be relevant to the Commission.

[6] I am called upon to make recommendations regarding ethical rules and guidelines concerning the activities of politicians as they transition from office and after they leave office. I am also required to make recommendations regarding the handling of correspondence in the Privy Council Office.

[7] I accept, as submitted by the Attorney General in his application, that the Government of Canada as a whole and several government departments and agencies have a direct and substantial interest in the subject matter of the Part II (Policy Review) because any recommendations made by the Commission with regard to the two areas of recommendation may have an impact on governmental policies and legislation.

[8] Therefore, I do not hesitate to grant the Attorney General full standing as a party to Part II (Policy Review).

Signed at Ottawa this 2nd day of February, 2009.

Jeffrey James Oliphant
Commissioner

RULING ON APPLICATION BY DEMOCRACY WATCH FOR STANDING AS A PARTY OR INTERVENOR RESPECTING PART II (POLICY REVIEW)

INTRODUCTION

[1] I have before me an application by Democracy Watch for full standing as a party or for intervenor status to Part II (Policy Review) of this Inquiry.

[2] Mr. Duff Conacher appeared as the representative of Democracy Watch at the oral hearing on January 22, 2009. In the application filed on behalf of Democracy Watch, the organization is described as "...an organization that strives to represent, and has represented since 1993, the interests of citizens in government policy-making processes."

[3] The application filed goes on to portray Democracy Watch as "...the leading research and advocacy organization in Canada since 1993 on issues concerning, and enforcement of, Canada's federal ethics rules..."

ANALYSIS AND CONCLUSION

[4] In arriving at my conclusion, I have considered and applied the guiding principles I set forth in my ruling, issued contemporaneously with this ruling, on the application of Arthur Jefford and Jefford Industries Limited.

[5] Having read the application filed by Democracy Watch, especially those portions cited earlier in this ruling, and having heard the submissions of Mr.

Conacher, I am satisfied that Democracy Watch is directly and substantially affected by the mandate of Part II (Policy Review) of this Inquiry.

[6] I have also concluded that Democracy Watch is also well-suited to provide this Commission with a particular perspective or expertise on the issue of ethical policies relative to the holders of public office in Canada, which will be of benefit to the Commission.

[7] Full standing as a party with respect to Part II (Policy Review) is therefore granted to Democracy Watch.

Signed at Ottawa, Ontario, this 2nd day of February, 2009.

Jeffrey James Oliphant
Commissioner

RULING ON APPLICATION BY JEFFORD INDUSTRIES LIMITED AND ARTHUR JEFFORD FOR STANDING FOR PART II (THE POLICY REVIEW)

INTRODUCTION

[1] Jefford Industries Limited and Arthur Jefford both seek full standing as parties and for funding to enable them to participate fully in Part II (Policy Review) of the Inquiry being conducted by this Commission. In addition to the written materials filed by Mr. Jefford, I had the benefit, on January 21, 2009, of hearing his oral submission in support of the application he filed for standing and funding.

THE RULES OF PROCEDURE AND PRACTICE

[2] The Commission operates under a set of rules called the "Rules of Procedure and Practice" (the "Rules"). The Rules provide that an applicant seeking standing as a party to Part II (Policy Review) must satisfy me, as the Commissioner, that the applicant is directly and substantially affected by the Part II (Policy Review) of the mandate of the Commission.

[3] The Rules also allow an applicant to apply to be an intervenor. In order to obtain status as an intervenor respecting Part II (Policy Review) of the Inquiry, an applicant must satisfy me that he, she or it, as the case may be, has a genuine concern about the issues raised by the Policy Review and has a particular

perspective or expertise that may assist me in carrying out the mandate of this Commission.

POSITION OF JEFFORD INDUSTRIES LIMITED AND ARTHUR JEFFORD

[4] Mr. Jefford contends he is representative of the average Canadian, the little guy who he calls "Joe Canadian" or "Joe Six Pack". At the same time, however, Mr. Jefford describes himself as a man who once controlled companies having a value of $120,000,000.00

[5] As I understand Mr. Jefford's submission, he was involved in running a urea formaldehyde foam insulation ("UFFI") business; that the Government of Canada banned the use of that product on or about December 17, 1980, as a result of which Mr. Jefford lost everything. Mr. Jefford alleges, without providing any supporting evidence, that the government's banning of the use of UFFI would not have occurred but for the fact that he refused to pay bribes demanded of him, or that he was pressured to pay, by several unnamed but highly placed bureaucrats employed by the Government of Canada at that time and by cabinet ministers, also unnamed, in the government headed by the Right Honourable Pierre Trudeau.

[6] Mr. Jefford asserts that as a result of his experience, he is able to provide me with a "completely different perspective" on the issues raised by the Policy Review.

[7] At the oral hearing, I asked Mr. Jefford to tell me about the different perspective from which he would approach the pertinent issues. Mr. Jefford responded by expressing a concern that the information I was going to receive, upon which I may be recommending changes respecting the ethics by which the holders of public office ought to be governed, would come from the Right Honourable Brian Mulroney and his lawyer, from Mr. Schreiber and his lawyer and from Fred Doucet and his lawyer. Mr. Jefford emphasized that his viewpoint of ethics would be completely different from those of Messrs. Mulroney, Schreiber and Doucet.

[8] Mr. Jefford then contended that he could assist me by providing me with the particular perspective of a person whose life has been devastated by a lack of ethics in government. As I have already pointed out, the event that devastated Mr. Jefford's life was the banning of the use of UFFI by the Government of Canada in late 1980.

[9] Mr. Jefford also told me that he wanted standing as a party to participate in Part II (Policy Review) so that he could comment upon how the Prime Minister's mail is handled. Mr. Jefford wants to participate in this aspect of Part II because, going back as far as Prime Minister Trudeau, he has written to various Prime Ministers without receiving a response.

GUIDING PRINCIPLES FOR GRANTING STANDING

[10] In approaching the issue of standing, I am guided by rulings made by commissioners in the course of other public inquiries concerning the principles to

be applied when deciding upon an application for standing as a party or intervenor.

[11] Those commissioners whose rulings I considered include Justice Gomery, who led the Commission of Inquiry into the Sponsorship Program and Advertising Activities (the "Sponsorship Inquiry"), and Associate Chief Justice O'Connor who was the Commissioner of Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar (the "Arar Inquiry"). Both of those inquiries were mandated under the *Inquiries Act*, R.S.C. 1985, c. I-11.

[12] The first and foremost principle by which I am guided is that the Inquiry must be fair, open and thorough. In order to be fair, open and thorough, it is important that I receive all relevant information pertaining to the issues with which I must deal and that I consider a variety of perspectives on the issues raised in the Terms of Reference of this Inquiry.

[13] As noted earlier in this ruling, the Rules governing this Commission provide that to be granted standing as a party, an applicant must demonstrate that he, she or it is directly and substantially affected by the mandate of the Policy Review or portions of the Policy Review.

[14] What does the phrase "directly and substantially affected by the mandate of the Policy Review" mean?

[15] Justice Gomery commented on this in his ruling on applications for standing at the Sponsorship Inquiry under the heading "Guiding Principles on Standing". He said:

> Based upon what has been decided in comparable cases, the interest of the applicant may be the protection of a legal interest in the sense that the outcome of the Inquiry may affect the legal status or property interests of the applicant, or it may be as insubstantial as the applicant's sense of well-being or fear of an adverse effect upon his or her reputation. Even if such a fear proves to be unfounded, it may be serious and objectively reasonable enough to warrant party or intervenor standing in the Inquiry. What does not constitute a valid reason for a participant's standing is mere concern about the issues to be examined, if the concern is not based upon the possible consequences to the personal interests of the person expressing the concern.

[16] Associate Chief Justice O'Connor also dealt with the factors to be considered on applications for standing when he headed the Arar Inquiry. He said this at p.6 of his Ruling on Standing and Funding:

> It is neither possible nor desirable to set out a comprehensive list of the types of interests that will come within this test for public inquiries. In each case, a commissioner conducting a public inquiry will have to consider a number of factors including his or her mandate, the nature of that aspect of the public inquiry for which standing is sought, the type of interest asserted by the applicant, and the connection of the particular applicant to the Inquiry's mandate.

[17] I agree with and adopt these statements made by Justice Gomery and Associate Chief Justice O'Connor.

[18] That said, from my reading of the Ruling on Standing and Funding made by Associate Chief Justice O'Connor in the Arar Inquiry, I have concluded there are some specific guiding principles to be considered as being applicable in the course of my determining whether or not Jefford Industries Limited and/or Mr. Jefford ought to be granted standing as a party to Part II (Policy Review) of this Inquiry. These principles are in addition to the general principles articulated by both former Justice Gomery and Associate Chief Justice O'Connor.

[19] First, having a concern, however deep or genuine, about the issues raised in the Policy Review, or having an expertise in those issues, does not necessarily mean the applicant is directly and substantially affected by the mandate of the Policy Review. Nor does having an interest in those issues mean the applicant is so affected.

[20] Second, an applicant may be able to demonstrate that he, she or it is directly and substantially affected, as required by the Rules, where it is shown that the subject matter of the inquiry may seriously affect the applicant's interest.

[21] Third, an applicant may demonstrate that he, she or it is affected, directly and substantially, by the mandate of the Policy Review, if it is shown that the findings of the Inquiry will affect the legal rights or the property interests of the applicant, at least so far as those rights are implicated.

[22] Fourth, there is no question that an applicant whose interests may be adversely affected by the report of an Inquiry as set out in section 13 of the

Inquiries Act, R.S.C. 1985, c. I-11, is directly and substantially affected by the mandate of the Policy Review.

ANALYSIS AND CONCLUSIONS

[23] According to Mr. Jefford, both he and Jefford Industries Limited were devastated, financially and otherwise, by the actions of the government led by Prime Minister Pierre Trudeau in December of 1980 when that government banned the use of UFFI in Canada. The impact of that loss has obviously traumatized Mr. Jefford for whom I have a great deal of sympathy.

[24] The consequences that flowed from the Government of Canada's banning of the use of UFFI, so far as those consequences affected Mr. Jefford and his company, appear to be the sole reason for their application for standing as parties to the Policy Review of this Inquiry.

[25] Mr. Jefford attributes the ban of UFFI to his refusal to pay bribes demanded of him or that he was pressured to pay by bureaucrats and cabinet ministers in the Trudeau Government.

[26] Mr. Jefford and his company, Jefford Industries Limited, have failed to satisfy me that their legal status or property interests will be seriously affected by the outcome of this Inquiry. It is important to remember that the issue that brings Mr. Jefford and his company to the table occurred some twenty-eight years ago. Nor will Mr. Jefford's good name or reputation be affected by the mandate of or recommendations made as a result of the Policy Review.

[27] While Mr. Jefford has made serious allegations about the actions of certain bureaucrats and politicians of the day, he has offered no proof whatsoever in support of his allegations. An allegation without proof can be based, and most often is, on an unfounded suspicion, fear or concern.

[28] I have concluded that an allegation such as that made by Mr. Jefford, unsupported by credible evidence, is not capable of satisfying me that the mandate of the Policy Review will directly and substantially affect either Mr. Jefford or his company.

[29] Put simply, neither Mr. Jefford nor Jefford Industries Limited has satisfied me that they are directly and substantially affected by the mandate of the Policy Review or any portion of that Policy Review. Accordingly, each of their applications for standing as a party to the Policy Review is dismissed.

[30] Although it is not clear from his written materials whether Mr. Jefford and Jefford Industries Limited are also applying for standing as an intervenor, I have considered whether they or either one of them should be granted intervenor status. For the reasons set out below, I am not going to grant standing as intervenors to either Jefford Industries Limited or Mr. Jefford in the Policy Review.

[31] As I noted earlier in this ruling, in order to be granted standing as an intervenor, an applicant must demonstrate to my satisfaction a genuine concern about the issues raised by the Policy Review. To be genuine, a concern must be based upon possible consequences to the applicant's personal interests. No

such consequences have been demonstrated by either Mr. Jefford or Jefford Industries Limited.

[32] Even if I were to have concluded that their concern was genuine in that the possible consequences might affect their personal interests, neither Jefford Industries Limited nor Mr. Jefford has satisfied me that it or he has a particular perspective or expertise that would be of assistance to me in carrying out my mandate. The Rules governing applications for standing as an intervenor say there must be both a genuine concern and a particular perspective or expertise. Here, in my view, neither exists.

[33] The foundation for the application of both Jefford Industries Limited and Mr. Jefford appears to be based on the premise that I will be basing my findings and recommendations on perspectives offered by three individuals only, namely, Messrs Mulroney, Schreiber and Doucet. That premise is demonstrably false. I note that neither Mr. Mulroney nor Mr. Doucet have applied for standing in the Part II Policy Review. The Commission will hear evidence from three experts who have been commissioned to provide papers on the policy issues that arise in the Policy Review. A forum will be held where the parties and their experts, if any, will be able to question the Commission's experts and offer their own perspective on the issues in the Policy Review. Submissions are being sought from the public in response to the Consultation Paper that has been prepared and a public hearing will be held to hear submissions from the public.

[34] In terms of how the Prime Minister's correspondence is handled, the fact that Mr. Jefford may have written to more than one Prime Minister without receiving a response does not, in my opinion, clothe him with a particular perspective or expertise that may assist me in fulfilling my mandate.

[35] For the foregoing reasons, I will not grant standing to Jefford Industries Limited or Mr. Jefford as intervenors in the Policy Review.

[36] I conclude this ruling by reminding Mr. Jefford that he is welcome to make a public submission in writing to the Commission dealing with any matter related to the Policy Review and may comment on any matters raised in the Consultation Paper published by the Commission and posted on the Commission's website. Any such public submission in writing must be received by the Commission no later than March 31, 2009.

Signed at Ottawa, Ontario this 2nd day of February, 2009.

Jeffrey J. Oliphant, Commissioner

Appendix 11

COMMISSION OF INQUIRY INTO CERTAIN ALLEGATIONS RESPECTING BUSINESS AND FINANCIAL DEALINGS BETWEEN KARLHEINZ SCHREIBER AND THE RIGHT HONOURABLE BRIAN MULRONEY

PROTOCOL BETWEEN THE GOVERNMENT OF CANADA AND THE COMMISSION OF INQUIRY FOR THE PROTECTION OF PRIVILEGED DOCUMENTS AND INFORMATION

1. The Government of Canada is committed to assisting the Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney ("Commission") to fulfil its mandate in an effective and expeditious manner without compromising Cabinet confidentiality, international relations, national defence or national security, jeopardizing any ongoing criminal investigations, or the functioning of the Government's law enforcement and intelligence apparatus.

2. The Government of Canada acknowledges that the Commission is entitled to consider and refer to information which is found in publicly available sources (Open Sourced Information), over which the Government of Canada claims no privilege. Witness examination and testimony, documentary production, consultation papers, research papers and other documents generated by the Commission and produced pursuant to its rules which are based solely upon Open Sourced Information are not subject to this Protocol.

3. This Protocol is intended to facilitate the timely production of documents in the possession of the Government of Canada that are relevant to the mandate of the Commission while ensuring that the privileges set out in sections 37 to 39 of the *Canada Evidence Act*, and other statutory and common law privileges are adequately protected.

Production to the Commission

4. This Protocol applies to all Government documents and information produced to this Commission by the Government of Canada, even if forwarded without a "caveat letter" setting out reservations on the document's subsequent disclosure.

5. Documents over which the Attorney General asserts Cabinet confidentiality privilege will be dealt with in accordance with s. 39 of the *Canada Evidence Act* and the law. Such documents shall be listed in a Certificate of the Clerk of the Privy Council in appropriate form provided to Commission Counsel.

6. The Attorney General reserves the right to assert solicitor-client or litigation privilege over appropriate documents. The Attorney General will advise Commission Counsel of the existence of documents over which it is asserting solicitor-client or litigation privilege, and will identify such documents by date and description with sufficient information to allow Commission Counsel to ascertain why the document is protected by solicitor-client or litigation privilege. In the event that there is a dispute regarding whether solicitor-client or litigation privilege applies to any such document, Rule 24 of the Commission's Draft *Rules of Procedure and Practice* shall apply, save with regard to information which forms a

part of the barrister's brief of counsel for the Attorney General of Canada, e.g. information related to the establishment of the inquiry or anticipated litigation with respect to the Inquiry, in which case an application may be brought to the Federal Court to determine the point.

7. Before the Commission discloses any Government of Canada document (or content of a document) to any third party (including parties with standing or any potential or actual witness), or before the Commission makes such documents or such content public, or before the Commission archives such document or such content, the Commission shall give:

    a) Reasonable notice to the Attorney General and in any event, no less than seven days' notice of such intention to disclose;

    b) No later than five days following its receipt of such notice, the Attorney General of Canada shall advise Commission Counsel of any objection;

    c) Further, the Commission will give the Attorney General an appropriate opportunity to assert a privilege and object to disclosure in accordance with Section 10 or Section 11 hereof.

8. The Attorney General is legally prohibited from disclosing any confidential tax payer information covered by s. 241 of the *Income Tax Act* or s. 295 of the *Excise Tax Act*.

9. The Attorney General will endeavour to deliver to the Commission documents relevant to the Commission's mandate as set out in the Commission's Terms of Reference pursuant to Order in Council P.C. 2008-1092 ("Terms of Reference") in an expeditious and timely manner. Although it is intended that documents provided by the Attorney General will be vetted in advance of delivery for statutory and common law privileges, in light of time restraints imposed by the Commission's schedule, inadvertent disclosure of privileged documents may occur. Delivery of documents to the Commission by the Attorney General as required by Rules 22 and 30 of the Commission's Draft *Rules of Procedure and Practice* does not constitute a waiver by the Government of Canada of any applicable privilege, including Cabinet confidentiality privilege, national security privilege, solicitor-client or litigation privilege, informer privilege, investigative techniques privilege, ongoing investigation privilege. Any issues of privilege are to be dealt with at a subsequent time as may be necessary to ensure the efficient and orderly process of the inquiry.

10. The Attorney General or Commission Counsel may apply to the Commissioner for a ruling as to whether a document or information is privileged or contains privileged information. The Commissioner shall determine whether the hearing to determine privilege shall be heard in public or *in camera*. In determining whether the hearing to determine privilege shall be heard in public or *in camera* the Commissioner shall consider whether the hearing itself involves privileged evidence and submissions.

11. If a document or information is determined by the Commissioner to be subject to privilege, the Attorney General may then apply to the Commissioner for a ruling as to whether the disclosure of a document or information would be contrary to law, the Terms of Reference or the public interest and whether the disclosure of the document or information should be confined to an *in camera* session. The Commissioner shall determine whether the hearing to determine disclosure of a privileged document or information shall be heard in public or *in camera*. In determining whether the hearing to determine disclosure shall be heard in public or *in camera* the Commissioner shall consider whether the hearing itself involves privileged evidence and submissions.

12. When the Commission hears proceedings *in camera*, whether for the purpose of receiving privileged information or deciding whether certain evidence should be received *in camera*, the Attorney General may request that the hearing be conducted *ex parte*. The only parties who will be present before the Commissioner *in camera* are Commission Counsel, counsel for the Attorney General and instructing clients for the Attorney General.

Other

13. The Attorney General is entitled to bring an application for judicial review of any decision of the Commissioner with respect to privilege or disclosure of documents over which privilege has been asserted by the Government of Canada pursuant to s. 18 of the *Federal Courts Act*. If the Attorney General brings such application, he shall proceed expeditiously and he shall apply for an order of the Federal Court that the application be dealt with on an expedited basis.

Dated at Ottawa, Ontario this 1st day of August, 2008

Attorney General of Canada
John Sims
Deputy Attorney General of Canada

Per Paul Vickery

Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney

Per Richard Wolson Q.C.
Lead Commission Counsel

11. If a document or information is determined by the Commissioner to be subject to privilege, the Attorney General may then apply to the Commissioner for a ruling as to whether the disclosure of a document or information would be contrary to law, the Terms of Reference or the public interest and whether the disclosure of the document or information should be confined to an *in camera* session. The Commissioner shall determine whether the hearing to determine disclosure of a privileged document or information shall be heard in public or *in camera*. In determining whether the hearing to determine disclosure shall be heard in public or *in camera* the Commissioner shall consider whether the hearing itself involves privileged evidence and submissions.

12. When the Commission hears proceedings *in camera,* whether for the purpose of receiving privileged information or deciding whether certain evidence should be received *in camera*, the Attorney General may request that the hearing be conducted *ex parte*. The only parties who will be present before the Commissioner *in camera* are Commission Counsel, counsel for the Attorney General and instructing clients for the Attorney General.

Other

13. The Attorney General is entitled to bring an application for judicial review of any decision of the Commissioner with respect to privilege or disclosure of documents over which privilege has been asserted by the Government of Canada pursuant to s. 18 of the *Federal Courts Act.* If the Attorney General brings such application, he shall proceed expeditiously and he shall apply for an order of the Federal Court that the application be dealt with on an expedited basis.

Dated at Ottawa, Ontario this 1st day of ~~July~~ August, 2008

Attorney General of Canada
John Sims
Deputy Attorney General of Canada

Per Paul Vickery

Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney

Per Richard Wolson Q.C.
Lead Commission Counsel

CANADA
PRIVY COUNCIL

P.C. 2009-534

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by Her Excellency the Governor General on the 10 th of April 2009

Whereas the Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney, P.C., (hereinafter referred to as the "Commission") was established under Part I of the *Inquiries Act*, pursuant to Order in Council P.C. 2008-1092 of June 12, 2008, to inquire into certain allegations respecting business and financial dealings between Karlheinz Shreiber and the Right Honourable Brian Mulroney, P.C.;

Whereas the Honourable Jeffrey J. Oliphant was appointed by the Commission as Commissioner to conduct the inquiry (hereinafter referred to as the "Commissioner");

Whereas the Commissioner has requested access to and copies of documents that contain confidences of the Queen's Privy Council for Canada which are relevant to the proceedings of the Commission;

Whereas it is a matter of convention and practice in Canada that access to confidences of the Queen's Privy Council for Canada is restricted to the Prime Minister and the Ministers who were members of the Cabinet at the relevant time, the Secretary to the Cabinet, and such persons on the Secretary's staff as the Secretary authorizes to see them, on a confidential basis, where necessary for the proper discharge of their duties;

Whereas this convention and practice is, in the opinion of the Committee of the Privy Council, essential for the proper functioning of the Cabinet system of government;

Whereas the former Prime Minister, the Right Honourable Brian Mulroney, P.C., on behalf of the Ministry of which he was Prime Minister, has consented to an exception being made to the convention and practice in order to enable the Commissioner to access the confidences of the Queen's Privy Council for Canada of his Ministry that are relevant to the proceedings of the Commission;

.../2

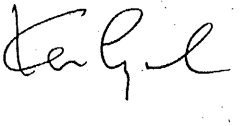
And whereas the Clerk of the Privy Council and Secretary to the Cabinet, as custodian of the confidences of the Queen's Privy Council for Canada of previous Ministries, has therefore concurred to the adoption of such an exception in respect of the confidences of the Queen's Privy Council for Canada relevant to the proceedings of the Commission;

Therefore, the Committee of the Privy Council, on the recommendation of the Prime Minister, with the consent of the former Prime Minister, the Right Honourable Brian Mulroney, P.C., and with the concurrence of the Clerk of the Privy Council and Secretary to the Cabinet, advises that:

(*a*) the confidences of the Queen's Privy Council for Canada that are contained in the documents listed in the attached schedule may be made available for the purpose of the proceedings of the Commission; and

(*b*) any individual may testify in respect of the confidences of the Queen's Privy Council for Canada referred to in paragraph (*a*) for the purposes of the proceedings of the Commission.

CERTIFIED TO BE A TRUE COPY–COPIE CERTIFIÉE CONFORME



CLERK OF THE PRIVY COUNCIL–LE GREFFIER DU CONSEIL PRIVÉ

SCHEDULE

(1) Unsigned memorandum to the Honourable Elmer MacKay from D.S. McPhail, undated [circa June 7, 1989] and attachment.

(2) Unsigned memorandum to the Honourable Elmer MacKay from D.S. McPhail, undated [circa June 7, 1989].

(3) Unsigned memorandum to the Honourable Elmer MacKay from D.S. McPhail, undated [circa June 7, 1989].

(4) Memorandum to the Honourable Elmer MacKay from D.S. McPhail, undated [circa June 7, 1989] and attachments, attached to a transmittal note.

(5) Memorandum to the Honourable Elmer MacKay from Peter B. Lesaux, President of the Atlantic Canada Opportunities Agency, dated October 26, 1989.

(6) Memorandum to the Honourable Elmer MacKay from Peter B. Lesaux, President of the Atlantic Canada Opportunities Agency, dated October 26, 1989, with attachment, attached to a transmittal note.

(7) Unsigned letter to the Honourable Harvie Andre from the Honourable Elmer MacKay, undated [circa October 31, 1989].

(8) Letter to the Honourable Harvie Andre from the Honourable Elmer MacKay, dated October 31, 1989.

(9) Letter to the Honourable Harvie Andre from the Honourable Elmer MacKay, dated October 31, 1989.

(10) Letter to the Honourable Elmer MacKay from the Honourable Harvie Andre, dated December 4, 1989.

(11) Memorandum to Peter Lesaux, President, from Norman Moyer, Vice-President of the Atlantic Canada Opportunities Agency, dated January 3, 1990, and attachment.

(12) Memorandum to Peter Lesaux, President, from Norman Moyer, Vice-President of the Atlantic Canada Opportunities Agency, dated January 3, 1990, and attachment.

(13) Memorandum to the Honourable Elmer MacKay from Peter B. Lesaux, President, Atlantic Canada Opportunities Agency, dated January 4, 1990.

(14) Memorandum to the Honourable Elmer MacKay from Peter B. Lesaux, President of the Atlantic Canada Opportunities Agency, dated January 4, 1990, and attachment.

(15) Unsigned memorandum to the Honourable Elmer MacKay from Peter B. Lesaux, President of the Atlantic Canada Opportunities Agency, undated [circa January 4, 1990].

(16) Memorandum to Stanley Hartt from Peter Meerburg, dated January 11, 1990, and attachments.

(17) Letter to Lieutenant Colonel Ed Champagne, Department of National Defence, from John McDowell, Atlantic Canada Opportunities Agency, dated January 16, 1990, and attachment.

(18) Note for Operations Committee, dated January 22, 1990.

(19) Memorandum for R. Protti from Maureen Smith, dated January 24, 1990, and attachment.

(20) Memorandum for R. Protti from Maureen Smith, dated January 24, 1990, and attachment.

(21) Memorandum for R. Protti from Maureen Smith, dated January 24, 1990.

(22) Memorandum for P.M. Tellier from Ronald Bilodeau, dated January 25, 1990, and attachments.

(23) Memorandum for the Prime Minister from Paul M. Tellier, Clerk of the Privy Council and Secretary to the Cabinet, dated February 5, 1990.

(24) Memorandum to Paul M. Tellier from Ronald Bilodeau, dated July 11, 1990, and attachment.

(25) Memorandum to the Prime Minister from Paul M. Tellier, Clerk of the Privy Council and Secretary to the Cabinet, dated July 12, 1990.

(26) Memorandum to the Prime Minister from Paul M. Tellier, Clerk of the Privy Council and Secretary to the Cabinet, dated July 12, 1990.

(27) Briefing Note for the Ministers on Thyssen Industries AG proposal to supply DND with 250 multi-role combat vehicles (MRCV), dated July 19, 1990.

(28) Memorandum to Mr. B. Dewar from Ronald Bilodeau, dated July 25, 1990, and attachments.

(29) Unsigned memorandum to the Minister, from Robert R. Fowler, Deputy Minister, National Defence, dated July 1990.

(30) Memorandum to the Deputy Minister from R.N. Sturgeon, dated August 1, 1990.

(31) Memorandum for the Prime Minister from Paul M. Tellier, Clerk of the Privy Council and Secretary to the Cabinet, dated August 10, 1990, and attachments.

(32) Briefing Note for the Minister on Thyssen Industries AG proposal to supply DND with 250 multi-role combat vehicles (MRCV), dated September 5, 1990.

(33) Briefing Note for the Minister on Thyssen Industries AG proposal to supply DND with 250 multi-role combat vehicles (MRCV), dated September 5, 1990, and attachment.

(34) Executive Summary to Briefing Note for the Minister on Thyssen Industries AG proposal to supply DND with 250 multi-role combat vehicles (MRCV), undated [circa September 1990].

(35) Memorandum to the Honourable Benoît Bouchard from H.G. Rogers, Deputy Minister, Industry, Science and Technology Canada, dated October 26, 1990.

(36) Briefing Note for the Minister on Thyssen Industries AG proposal to supply DND with 250 multi-role combat vehicles (MRCV), dated October 30, 1990, and attachment.

(37) Executive Summary to Briefing Note for the Minister on Thyssen Industries AG proposal to supply DND with 250 multi-role combat vehicles (MRCV), undated [circa October 30, 1990] and attachment.

(38) Executive Summary to Briefing Note for the Minister on Thyssen Industries AG proposal to supply DND with 250 multi-role combat vehicles (MRCV), undated [circa October 30, 1990].

(39) Memorandum to Norman Spector from Paul M. Tellier, Clerk of the Privy Council and Secretary to the Cabinet, dated October 31, 1990, and attachments.

(40) Memorandum to Norman Spector from Paul M. Tellier, Clerk of the Privy Council and Secretary to the Cabinet, dated October 31, 1990, and attachments, attached to a transmittal note.

(41) Letter to "Peter" from R.D. Gillespie, Assistant Deputy Minister, dated November 19, 1990.

(42) Document entitled "Bear Head Industries Facility in Nova Scotia", dated November 26, 1990.

(43) Memorandum to Wynne Potter from John McDowell, dated November 28, 1990, and attachments.

(44) Document entitled "Point Form Critique of ACOA Draft Aide Memoire on Thyssen Proposal", dated November 30, 1990.

(45) Document entitled "Point Form Critique of ACOA Draft Aide Memoire on Thyssen Proposal", dated November 30, 1990.

(46) Document entitled "Point Form Critique of ACOA Draft Aide Memoire on Thyssen Proposal", dated November 30, 1990.

(47) Memorandum to the Minister, from Robert R. Fowler, Deputy Minister, National Defence, dated December 5, 1990.

(48) Letter to Peter B. Lesaux, President, Atlantic Canada Opportunities Agency, from Robert R. Fowler, Deputy Minister, National Defence, dated December 7, 1990, and attachments.

(49) Unsigned memorandum to the Minister, from Frederick W. Gorbet, dated December 7, 1990.

(50) Unsigned letter to the Honourable Don Mazankowski from the Honourable Michael H. Wilson, undated [circa December 7, 1990].

(51) Unsigned memorandum to the President of the Treasury Board from the Secretary of the Treasury Board, dated December 7, 1990.

(52) Memorandum for Norman Spector from Paul M. Tellier, Clerk of the Privy Council and Secretary to the Cabinet, dated December 10, 1990, and attachment.

(53) Memorandum for Norman Spector from Paul M. Tellier, Clerk of the Privy Council and Secretary to the Cabinet, dated December 10, 1990, and attachment.

(54) Memorandum for Norman Spector from Paul M. Tellier, Clerk of the Privy Council and Secretary to the Cabinet, dated December 10, 1990, and attachment.

(55) Memorandum to the Honourable Elmer MacKay from Peter R. Smith, Vice-President, Atlantic Canada Opportunities Agency, dated December 10, 1990.

(56) Document entitled "Thyssen/Bear Head Industries Facility in Nova Scotia", dated December 10, 1990.

(57) Document entitled "Thyssen/Bear Head Industries Facility in Nova Scotia", dated December 10, 1990.

(58) Unsigned memorandum to the Minister, from Frederick Gorbet, dated December 10, 1990.

(59) Unsigned memorandum to the Honourable Elmer MacKay from Peter R. Smith, Vice-President, Atlantic Canada Opportunities Agency, undated [circa December 10, 1990] and attachment.

(60) Letter to the Right Honourable Brian Mulroney from the Honourable Elmer MacKay, dated December 11, 1990.

(61) Supplementary speaking notes for the Minister of National Defence, dated December 11, 1990.

(62) Memorandum for Paul Tellier from Ronald Bilodeau, dated December 12, 1990.

(63) Memorandum for Paul Tellier from Ronald Bilodeau, dated December 12, 1990.

(64) Document entitled "Changes required in the ACOA Aide Memoire re Thyssen Proposal", undated [circa December 12, 1990].

(65) Document entitled "Changes required in the ACOA Aide Memoire re Thyssen Proposal", undated [circa December 12, 1990].

(66) Document entitled "Changes required in the ACOA Aide Memoire re Thyssen Proposal", undated [circa December 12, 1990].

(67) Speaking notes for the Minister of National Defence, dated December 12, 1990.

(68) Speaking notes for Minister of National Defence, undated [circa December 12, 1990].

(69) Speaking notes for Minister of National Defence, undated [circa December 12, 1990].

(70) Speaking notes for Minister of National Defence, undated [circa December 12, 1990].

(71) Speaking notes for Minister of National Defence, undated [circa December 12, 1990] and attachments.

(72) Memorandum to the Assistant Deputy Minister, from R.N. Sturgeon, dated December 13, 1990.

(73) Letter to Norman Spector from the Honourable Elmer MacKay, dated December 19, 1990.

(74) Letter to Norman Spector from the Honourable Elmer MacKay, dated December 19, 1990.

(75) Letter to Norman Spector from the Honourable Elmer MacKay, dated December 19, 1990.

(76) Aide Memoire on Bear Head Industries (Thyssen), undated [circa 1990] and attachments.

(77) Aide Memoire on Bear Head Industries (Thyssen), undated [circa 1990] attached to an action request.

(78) Letter to William Rowat, Assistant Secretary to the Cabinet, from Peter Smith, Vice-President, Atlantic Canada Opportunities Agency, dated January 9, 1991.

(79) Letter to William Rowat, Assistant Secretary to the Cabinet, from Peter Smith, Vice-President, Atlantic Canada Opportunities Agency, dated January 9, 1991.

(80) Letter to William Rowat, Assistant Secretary to the Cabinet, from Peter Smith, Vice-President, Atlantic Canada Opportunities Agency, dated January 9, 1991.

(81) Memorandum for Norman Spector from Paul M. Tellier, Clerk of the Privy Council and Secretary to the Cabinet, dated January 16, 1991, and attachment.

(82) Memorandum for Norman Spector from Paul M. Tellier, Clerk of the Privy Council and Secretary to the Cabinet, dated January 16, 1991, and attachment.

(83) Aide Memoire on Bear Head Industries (Thyssen), undated [circa January 20, 1991] attached to a transmittal note.

(84) Letter to William Rowat, Assistant Secretary to the Cabinet, from R.D. Gillespie, Assistant Deputy Minister of National Defence, dated January 28, 1991.

(85) Unsigned letter to William Rowat, Assistant Secretary to the Cabinet, from R.D. Gillespie, Assistant Deputy Minister, National Defence, dated January 1991.

(86) Questions and answers related to the Aide Memoire, dated February 1991.

(87) Memorandum for Norman Spector from Paul M. Tellier, Clerk of the Privy Council and Secretary to the Cabinet, dated March 26, 1991, and attachment.

(88) Memorandum for Paul Tellier from William A. Rowat, dated April 10, 1991, and attachments.

(89) Aide Memoire on Bear Head Industries (Thyssen), undated [circa April 17, 1991] and attachments.

(90) Unsigned letter to the Right Honourable Brian Mulroney from the Honourable Elmer MacKay, undated [between January 30, 1989 and April 20, 1991].

(91) Unsigned letter to the Right Honourable Brian Mulroney from the Honourable Elmer MacKay, undated [between January 30, 1989 and April 20, 1991].

(92) Briefing Note for the Minister on Thyssen Industries AG proposal for a directed contract to supply DND with 207-250 Light Armoured Vehicles, dated May 13, 1991.

(93) Briefing Note for the Minister on "Proposition de la société Thyssen Industries AG visant à passer avec le MDN un contrat sans appel d'offres pour 207 ou 250 véhicules blindés légers", dated May 13, 1991.

(94) Summary of the Briefing Note for the Minister on "Proposition de Thyssen Industries AG visant l'obtention d'un contrat sans appel d'offres pour la fourniture au MDN de 207 ou de 250 véhicules blindés légers", undated [circa May 13, 1991] and attachment.

(95) Briefing Note for the Minister on "Proposition de la société Thyssen Industries AG visant à passer avec le MDN un contrat sans appel d'offres pour 207 ou 250 véhicules blindés légers", dated May 13, 1991.

(96) Unsigned memorandum to the Honourable John C. Crosbie from Peter B. Lesaux, dated May 16, 1991.

(97) Transmittal note to Jane Billings from Peter R. Smith, dated May 17, 1991, and attachment.

(98) Memorandum to the Honourable John C. Crosbie from Peter B. Lesaux, President, Atlantic Canada Opportunities Agency, dated May 17, 1991.

(99) Memorandum to the Honourable John C. Crosbie from Peter B. Lesaux, President, Atlantic Canada Opportunities Agency, dated May 17, 1991, and attachments.

(100) Memorandum to the Honourable John C. Crosbie from Peter B. Lesaux, President, Atlantic Canada Opportunities Agency, dated May 17, 1991.

(101) Unsigned memorandum to Robert Dunlop from J.M. Banigan, dated May 27, 1991, and attachment.

(102) Unsigned memorandum to Robert Dunlop from J.M. Banigan, dated May 27, 1991, and attachment.

(103) Unsigned memorandum to Robert Dunlop from J.M. Banigan, dated May 27, 1991, and attachments.

(104) Unsigned memorandum to the Minister, dated May 1991.

(105) Unsigned memorandum to the Minister, from Robert R. Fowler, dated May 1991.

(106) Aide Memoire on Bear Head Industries (Thyssen), dated June 18, 1991.

(107) Unsigned letter to the Honourable Elmer MacKay from the Honourable Michael H. Wilson, undated [circa June 20, 1991].

(108) Unsigned memorandum to H.G. Rogers from R.A. Russell, undated [circa June 20, 1991] and attachments, attached to a request for facsimile transmission.

(109) Unsigned memorandum to Wayne Wouters from Jim Stanton, dated June 27, 1991.

(110) Letter to W.A. Rowatt from J.C. Mackay, Industry, Science and Technology Canada, dated July 9, 1991, and attachment.

(111) Letter to W.A. Rowatt from J.C. Mackay, Industry, Science and Technology Canada, dated July 9, 1991, and attachment.

(112) Aide Memoire on Bear Head Industries (Thyssen), dated July 9, 1991.

(113) Aide Memoire on Industries Bear Head (Thyssen), dated July 9, 1991.

(114) Memorandum to the Honourable Michael H. Wilson from J.M. Banigan, Industry, Science and Technology Canada, dated July 10, 1991.

(115) Memorandum for Paul M. Tellier from William A. Rowat, dated July 16, 1991, and attachment.

(116) Memorandum for Paul M. Tellier from William A. Rowat, dated July 18, 1991, and attachment.

(117) Unsigned memorandum to the Minister, from Robert R. Fowler, Deputy Minister, National Defence, dated July 29, 1991.

(118) Unsigned memorandum to the Minister, from Robert R. Fowler, dated August 1, 1991.

(119) Memorandum to the Minister, from Robert R. Fowler, Deputy Minister, National Defence, dated August 8, 1991.

(120) Unsigned memorandum to the Minister, from Robert R. Fowler, Deputy Minister, National Defence, dated August 28, 1991.

(121) Unsigned letter to the Minister, from Robert R. Fowler, undated [circa August 28, 1991].

(122) Unsigned letter to the Minister, from Robert R. Fowler, undated [circa August 28, 1991].

(123) Aide Memoire for the Minister on Thyssen Industries AG/Trenton Works Lavalin, dated August 28, 1991.

(124) Aide Memoire for the Minister on "La Thyssen Industries AG et la Trenton Works Lavalin", dated August 28, 1991.

(125) Letter to R. Bilodeau, Deputy Secretary to the Cabinet, Privy Council Office, from R.D. Gillespie, Assistant Deputy Minister, National Defence, dated March 17, 1992, and attachment.

(126) Briefing Note for Chief of Staff to the Minister of National Defence on Thyssen Industries – Chronology of Significant Events, dated April 2, 1992.

(127) Suggested letter from the Minister of National Defence to the Minister of Industry, Science and Technology Canada, undated [circa May 20, 1992] and attachment.

(128) Unsigned letter to the Honourable Michael H. Wilson from the Honourable Marcel Masse, undated [circa May 20, 1992].

(129) Suggested letter from Minister of National Defence to the Minister of Industry, Science and Technology Canada, undated [circa May 22, 1992].

(130) Aide Memoire on Thyssen Proposal, "MOU for Development of a multi-purpose base Armoured Vehicle", dated May 28, 1992.

(131) Aide Memoire on Thyssen Proposal, "MOU for Development of a multi-purpose base Armoured Vehicle", dated May 28, 1992.

(132) Aide Memoire on Thyssen Proposal, "MOU for Development of a multi-purpose base Armoured Vehicle", dated May 28, 1992.

(133) Unsigned memorandum for the Prime Minister from Paul M. Tellier, undated [circa June 24, 1992].

(134) Unsigned memorandum for the Prime Minister from Paul M. Tellier, undated [circa June 24, 1992].

(135) Memorandum for the Prime Minister from Paul M. Tellier, dated June 24, 1992.

(136) Briefing Note for the Assistant Deputy Minister on Thyssen Bearhead Industry Update, dated September 11, 1992, and attachment.

(137)	Memorandum to L. Beverly from E. Leah Clark, dated September 15, 1992 [2 copies].
(138)	Memorandum to L. Beverly from E. Leah Clark, dated September 15, 1992, and attachments.
(139)	Memorandum for Hugh Segal from Glen Shortliffe, Clerk of the Privy Council and Secretary to the Cabinet, dated September 17, 1992.
(140)	Briefing Note on Bear Head Industries (BHI) – Proposal to Establish a Facility to Manufacture Light Armoured Vehicles (LAV) in Montreal, Quebec, dated September 17, 1992, and attachments.
(141)	Statement from Norman Spector, President, Atlantic Canada Opportunities Agency, dated September 20, 1995 [refers to information dated from September 1990 to February 1992].
(142)	Agenda, Prime Minister, June 1993.

Appendix 13: Sample Notice Under Section 13 of *Inquiries Act*

Commission of Inquiry into Certain Allegations
Respecting Business and Financial Dealings
Between Karlheinz Schreiber and
the Right Honourable Brian Mulroney

Commission d'enquête concernant les allégations
au sujet des transactions financières et commerciales
entre Karlheinz Schreiber et
le très honorable Brian Mulroney

IN THE MATTER OF an Inquiry into Certain Allegations
Respecting Business and Financial Dealings between
Karlheinz Schreiber and the Right Honourable Brian Mulroney

NOTICE UNDER SECTION 13 of the
***Inquiries Act*, R.S. 1985, c. I-11 to**

[NAME OF RECIPIENT]

As you are aware, section 13 of the *Inquiries Act* R.S. 1985, c. I-11 prevents the Commissioner from making a report against any person unless reasonable notice has been given of the charge of misconduct alleged against him. Pursuant to section 13 of the *Inquiries Act* you are hereby informed that the Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings between Karlheinz Schreiber and the Right Honourable Brian Mulroney may make a finding or findings of misconduct by you in its report. These potential findings, which are described in this section 13 notice, are open to be made on the evidence presented and may amount to misconduct. Please be aware that the Commissioner has not suggested that he is inclined to make these findings. I have identified these areas of concern, independently of him, to ensure that you will be in a position to give him full information and argument before he begins to deliberate, should you choose to do so. I can reaffirm that the Commissioner is aware that he is not to make findings of civil or criminal responsibility. Should you wish to respond to these potential misconduct findings by calling additional evidence, please notify me by 5 p.m. on Friday, May 29, 2009.

Be advised that this section 13 notice is being provided in confidence, i.e. the fact that this section 13 notice has been issued, and its contents, will be kept in confidence by the Commission. This is being done to protect your reputation from being harmed by the mere possibility that any of these findings could be made.

Potential findings of misconduct that could be made include:

1. **[Full particulars of alleged misconduct]**

2. **Etc.**

[Date], 2009

Richard Wolson, Q.C.
Lead Commission Counsel

TO: NAME OF RECIPIENT OF HIS OR HER COUNSEL

Appendix 14

Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney

Commission d'enquête concernant les allégations au sujet des transactions financières et commerciales entre Karlheinz Schreiber et le très honorable Brian Mulroney

COMMISSION OF INQUIRY INTO CERTAIN ALLEGATIONS RESPECTING BUSINESS AND FINANCIAL DEALINGS BETWEEN KARLHEINZ SCHREIBER AND THE RIGHT HONOURABLE BRIAN MULRONEY

SUBPOENA TO

[NAME]

SECTION I - TESTIMONY

PURSUANT TO THE AUTHORITY granted to The Hon. Jeffrey J. Oliphant by Order in Council 2008-1092 and Part I of the *Inquiries Act*, section 4, you are required to attend at the Old City Hall, Bytown Pavilion (111 Sussex Drive, Ottawa, Ontario) or at any other place to be determined, before the Commissioner on **[DATE], 2009**, or on such other date fixed by the Commission, and to remain until your attendance is no longer required, to give oral evidence on the following questions and matters:

1. What were the business and financial dealings between Mr. Schreiber and Mr. Mulroney?
2. Was there an agreement reached by Mr. Mulroney while still a sitting prime minister?
3. If so, what was that agreement, when and where was it made?
4. Was there an agreement reached by Mr. Mulroney while still sitting as a Member of Parliament or during the limitation periods prescribed by the 1985 ethics code?
5. If so, what was that agreement, when and where was it made?
6. What payments were made, when and how and why?
7. What was the source of the funds for the payments?
8. What services, if any, were rendered in return for the payments?
9. Why were the payments made and accepted in cash?
10. What happened to the cash; in particular, if a significant amount of cash was received in the U.S., what happened to that cash?

11. Were these business and financial dealings appropriate considering the position of Mr. Mulroney as a current or former prime minister and Member of Parliament?

12. Was there appropriate disclosure and reporting of the dealings and payments?

13. Were there ethical rules or guidelines which related to these business and financial dealings? Were they followed?

14. Are there ethical rules or guidelines which currently would have covered these business and financial dealings?

15. What steps were taken in processing Mr. Schreiber's correspondence to Prime Minister Harper of March 29, 2007?

16. Why was the correspondence not passed on to Prime Minister Harper?

SECTION II – DOCUMENTS AND INFORMATION

PURSUANT TO THE AUTHORITY granted to The Hon. Jeffrey J. Oliphant by Order in Council 2008-1092 and Part I of the *Inquiries Act*, section 4, this is to order you to produce to the Commissioner at the Commission's Office located at 427 Laurier Avenue West, Suite 400 in the City of Ottawa, Ontario, **on or before [DATE]** the following documents and things:

a. **[DOCUMENTS DESCRIBED]**

b. **ETC.**

FOR PURPOSES OF THIS Subpoena, "document" is defined in Appendix A.

PURSUANT TO THE AUTHORITY granted to The Hon. Jeffrey J. Oliphant by Order in Council 2008-1092 and Part I of the *Inquiries Act*, section 4, this is to order you to produce to the Commissioner at the Commission's Office located at 427 Laurier Avenue West, Suite 400 in the City of Ottawa, Ontario, **on or before DATE** the following information:

1. A list of all persons, including their present and, where relevant, former titles and position(s), together with current addresses, telephone numbers, fax numbers and e-mail addresses, who have any relevant knowledge of, or involvement in, any of the matters identified in Section I hereof. Without limiting the generality of the foregoing, the list should specifically include and identify all persons who might reasonably be considered to have relevant and material evidence as witnesses before the Commission;

Dated at Ottawa this DATE day of MONTH, 2008, in Ottawa

_____

The Hon. Jeffrey J. Oliphant, Commissioner

Appendix A

For the purposes of this Subpoena, the word "**Document**" includes any memorandum, data, analysis, report (including internal or other audit reports), minutes, briefing material, submission, correspondence, record (including accounting and financial records), agenda, diary, note, study, investigation, test, file, e-mail or other electronic file or communication or other communication or material in writing (both internal to the Government of Canada or sent to or received from external sources), including, without limiting the generality of the foregoing, any document as defined herein that may be subject to Cabinet or Executive privilege, in your possession, custody or control. For greater certainty, this includes documents in off-site storage or which have been archived, and any electronic files, documents and communications. In the case of electronic files, documents and communications, these should not be copied or attached in any manner that might result in electronic information about it being lost or changed, and the hard drives should be preserved. The term "documents" is intended to have a broad meaning, and includes the following formats: written, electronic, audiotape, videotape, digital reproductions, photographs, maps, graphs, microfiche and any data and information recorded or stored by means of any device.

Appendix 15

Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney

Commission d'enquête concernant les allégations au sujet des transactions financières et commerciales entre Karlheinz Schreiber et le très honorable Brian Mulroney

DECLARATION

I, _____, was served with a Subpoena by the Oliphant Commission. I hereby declare that I have produced all documents (as defined in Appendix "A" to the Subpoena) and things in my possession, control or power that fall within the scope of the matters referred to in Section II of the Subpoena, specifically pertaining to the financial and business dealings of The Right Hon. Brian Mulroney and Karlheinz Schreiber in relation to the Bear Head Project and the payments made to Mr. Mulroney by Mr. Schreiber in 1993 and 1994.

_____
Date of Execution

_____ _____
Print name of Party, Intervenor or Witness Signature of Party, Intervenor or Witness

_____ _____
Print name of person witnessing the execution of this Declaration Signature of person witnessing the execution of this Declaration

Part 1 – Inquiry into Facts
Schedule of Witnesses

- **March 30, 2009**
  The Honourable Marc Lalonde, former minister of justice
  The Honourable William McKnight, former minister of national defence

- **March 31, 2009**
  Elizabeth Moores, wife of Frank Moores, former premier of Newfoundland and Labrador
  Derek Burney, former chief of staff to the Right Honourable Brian Mulroney

- **April 14 to April 17, 2009**
  Karlheinz Schreiber, German Canadian businessman

- **April 20, 2009**
  Pat MacAdam, former chief of staff for Mr. Brian Mulroney as leader of the opposition
  Donald Smith, English editor, Executive Correspondence Unit, Privy Council Office
  Sheila Powell, Director, Executive Correspondence Unit, Privy Council Office

- **April 21, 2009**
  Greg Alford, former vice-president, Bear Head Industries
  Paul Smith, executive assistant to the Right Honourable Brian Mulroney, 1991-93
  Harry Swain, former deputy minister of Industry, Science and Technology

- **April 22, 2009**
  Harry Swain, former deputy minister of Industry, Science and Technology
  Robert Hladun, Mr. Shreiber's lawyer

- **April 23, 2009**
  William Kaplan, author
  Paul Terrien, former speech writer for the Right Honourable Brian Mulroney

- **April 27 to April 28, 2009**
  Fred Doucet, former senior advisor to the Right Honourable Brian Mulroney

- **April 29, 2009**
  The Right Honourable Kim Campbell, former prime minister of Canada
  The Honourable Perrin Beatty, former minister of defence

- **April 30, 2009**
  Mr. Norman Spector, former chief of staff to the Right Honourable Brian Mulroney

- **May 4, 2009**
  Mr. Luc Lavoie, former deputy chief of staff, Operations, to the Right Honourable Brian Mulroney
  The Honourable Elmer MacKay, former minister responsible for Atlantic Canada Opportunities Agency

- **May 5, 2009**
  Mr. Paul Tellier, former clerk of the Privy Council and secretary to the Cabinet
  The Honourable Lowell Murray, senator and former minister responsible for Atlantic Canada Opportunities Agency

- **May 6, 2009**
  Steven Whitla, managing director, Navigant Consulting

- **May 7, 2009**
  Mr. Karlheinz Schreiber, German Canadian businessman

- **May 12 to May 19, 2009**
  The Right Honourable Brian Mulroney, former Prime Minister of Canada

- **May 20, 2009**
  The Right Honourable Brian Mulroney, former Prime Minister of Canada
  Wayne Adams, Canada Revenue Agency

- **May 21, 2009**
  Salpie Stepanian, manager, Prime Minister's Correspondence Unit, PMO
  Christiane Sauvé, Canada Revenue Agency
  Fred Bild, former Canadian Ambassador to China

- **June 3, 2009**
  Mr. Karlheinz Schreiber, German Canadian businessman

Appendix 17: Ruling on Application Filed by Mr. Schreiber, May 11, 2009 (Excerpt from Transcript), June 3, 2009

answer.

45518 COMMISSIONER OLIPHANT: You can't answer yes or no then?

45519 MR. LANDRY: No.

45520 COMMISSIONER OLIPHANT: Okay.

45521 MR. LANDRY: So basically, Mr. Commissioner, that would be our submission --

45522 COMMISSIONER OLIPHANT: I have read the --

45523 MR. LANDRY: -- subject to your questions.

45524 COMMISSIONER OLIPHANT: That's fine. Thank you.

--- Pause

45525 COMMISSIONER OLIPHANT: Mr. Roitenberg...?

45526 MR. ROITENBERG: Mr. Commissioner, I should indicate for the benefit of the record that Commission counsel takes no position on this application.

45527 COMMISSIONER OLIPHANT: Fine. Thank you.

--- Pause

RULING / DÉCISION

45528 COMMISSIONER OLIPHANT: I have a

before me an application by Karlheinz Schreiber whereby he seeks from this Commission an order, direction or recommendation that he remain available in Ottawa to attend the balance of Parts I and II of the work of this Commission.

45529 He makes that application on the basis that he does have status as a party with full standing on both Parts I and II and wants to be available in Canada for the purpose of instructing his counsel with respect to final submissions to be made on Part I and with respect to instructions to be provided in terms of questions that may be asked by counsel throughout the course of Part II.

45530 What has precipitated the application is the position taken by the Minister of Justice whereby the only undertaking, if I might use that term, given was to agree on the part of the Minister not to surrender Mr. Schreiber until he had completed giving his evidence on Part I.

45531 It seems to me that while this Commission has no jurisdiction or authority to make an order to compel the Minister of Justice to permit Mr. Schreiber to remain in Canada for the duration of this Commission, that out of an abundance of fairness, procedurally and in terms of natural justice, it would

be a travesty to remove Mr. Schreiber from Canada while the Commission is still at work and has yet to commence its work on Part II.

45532 Let it be said immediately that had I not been convinced that Mr. Schreiber could make a contribution to Part II, I would not have granted him status as a party.

45533 We have a schedule to complete Part I which includes final submissions by counsel on the 10th and 11th of this month. Part II will commence on the 15th of June, go for three days that week and then move over to either the 22nd or 23rd of June, which will bring the work of the Commission to an end finally.

45534 Mr. Auger, who has laboured on his own throughout the course of Part I, is entitled, I think, to have Mr. Schreiber available to provide instructions to him in respect of submissions to be made on Mr. Schreiber's behalf on the 10th and/or 11th of June and to instruct Mr. Auger in terms of responding to submissions that might be made by other counsel.

45535 Mr. Schreiber is entitled, in my view, to be present in Canada to provide instructions to Mr. Auger or any other counsel he might have indeed, with respect to questions to be posed of various

experts who will be speaking during the course of the four days that will be taken up with Part II.

45536 If he were to be removed from Canada, the ability of Mr. Schreiber to communicate in a meaningful way with his counsel would be diminished, if not totally destroyed.

45537 So as I say, it seems to me that to surrender Mr. Schreiber prior to the termination of the work of the Commission, which is only three weeks down the road in any event, would result, in my view, to a travesty of justice and ought not to be endorsed by anyone.

45538 Having said that I have no authority to make an order compelling the Government of Canada to permit Mr. Schreiber to remain in Canada until the work of this Commission is completed, I say now without any hesitation whatsoever that it is my hope, indeed my expectation, that the Minister will see his way fit not to surrender Mr. Schreiber until the work of the Commission is completed, and that would be a recommendation that I would make wholeheartedly to Mr. Nicholson, the Minister of Justice.

45539 I hope, despite the fact that I am not in a position to make an order because my jurisdiction comes from statutes and from other

documents and it just isn't there -- I can't make an order. But I would hope that the Minister will see fit to accept the recommendation that I have made and to allow Mr. Schreiber to remain in the country at least until the work of the Commission is complete.

45540 That, then, is my ruling with respect to Mr. Schreiber's application.

45541 Is there anything further for today, Mr. Roitenberg?

45542 MR. ROITENBERG: There is not, Mr. Commissioner.

45543 I suggest that we suspend for one week's time until 9:30 on June 10th.

45544 COMMISSIONER OLIPHANT: All right, at which time we will hear submissions from all counsel with respect to Part I.

45545 Thank you very much, counsel. Good morning.

45546 Mr. Pratte, did you have something to say?

45547 MR. PRATTE: Not directly, sir. I just wanted to maybe invite counsel to stay so we could talk about the schedule of argument --

45548 COMMISSIONER OLIPHANT: Sure.

45549 MR. PRATTE: -- but you need not be

Appendix 18

Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney

Commission d'enquête concernant les allégations au sujet des transactions financières et commerciales entre Karlheinz Schreiber et le très honorable Brian Mulroney

Part II – Policy Review

Public Consultation Paper

December 15, 2008

Contents

Oliphant Commission

I CALL FOR SUBMISSIONS

A Introduction

As laid out in the Rules of Procedure and Practice, the proceedings of the Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney are divided into two parts. Part I, the Factual Inquiry, will focus on questions relating to the business and financial dealings between Mr. Schreiber and Mr. Mulroney. These questions are set out in paragraph (a) sections 1 through 16 of the Inquiry's terms of reference. Part II, the Policy Review, focuses on the questions set out in paragraph (a) sections 14 and 17. These policy questions are the subject of this paper.

In the policy review, the Commissioner is charged with reporting and making recommendations on two issues of policy. They centre, first, on the content of Canada's federal ethics rules and, second, on the policies and practices at the Privy Council Office (PCO) governing the handling of the prime minister's correspondence. These two policy issues are described in more detail below, under the headings Ethics Questions and Correspondence Question.

As part of its policy deliberations on these matters, the Commission has undertaken a multi-stage policy review. First, it has commissioned three research studies from leading researchers in the field – two on ethics rules and the third on correspondence-handling policies. These studies will be published in draft form in early 2009, and the authors will participate in an Expert Forum in late spring 2009, at which they will present their findings and be questioned by the Commission and those with party standing in the policy review. (The hearing of applications for standing and funding for the Part II – Policy Review will be held on January 21, 22, and, if necessary, January 23, 2009. The Notice for this hearing is posted on the Commission's website.)

In addition, at this time the Commission is requesting written submissions on the policy questions from interested persons and the general public. All submissions will be carefully reviewed. After this review, the Commission will offer some of the submitters the opportunity to present their views at a public session in late spring 2009.

Selection of the presenters is at the sole discretion of the Commission and will depend on the Commission's assessment of the usefulness of the presenters' arguments to the Commission.

This consultation paper outlines in greater detail the issues raised by the two policy questions and poses a series of more detailed questions. The paper should guide those interested in providing written submissions.

B Making Submissions

Members of the public who wish to respond to the matters raised in this consultation paper should do so in writing by 5 p.m. eastern time, **March 23, 2009**. Written submissions should be sent by mail, courier, or fax to the following address:

Oliphant Commission

Director of Policy Research
Commission of Inquiry into Certain Allegations Respecting
Business and Financial Dealings Between Karlheinz
Schreiber and the Right Honourable Brian Mulroney
P.O. Box 2740, Station D
Ottawa, Ontario K1P 5W7
Canada

Fax: (613) 995-0785

Submissions may also be delivered by sending PDF (portable document format) files via e-mail to

research@oliphantcommission.ca

C Disclaimer

The Commission has not completed its fact-finding functions. The Commissioner takes no views on the truth or otherwise of any of the allegations that led to this Commission of Inquiry, or on any of the facts described in prior examinations of these matters. In no manner should this consultation paper be read as taking a position on these issues. To the extent it presumes facts, it does so entirely to ground the policy questions, in a manner that has no bearing on the fact-finding function of the Commission.

II ETHICS QUESTIONS

A Overview

Paragraph (a) section 14 of the Commission's terms of reference reads:

> 14. Are there ethical rules or guidelines which currently would have covered these business and financial dealings? Are they sufficient or should there be additional ethical rules or guidelines concerning the activities of politicians as they transition from office or after they leave office?

The words "these business and financial dealings" refer to other questions raised in the terms of reference concerning the alleged business and financial dealings of Mr. Karlheinz Schreiber and the Right Honourable Brian Mulroney, as follows:

> 1. What were the business and financial dealings between Mr. Schreiber and Mr. Mulroney?
>
> 2. Was there an agreement reached by Mr. Mulroney while still a sitting prime minister?
>
> 3. If so, what was that agreement, when and where was it made?
>
> 4. Was there an agreement reached by Mr. Mulroney while still sitting as a Member of Parliament or during the limitation periods prescribed by the 1985 ethics code?
>
> 5. If so, what was that agreement, when and where was it made?
>
> 6. What payments were made, when and how and why?
>
> 7. What was the source of the funds for the payments?
>
> 8. What services, if any, were rendered in return for the payments?
>
> 9. Why were the payments made and accepted in cash?
>
> 10. What happened to the cash; in particular, if a significant amount of cash was received in the U.S., what happened to that cash?

As noted, the parameters of any business and financial dealings between Messrs. Schreiber and Mulroney are the subject of the factual inquiry of the Commission. They are not, therefore, an issue to be decided in this policy review, and the Commission will

not accept submissions connected to the alleged relationship between Messrs. Schreiber and Mulroney as part of the policy review. For the purposes of this policy review – and without any bearing on the factual review – this consultation paper defines the ethics questions raised by paragraph (a) section 14 as follows:

> ***Consultation Questions***
>
> 1. **Are there ethical rules or guidelines that *currently* cover business and financial dealings between a sitting prime minister or a sitting member of parliament and a third party?**
>
> 2. **If so, what sort of business and financial dealings are covered?**
>
> 3. **Are there deficiencies in the scope and nature of this coverage?**
>
> 4. **In particular, should there be additional ethical rules or guidelines concerning the activities of politicians as they transition from office or after they leave office?**
>
> 5. **In this last regard, are the current rules on the post-employment of politicians appropriate?**
>
> 6. **Are the existing enforcement and penalty regimes sufficient?**

In the sections that follow, this consultation paper provides a succinct overview of the Commission's current understanding of federal ethics rules to assist those wishing to make submissions on these questions.

B Federal Ethics Rules

1 Overview of Statutory and Regulatory Framework

Ethics rules pertaining to politicians at the federal level have evolved since the early 1990s. By the end of Mr. Mulroney's tenure in office (as prime minister until June 24, 1993, and as a member of parliament until September 8, 1993), the ethics rules of plausible relevance to the Commission's work were contained in the *Conflict of Interest and Post-Employment Code for Public Office Holders*,[1] the *Parliament of Canada Act*,[2] and the *Criminal Code*.[3] The *Lobbyist Registration Act*,[4] while not strictly including ethics rules at the time, has since become more relevant as an ethics instrument.

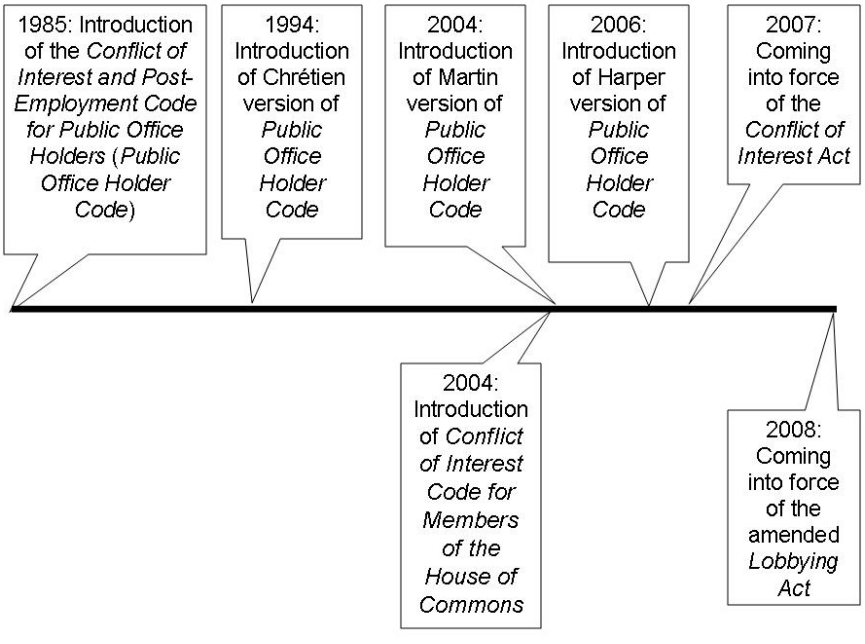
The content of each of these instruments changed with time. The most sweeping renovation came in 2006 with the passage of the *Federal Accountability Act* (FAA).[5] A core component of that statute was the *Conflict of Interest Act*,[6] which replaced the non-statutory *Conflict of Interest and Post-Employment Code for Public Office Holders*. The

FAA also introduced changes to what was renamed the *Lobbying Act* with implications for the federal ethics regime.

Also of note is the *Conflict of Interest Code for Members of the House of Commons*,[7] which came into effect in October 2004 as part of the Commons Standing Orders. The Senate adopted an analogous instrument on May 18, 2005: the *Conflict of Interest Code for Senators*.[8]

Figure 1 is a chronology showing the sequencing of key federal ethics instruments.

Figure 1: Chronology of Key Federal Ethics Instruments



2 Comparative Content of Ethics Instruments

The content of these instruments varies. Table 1 outlines our understanding of the rules and restrictions found in Canada's federal conflicts of interest regime, as it applies to politicians and former politicians.

At present, the core instruments for a member of parliament with a ministerial post are the *Conflict of Interest Act*, the *Lobbying Act*, the *Conflict of Interest Code for Members of the House of Commons*, the *Parliament of Canada Act*, and the *Criminal Code*. These instruments apply to different (although overlapping) categories of public officials, and impose varying requirements.

Table 1: Comparative Content of Federal Ethics Instruments

Rule	*Conflict of Interest and Post-Employment Code for Public Office Holders*				*Conflict of Interest Act* (2007)	*Conflict of Interest Code for Members of the House of Commons* (2004)
	1985	1994	2004	2006		
Definition of "conflict of interest"					✔	
Must arrange affairs to avoid conflict of interest	✔	✔	✔	✔	✔	✔
Must recuse oneself where decision creates conflict			✔	✔	✔	✔
Not to give preferential treatment based on identity of person	✔	✔	✔	✔	✔	
Not to use non-public information to further private interest	✔	✔	✔	✔	✔	✔
Not to use position to influence decision-making in favour of private interest		✔	✔	✔	✔	✔
Not to be influenced in conduct of powers by prospects for outside employment	✔	✔	✔	✔	✔	
Not to accept gifts that might be seen to influence office holder	✔	✔	✔	✔	✔	✔
Gifts of a certain value are forfeited to the Crown			✔	✔	✔	
Not to accept travel on private aircraft, subject to exceptions			✔	✔	✔	
Not to be a party to a contract with a public sector entity					✔	✔
Not to have an interest in a business enterprise that is party to a contract with a public sector entity					✔	✔
Not to contract on behalf of the government with immediate family		✔	✔	✔	✔	
No outside business activities	✔	✔	✔	✔	✔	
No use of government property for anything other than official activities	✔	✔	✔	✔		
No solicitation of funds where would create a conflict			✔	✔	✔	
No holding of "controlled assets"	✔	✔	✔	✔	✔	
No circumvention of these rules	✔[a]	✔[b]	✔	✔	✔	
Compliance with rules as a condition of employment	✔	✔	✔	✔	✔	
Once a former public office holder, not to act in a manner so as to take improper advantage of previous public office	✔	✔	✔	✔	✔	
Once a former public office holder, not to act for someone in connection with any specific matter on which acted for government while in office	✔	✔	✔	✔	✔	

Once a former public office holder, not to give advice using non-public information obtained while a public office holder	✔ [c]	✔	✔	✔	✔	
Once a former public office holder, for a cooling-off period, not to enter into contract, accept appointment to a board of directors, or accept employment with an entity with which had direct and significant dealings for a year prior to leaving office	✔ [d]	✔ [e]	✔	✔	✔	
Once a former public office holder, for a cooling-off period, not to make representations to any public entity with which had direct and significant dealings for a year prior to leaving office	✔	✔	✔	✔	✔	
Once a former public office holder, for a cooling-off period, not to give counsel, for commercial purposes of the recipient, concerning programs of policies of the office holder's former department or a department with which office holder had direct and substantial relationship for a year prior to leaving office	✔					
Once a former minister, for a cooling-off period, not to make representations to a former ministerial colleague who remains a minister			✔	✔	✔	
For certain senior public office holders (including ministers), no lobbying for five years				✔	✔ (under the *Lobbying Act*)	

Notes

a Language confines non-circumvention rule to selling or transferring assets to family members or other persons for the purposes of circumvention.

b Language confines non-circumvention rule to selling or transferring assets to family members or other persons for the purposes of circumvention.

c This obligation is, however, found in the objects portion of the Code, not in the formal obligations portion.

d No reference to "contracts."

e No reference to "contracts."

a) *Conflict of Interest Act* and the *Lobbying Act*

The *Conflict of Interest Act* (*CIA*) is the most detailed (and most recent) instrument. It applies to public office holders – a defined term that includes mostly senior executive branch officials, including "a minister of the Crown."[9]

i) Conflicts of Interest

The *CIA* imposes specific prohibitions, designed to eliminate conflicts of interest, on the current activities of public office holders. A conflict of interest exists where a public office holder "exercises an official power, duty or function that provides an opportunity to further his or her private interests or those of his or her relatives or friends or to improperly further another person's private interests."[10] There is no limit on what might constitute a "private interest," although the *CIA* excludes interests that are general, that affect the public office holder as one of a broad class of individuals, or that concern remuneration of benefits received in return for employ as a public office holder.[11]

ii) Sample Specific Prohibitions

Certain specific actions are barred by the *CIA*. For example, most public office holders are barred from engaging in employment or the practice of a profession, managing or operating a business or commercial activity, or serving as a paid consultant.[12] Public office holders are also precluded from giving "preferential treatment" in exercising their official powers, duties, or functions to anyone "based on the identity of the person or organization" representing that entity (for example, the identity of the lobbyist).[13] Likewise, no public office holders can use information obtained via their office and not available to the public to further (or to seek to further) their private interests or those of relatives or friends. Nor can they use this information to further (or to seek to further) "improperly" another person's private interests.[14] The *CIA* also bars office holders from using their position to influence another official to further these private interests.[15]

iii) Disclosure and Divestment Rules

The *CIA* also includes detailed rules obliging disclosure to an ethics official (and, in some cases, public declaration) of, among other things, public office holders' assets; and, in some instances, outright divestment of those assets is required. The core disclosure and divestment rules are summarized in Table 2.

Table 2: Asset Disclosure and Divestment Rules under the *Conflict of Interest Act*

Class	Asset
Confidential disclosure	Within 60 days of appointment, a confidential disclosure is made to the conflict of interest and ethics commissioner of • All income, assets, and liabilities of office holders; ministers must include similar information on family members; • All income during the 12 months before the appointment and all the income the public office holders are entitled to receive for 12 months after the appointment; ministers must include similar information on family members; • Benefits from a contract with a public service entity the public office holders (or their family members or a private corporation or partnership in which they or their family has an interest) are entitled to receive for 12 months after the appointment • Certain outside activities (e.g., business activities; involvement in charitable activities)

Class	Asset
	from two years before they became office holders; ministers must include outside activities of family members. Within 30 days of any material change in the above, a confidential report is made to the the conflict of interest and ethics commissioner. Within 30 days of gifts from any one person other than a family member or friend exceding $200 in a single year, the gifts shall be disclosed to the conflict of interest and ethics commissioner.
Public declarations	Within 120 days of appointment, public office holders must publicly delare all of their assets that are neither "controlled" nor "exempted." Ministers must also publicly disclose all liabilities in excess of $10,000. Within 120 days of appointment, public office holders must publicly declare whether they are a director or officer in a charitable, philanthropic, or non-commercial corporation. Within 60 days of a recusal done to avoid a conflict of interest, public office holders must make a public declaration describing in sufficient detail the conflict of interest avoided. Within 30 days of receipt of a gift with a value of $200 or more from anyone other than a friend or relative, public office holders must make a public declaration describing the gift. Within 30 days of accepting travel in a manner that falls within the permitted exceptions contained in the Act, ministers must make a public declaration describing the travel and circumstances.
Mandatory divestment (controlled assets)	Within 120 days of appointment, public office holders must divest themselves of controlled assets by selling them in an arm's length transaction or placing them in a blind trust. Controlled assets are those that "could be directly or indirectly affected by government decisions or policy," including • publicly traded securities of corporations and foreign governments, whether held individually or in an investment portfolio account; • self-administered registered retirement savings plans, self-administered registered education savings plans, and registered retirement income funds, if composed of at least one asset that would be considered "controlled" if outside the fund; • commodities, futures, and foreign currencies held or traded for speculative purposes; and • stock options, warrants, rights, and similar instruments.
Exempt assets and interests	Assets and interests for the private use of public office holders and their families and assets that are not of a commercial character, including • residences, recreational property, and farms used or intended for use by public office holders or their families; • household goods and personal effects; • works of art, antiques, and collectibles; • automobiles and other personal means of transportation; • cash and deposits; • Canada savings bonds and other similar investments issued or guaranteed by any level of government in Canada or agencies of those governments; • registered retirement savings plans and registered education savings plans that are not

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Class	Asset
	self-administered or self-directed; • investments in open-ended mutual funds; • guaranteed investment certificates and similar financial instruments; • public sector debt financing not guaranteed by a level of government, such as university and hospital debt financing; • annuities and life insurance policies; • pension rights; • money owed by a previous employer, client, or partnership; or • personal loans receivable from the members of the public office holder's relatives, and personal loans of less than $10,000 receivable from other persons where the public office holder has loaned the moneys receivable; • money owed under a mortgage of less than $10,000; • self-directed or administered registered retirement savings plans, self-administered registered education savings plans, and registered retirement income funds composed exclusively of assets that would considered exempt; and • investments in limited partnerships that are not traded publicly and whose assets are exempt assets.

Source: *Conflict of Interest Act*, ss. 20 *et seq.*

iv) Post-Employment Rules

The *CIA* regulates post-employment activities – that is, what public office holders may do once they leave office.

While Still in Office

While still in public office, public office holders must not permit themselves to be influenced in their official activities "by plans for, or offers of, outside employment."[16] The public office holders must disclose all "firm offers" of outside employment to the conflict of interest and ethics commissioner within seven days.[17] Similarly, acceptance of an offer of outside employment must be disclosed to the commissioner within seven days. Ministers who accept such an offer must also report this fact to the prime minister.[18]

Indefinite Rules Once Holders Depart Office

The *CIA* also purports to regulate conduct once the person has left public office. Some of these rules are permanent; that is, they endure for an indefinite period of time. Thus, the Act specifies that "[n]o former public office holder shall act in such a manner as to take improper advantage of his or her previous public office."[19] More specifically, it prohibits the former office holder from acting for a person in respect to any specific matter in relation to which the former public office holder had acted for the government. Likewise, the former public office holder may not give advice to a client, business associate, or employer using non-public information obtained by virtue of the office holder's former position.[20]

Time-Limited Rules Once Holders Depart Office

The *CIA* also imposes so-called "cooling off" periods – additional prohibitions that endure for a limited period of time. For ministers, this period is two years. During this time, among other things, former public office holders may not enter into a service contract with an entity with which they had "direct and significant" dealings for one year before their departure from office. Likewise, they may not make representations on

behalf of any entity to a public agency with which the former office holders had "direct and significant official dealings" for one year before their departure from office. This rule is supplemented for former ministers: they may not make representations to a current minister who was a former ministerial colleague.[21]

The *Lobbying Act* now augments these post-employment rules. Under that statute, certain public office holders – including ministers – may not lobby for five years after leaving office. Thus, the former minister may not (for payment and on behalf of a client or, in some instances, employer) arrange a meeting between a public office holder and another person, or communicate with a public office holder in respect of a number of public policy initiatives, including the promulgation of a statute or making of a regulation, the development or amendment of any government policy or program, or the awarding of any contract, "grant, contribution, or other financial benefit by or on behalf" of the government.[22]

b) *Conflict of Interest Code for Members of the House of Commons* and the *Parliament of Canada Act*

Members of Parliament are governed by a separate instrument, appended to the Standing Orders of the House of Commons – the *Conflict of Interest Code for Members of the House of Commons* (MP Code). This is not a legislative instrument – that is, it was never introduced as a bill, assessed by both the Commons and the Senate and accorded royal assent from the Governor General. It is instead a set of rules created by the House of Commons as a manifestation of its inherent parliamentary privilege to discipline its own membership.

The Code applies to "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."[23] It applies, therefore, to ministers, at least when acting in their parliamentary capacity (for example, voting on a measure in the House of Commons). Ministers and regular MPs are, however, treated slightly differently by the Code: MPs who are not ministers may carry on a business or engage in employment in a profession. This authorization is tempered by the requirement that, in so acting, the MP is not in breach of the conflict of interest rules in the Code.[24]

Those conflict of interest rules are broadly similar to those found in the *CIA* (although less numerous) and, at core, are directed at precluding MPs from exercising their functions in a manner that favours their private interest (or those of relatives) or improperly favours the private interest of some other party. Unlike in the *CIA*, "private interest" is defined in the Code. Furthering a private interest exists 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) [income from employment, a contract, or a business];

> (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.[25]

Also of note, the *Parliament of Canada Act* bars MPs from receiving or agreeing to receive any compensation for services to any person "in relation to any bill, proceeding, contract, claim, controversy, charge, accusation, arrest or other matter before the Senate or the House of Commons or a committee of either House; or … for the purpose of influencing or attempting to influence any member of either House."[26] Violation of this prohibition is a criminal offence, potentially disqualifying the MP from membership in the House of Commons or any position in the federal public administration for five years.

The Code includes substantial disclosure requirements, obliging MPs to report their most important assets to an ethics official (described below). A summary of this disclosure is available for public inspection.

A significant distinction in the rules governing MPs (as opposed to senior executive officials under the *CIA*) is that neither the Code nor the *Parliament of Canada Act* includes specific rules on post-employment of the sort found in the *CIA*.

c) *Criminal Code*

The *Criminal Code* prohibits the most serious forms of unethical conduct by public officials, including politicians. For instance, the *Criminal Code* criminalizes the actual or attempted bribing of (or acceptance of a bribe by) "members of Parliament."[27] Other sections extend to "officials," a term defined broadly to include all those who hold a government office or who are appointed or elected to "discharge a public duty."[28] The *Criminal Code* makes fraud or "breach of trust" committed in connection with an official's duties a crime.[29] The *Criminal Code* also criminalizes what is colloquially known as "influence peddling" – in essence, the selling of or the offering to sell influence with the government for a fee. This *Criminal Code* provision applies to anyone who makes (and any official who accepts) an offer to sell influence, whether or not the official actually has the power to influence a government decision.[30]

C Enforcement and Administration

Enforcement of the criminal provisions discussed above – including the *Criminal Code* and the *Parliament of Canada Act* – is a police matter, carried out by the RCMP. The *Conflict of Interest Act* and the *Conflict of Interest Code for Members of the House of Commons* are administered by a special official – the conflict of interest and ethics commissioner.

The commissioner is appointed by the Governor in Council (in essence, the federal Cabinet) "after consultation with the leader of every recognized party in the House of Commons and approval of the appointment by resolution of that House."[31] He or she must be a former judge or someone who has served on a government board, commission, or tribunal and who has, in the federal Cabinet's view, relevant expertise.[32] The commissioner enjoys substantial security of tenure – he or she is appointed for seven years (with the possibility of an additional seven-year renewal) during "good behaviour." This means the commissioner can be dismissed only for cause, and even then the

government cannot fire the person: the firing must be approved by a vote in the House of Commons.

Under both the *CIA* and the MP Code, the commissioner administers the disclosures made by public officials of their assets. Under the *CIA*, he or she reviews these disclosures annually and may order the public office holder to take certain steps to bring them into compliance with the Act – including recusals on certain matters or divestment.[33]

The commissioner also has responsibilities in relation to the post-employment rules. Former public office holders must notify the commissioner of any lobbying they do during the "cooling off" period.[34] The commissioner then assesses compliance with the post-employment rules, and if he or she concludes that there has been non-compliance, the commissioner may order that current public office holders have no dealings with the former official.[35] The commissioner is also authorized to relax some of the post-employment restrictions for certain former public office holders should a number of listed criteria be met.[36]

The commissioner is charged with giving confidential advice to the prime minister and individual public office holders concerning compliance with the Act. He or she also investigates complaints of non-compliance, made by a senator or member of parliament "who has reasonable grounds to believe that a public office holder or former public office holder has contravened this Act."[37] The commissioner may also initiate his or her investigation where he or she has "reason to believe that a public office holder or former public office holder has contravened" the Act.[38] The commissioner reports his or her findings to the prime minister, the complainant, the public office holder in question, and also to the public.[39] The conclusions of the commissioner that "a public office holder or former public office holder has or has not contravened this Act may not be altered by anyone but is not determinative of the measures to be taken as a result of the report."[40]

The commissioner's responsibilities under the MP Code are broadly analogous. He or she administers the disclosure process, is empowered to issue opinions on compliance questions to inquiring MPs, and investigates complaints concerning non-compliance made by MPs (or may investigate on his or her own initiative). The commissioner's findings concerning investigations are tabled in the House of Commons, and the matter is then debated in the House of Commons.

D Penalties

Penalties under the instruments described in this consultation paper vary. They include disqualification from sitting as an MP (for violation of the *Parliament of Canada Act*); potentially significant fines (for *Criminal Code* violations or the limitations on post-public office lobbying under the *Lobbying Act*) or terms of imprisonment (*Criminal Code* violations); and more indefinite sanctions for violations of the *Conflict of Interest Act* and the MP Code. Although the *CIA* imposes modest fines for violations by public office holders of disclosure obligations,[41] it is silent on penalties for other instances of non-compliance with the Act. Ultimately, the sanctions imposed on non-compliant public office holders are a matter for the prime minister to decide.

Similarly, the imposition of penalties for violation of the MP Code lies in the hands of MPs themselves. As a manifestation of parliament's inherent parliamentary privileges, MPs are entitled to vote disciplinary measures on their colleagues.

E Application of Ethics Rules: A Hypothetical Example

As the discussion above suggests, different rules apply to different officials – and officials whose status changes with time would be subject to a variety of different standards over the course of their careers. Table 3 provides a more specific – but hypothetical – context for this general discussion of the federal ethics rules: it highlights our understanding of the rules as they would apply to a member of parliament who becomes prime minister (at "Year 0") and who then resigns after a year to sit again as a regular member of parliament for one year before leaving public life completely.

Table 3: Timeline of Application of Ethics Obligations: A Hypothetical Example

	Time Horizon					
	Yr minus 2	**Yr minus 1**	**Yr minus 1 plus 60 days**	**Yr 0**	**Yr 0 plus 60 days**	**Yr 0 plus 120 days**
Status of individual	Private citizen	Elected MP	Sitting MP	Appointed prime minister	Sitting prime minister	
Applicable ethics instruments	*Criminal Code*, *Parliament of Canada Act*	*Criminal Code*, *Parliament of Canada Act*, and MP Code		*Criminal Code*, *Parliament of Canada Act*, MP Code (insofar as acting in parliamentary capacity), and *Conflict of Interest Act*		
Ethics/ financial disclosure obligations	N/A		File confidential statement with the commissioner disclosing the MP's private interests and the private interests of the members of the MP's family. A summary of the statement is prepared by the conflict of interest and ethics commissioner and placed on file at the office of the commissioner and made available for public inspection.[a]		Confidential disclosure obligations per Table 2 above	Public disclosure obligations per Table 2 above
Obligations relevant to business transactions	General obligations, including *Criminal Code* rules concerning bribery, influence peddling, etc., and *Parliament of Canada* rules in relation to offering any compensation for services to an MP in connection with a matter before the Commons	o General obligations, including *Criminal Code* rules concerning bribery, influence peddling, etc., and *Parliament of .Canada* rules in relation to receiving or agreeing to receive any compensation for services to any person in connection with a matter before the Commons o MP-specific obligations about not advancing "private interest" and, e.g., being a party in a contract with a public entity		o General obligations, including *Criminal Code* rules concerning bribery, influence peddling, etc., and *Parliament of Canada* rules in relation to receiving or agreeing to receive any compensation for services to any person in connection with a matter before the Commons o MP Code obligations continue insofar as PM acting in parliamentary capacity o Specific obligations under the *CIA* barring advancement of "private interest," the giving of preferential treatment, or the acceptance of gifts that might be seen as influencing actions o Specific obligations about, e.g., being a party in a contract with a public entity o Bar on, e.g., engaging in employment, the practice of a profession, managing or operating a business or commercial activity, or serving as a paid consultant		
Specific obligations relevant to post-employment	N/A	N/A		o Must not allow plans for or offers of outside employment to influence exercise of official power o Disclosure of all "firm offers" (and acceptance) of employment to the conflict of interest and ethics commissioner within seven days		

Table 3: Timeline of Application of Ethics Obligations: A Hypothetical Example (Continued)

	Time Horizon			
	Yr 1	**Yr 2**	**Yr 3 to Yr5**	**After Yr 5**
Status of individual	No longer PM; sitting MP	Private citizen		
Applicable ethics instruments	*Criminal Code*, *Parliament of Canada Act*, MP Code, and post-employment provisions in *Conflict of Interest Act*, *Lobbying Act*	*Criminal Code*, *Parliament of Canada Act*, MP Code, and post-employment provisions in *Conflict of Interest Act*, *Lobbying Act*		
Ethics/ financial disclosure obligations	o Continuing obligations to file material changes to the disclosure statement made under the MP Code (see Yr minus 1 plus 60 days) o Obligation to report any lobbying done to the commissioner	o Obligation to report any lobbying done to the commissioner		
Obligations relevant to business transactions	o General obligations, including *Criminal Code* rules concerning bribery, influence peddling, etc., and *Parliament of Canada* rules in relation to receiving or agreeing to receive any compensation for services to any person in connection with a matter before the Commons o MP-specific obligations about not advancing "private interest" and, e.g., being a party in a contract with a public entity	o General obligations, including *Criminal Code* rules concerning bribery, influence peddling, etc., and *Parliament of Canada* rules in relation to offering any compensation for services to an MP in connection with a matter before the Commons		
Specific obligations relevant to post-employment	o Must not act in such a manner as to take improper advantage of previous public office o Must not act for a person in respect to any specific manner in relation to which the PM had acted for the government o Must not give advice to a client, business associate, or employer using non-public information obtained by virtue of the PM's former position o Must not enter into a service contract with an entity with which the PM had "direct and significant" dealings for one year before his or her departure from office o Must not make representations on behalf of any entity to a public agency with which the PM had "direct and significant official dealings" for one year before his or her departure from office o Must not make representations to a current minister who was a former ministerial colleague o Must not lobby – that is, for payment and on behalf of a client/employer; arrange a meeting between a public office holder and another person; or communicate with a public office holder in respect of a number of public policy initiatives, including the promulgation of a statute or making of a regulation, the development or amendment of any government policy or program, or the awarding of any contract, "grant, contribution, or other financial benefit by or on behalf" of the government	o Must not act in such a manner as to take improper advantage of previous public office o Must not act for a person in respect to any specific manner in relation to which the PM had acted for the government o Must not give advice to a client, business associate or employer using non-public information obtained by virtue of the PM's former position o Must not lobby	o Must not act in such a manner as to take improper advantage of previous public office o Must not act for a person in respect to any specific manner in relation to which the PM had acted for the government o Must not give advice to a client, business associate, or employer using non-public information obtained by virtue of the PM's former position

a MP Code, ss. 20 *et seq.*

III CORRESPONDENCE QUESTION

A Overview

Paragraph (a) sections 15 to 17 of the Commission's terms of reference read:

> 15. What steps were taken in processing Mr. Schreiber's correspondence to Prime Minister Harper of March 29, 2007?
>
> 16. Why was the correspondence not passed on to Prime Minister Harper?
>
> 17. Should the Privy Council Office have adopted any different procedures in this case?

Paragraph 17 encapsulates the policy question posed to the Commission, on which the Commission is now eliciting comments. The specific question on which the Commission invites submissions is as follows:

> ***Consultation Question***
>
> **Are there practices that the Privy Council Office should be employing in deciding which letters received from the public should be communicated directly to the Prime Minister?**

The Privy Council Office is a central agency of the Government of Canada, sometimes labelled the "Prime Minister's department." As described by its website:

> The Privy Council Office (PCO) is the hub of public service support to the Prime Minister and Cabinet and its decision-making structures. … Some of PCO's main roles are:
>
> - Providing professional, non-partisan advice to the Prime Minister and Cabinet;
> - Managing the Cabinet's decision-making system (including coordinating departmental policy proposals and conducting policy analysis);
> - Arranging and supporting meetings of Cabinet and Cabinet committees;
> - Advancing the development of the Government's agenda across federal departments and agencies and with external stakeholders;
> - Providing advice on the government's structure and organization;

- Managing the appointment process for senior positions in federal departments, Crown corporations and agencies;
- Preparing Orders-in-Council and other statutory instruments to give effect to Government decisions;
- Fostering a high-performing and accountable public service;
- Submitting an annual report to the Prime Minister on the state of the Public Service.[42]

B Context

As noted at the beginning of this paper, the Commission has not concluded its fact-finding functions. It has not yet examined questions 15 and 16 of the terms of reference. The Commission believes, however, that those making submissions on paragraph 17 require additional context. Strictly for the purposes of this consultation paper, therefore, it reproduces the discussion of this correspondence issue prepared by David Johnston, the Independent Advisor into the Allegations Respecting Financial Dealings Between Mr. Karlheinz Schreiber and the Right Honourable Brian Mulroney, in January 2008.[43] The Commission takes no position on the accuracy of this assessment at this time.

A. Schreiber's Correspondence with Government Officials

1. *The Correspondence Review Process*

As noted above, Mr. Schreiber wrote a letter to Prime Minister Harper in March 2007, enclosing another letter that referenced the Harrington Lake meeting [and described below]. This letter was part of more than one million pieces of correspondence addressed to the Prime Minister or his office annually.

Between June 2006 and September 2007, the Executive Correspondence Services (the "ECS"), the correspondence management arm of the Privy Council Office (the "PCO") comprising 35 full-time employees, received 16 letters from Mr. Schreiber, contained in 15 separate mailings. These letters were vetted and categorized in accordance with the ECS's standard procedure and were tracked using its automated Correspondence Management Information System. The ECS receives a vast amount of correspondence each year. During the last documented 12-month period, which spanned both 2006 and 2007, the ECS received over 1.7 million items of correspondence.

Of the 16 letters received, 10 of the letters remained under the ECS's control and were directed to be filed without response. According to the ECS, these 10 letters did not warrant responses pursuant to standard procedure for the following reasons: first, the letters described matters that were before the courts and it is standard procedure not to comment on ongoing litigation; second, the letters attached copies of letters between Mr. Schreiber and other individuals and it is standard procedure not to reply to letters that are copies.

The ECS sent Mr. Schreiber's November 30, 2006 letter to the PCO, seeking its advice on handling ongoing correspondence from Mr. Schreiber. The letter was reviewed and the Clerk's Office advised the ECS that no response was necessary, and the ECS filed the letter.

The ECS acknowledged Mr. Schreiber's January 16, 2007 letter and forwarded it on to the DOJ [Department of Justice] for information purposes.

The remaining four letters (June 16, 2006, August 23, 2006, May 3, 2007 and September 26, 2007) were sent to the Prime Minister's Correspondence (the "PMC"), which is a smaller correspondence review arm of the Prime Minister's Office, for its review and comments. From time to time, the ECS sends correspondence to the PMC to give it the opportunity to determine if it wishes to reply to correspondence on a subject on which the ECS received no specific PMC instructions. According to the ECS, these letters were not sent for any particular reason; rather they were chosen from all Mr. Schreiber's letters and sent to the PMC only to receive feedback from its perspective on Mr. Schreiber's correspondence generally on how the correspondence should be handled and to raise any concerns. The PMC did not provide the ECS with any direction on how to handle the correspondence.

The PCO, ECS and PMC, following their respective standard procedures, reviewed Mr. Schreiber's letters in the normal course and all three departments determined that the letters that they reviewed should not be sent to Prime Minister Harper for his review.

Prime Minister Harper has also confirmed that he never received any of Mr. Schreiber's correspondence sent during

this period. On November 29, 2007, Mr. Schreiber testified before the Ethics Committee that he has never spoken with or met with Prime Minister Harper.

2. *The Schreiber Letters*

The letters sent between June 2006 and September 2007 primarily addressed Mr. Schreiber's claim of a "political justice scandal" against him and Mr. Mulroney, and the "Airbus Affair", and the RCMP. In those letters, Mr. Schreiber attached various pieces of correspondence that he had sent to Government officials over the years, various newspaper articles and summaries of events from his perspective.

In a March 29, 2007 letter to Prime Minister Harper, Mr. Schreiber enclosed a copy of a letter sent to Mr. Mulroney on January 29, 2007. The January 29, 2007 letter stated that he and Mr. Mulroney had reached an agreement on June 23, 1993 at Harrington Lake for services related to the Bear Head Project, while Mr. Mulroney was still prime minister. According to Mr. Schreiber's letter, he and Mr. Mulroney, "agreed to work together and I [Schreiber] arranged for some funds for you [Mr. Mulroney]."

Mr. Schreiber sent additional letters dated April 8 and 10, 2007 to Prime Minister Harper. They primarily discussed his impending extradition to Germany, and provided copies of various correspondence between Mr. Schreiber and Government officials, such as Mr. Mulroney and Ms. Kim Campbell.

Endnotes

[1] *Conflict of Interest and Post-Employment Code for Public Office Holders* (Ottawa: Office of the Assistant Registrar General of Canada, 1985).
[2] *Parliament of Canada Act*, RSC 1985, c. P-1.
[3] *Criminal Code*, RSC 1985, c. C-46.
[4] *Lobbyist Registration Act*, RSC 1985, c. 44 (4th Supp.).
[5] *Federal Accountability Act*, SC 2006, c. 9.
[6] *Conflict of Interest Act* (*CIA*), SC 2006, c. 9, s. 2.
[7] The *Conflict of Interest Code for Members of the House of Commons* (MP Code) is available at http://www.parl.gc.ca/information/about/process/house/standingorders/toc-E.htm.
[8] Because the Commission's mandate does not raise questions about ethics rules specific to senators, the Senate code will not be discussed further.
[9] *CIA*, s. 2.
[10] *CIA*, s. 4.
[11] *CIA*, s. 2.

[12] *CIA*, s. 15.
[13] *CIA*, s. 7.
[14] *CIA*, s. 8.
[15] *CIA*, s. 9.
[16] *CIA*, s. 10.
[17] *CIA*, s. 24.
[18] *CIA*, s. 24.
[19] *CIA*, s. 33.
[20] *CIA*, s. 34.
[21] *CIA*, s. 35.
[22] *Lobbying Act*, s. 10.11.
[23] MP Code, s. 4.
[24] MP Code, s. 7.
[25] MP Code, s. 3.
[26] *Parliament of Canada Act*, s. 41.
[27] *Criminal Code*, s. 119.
[28] *Criminal Code*, s. 118.
[29] *Criminal Code*, s. 122.
[30] *Criminal Code*, s. 121.
[31] *Parliament of Canada Act*, s. 81.
[32] The person may also have been a former ethics commissioner or Senate ethics officer. The ethics commissioner was the office that existed before the enactment of the *Federal Accountability Act* in 2006.
[33] *CIA*, s. 26 *et seq.*
[34] *CIA*, s. 37.
[35] *CIA*, ss. 40–41.
[36] *CIA*, ss. 38 *et seq*.
[37] *CIA*, s. 44.
[38] *CIA*, s. 45.
[39] *CIA*, ss. 44 and 45.
[40] *CIA*, s. 47.
[41] *CIA*, ss. 52 *et seq*.
[42] PCO website, *About PCO*, available at http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=about-apropos.
[43] *Report of the Independent Advisor into the Allegations Respecting Financial Dealings Between Mr. Karlheinz Schreiber and the Right Honourable Brian Mulroney* (Ottawa, January 2008), pp. 15 *et seq*., available at http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=ria-rci/table_e.htm.

Oliphant Commission

Appendix 19: Part II, Policy Review: Schedule – Expert Forum Participants

Part II – Policy Review

Schedule – Expert Policy Forum Participants

Panel A June 15, 2009

- Gregory J. Levine, barrister and solicitor, London, Ont.
- Paul G. Thomas, Duff Roblin professor of government , University of Manitoba
- Lori Turnbull, assistant professor, Department of Political Science, Dalhousie University

Panel B June 16, 2009

- Kathleen Clark, Washington University in St. Louis, Mo.
- Ian Greene, York University
- Lorne Sossin, University of Toronto
- Duff Conacher, Democracy Watch

Panel C June 17, 2009

- Mary Dawson, federal conflict of interest and ethics commissioner
- Paul D.K. Fraser, QC, conflict of interest commissioner, British Columbia
- Lynn Morrison, acting integrity commissioner, Province of Ontario
- Karen E. Shepherd, interim federal commissioner of lobbying

Panel E June 22, 2009

- Mel Cappe, president, Institute for Research on Public Policy
- The Right Honourable Joe Clark, former prime minister of Canada
- Penny Collenette, University of Ottawa
- David Mitchell, president, Public Policy Forum

July 28, 2009

- Mary Dawson, federal conflict of interest and ethics commissioner
- Sue Gray, head of propriety and ethics team, UK Cabinet Office

Appendix 20: Expert Policy Forum – Issues

Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney

Commission d'enquête concernant les allégations au sujet des transactions financières et commerciales entre Karlheinz Schreiber et le très honorable Brian Mulroney

EXPERTS POLICY FORUM

June 15 – 17 and 22, 2009

Bytown Pavilion, 111 Sussex Drive, Ottawa, Ontario

In the Part II – Policy Review, the Commission will focus on the policy issues raised in questions 14 and 17 of its Terms of Reference:

> 14. Are there ethical rules or guidelines which currently would have covered these business and financial dealings [of Mr. Mulroney and Mr. Schreiber]? Are they sufficient or should there be additional ethical rules or guidelines concerning the activities of politicians as they transition from office or after they leave office?
>
> 17. Should the Privy Council Office have adopted any different [correspondence handling] procedures in this case?

***

PANELS A AND B: ACADEMIC AND PARTY EXPERTS

The commission has invited six experts to discuss the policy questions arising from its terms of reference. The six invited experts taking part in Panels A and B will be invited to turn their mind to the following questions:

Ethics Rules Issues

A. General Questions:

What is the ultimate objective of ethics rules? Is it to shape behaviour, to communicate publicly commitment to values, or something else entirely? Do you have any views on how ethics rules should be structured to create accountability, but without imposing limitations that have the effect of deterring qualified individuals from seeking public office? Do you believe that ethics rules enhance ethics, or are political "culture" the more important ingredient to ethical behaviour? How is an ethical political "culture" created?

Do you have any views on how ethics rules should be structured to create accountability, but without imposing limitations that have the effect of deterring qualified individuals from seeking public office? What other adverse consequences may flow from the regulating of ethical behaviour?

B. Specific Questions:

Do you believe that the concept of "conflicts of interest" contained in federal law is adequate? In your view, is the distinction between a real and a potential or apparent conflict of interest important in affecting the scope of conflict of interest rules?

Do you believe that the ethics rules that *currently* cover business and financial dealings between a sitting Prime Minister or a sitting Member of Parliament and a third party are adequate? If not, how could they be improved? Should there be additional ethical rules or guidelines concerning the activities of politicians as they transition from office or after they leave office? Are the current rules on the post-employment of politicians appropriate? Should they reach further in terms of the sort of post-employment activity that they regulate? Do rules currently reach the actions of former public officials directed not at Canadian governments, but at international governments and organizations? To what extent do you believe that the rules should reach the latter sorts of activities?

Are the existing enforcement and penalty regimes sufficient? Do the various sources of ethics and lobbying rules (*e.g., Conflicts of Interest Act, Criminal Code, Parliament of Canada Act, Lobbyist Act* etc.) provide a coherent whole, or do they create overlap or leave gaps?

Are you aware of precedents from other jurisdictions that offer insight into how Canada might address issues raises in the questions above?

Prime Ministerial Correspondence Handling Procedures

Do you believe that the federal government's current prime ministerial correspondence handling policies are appropriate? Are there recommendations for improvement that you would make? Are you aware of any other models and precedents that might improve on this system?

PANEL A: COMMISSION EXPERTS
Monday June 15

Panel chair: Evan Roitenberg, Sr. Commission Counsel

Panelists:

Gregory J. Levine, Lawyer
Dr. Paul G. Thomas, PhD., Duff Roblin Professor of Government, St. John's College, University of Manitoba
Dr. Lori Turnbull PhD., Assistant Professor of Political Science, Dalhousie University, Halifax, Nova Scotia

Schedule:

0930 – 1050 –	Panel called to session
1050 – 1150 –	Statements by parties on issues raised by Commission Experts
1150 – 1315 –	Lunch break

1315 – 1415 –	Questioning of Commission Experts by Commission Counsel
1415 – 1515 –	Questioning of Commission Experts by Parties
1515 – 1530 –	Follow up questions by Commission Counsel
1530 – 1600 –	Final comments or observations by Commission Experts

***

PANEL B: PARTY AND OTHER EXPERTS
Tuesday June 16

Panel chair:
Giuseppe Battista, Sr. Commission Counsel

Panelists:

Prof. Kathleen Clark, Washington University in St. Louis
Prof. Ian Greene, York University
Prof. Lorne Sossin, University of Toronto
Duff Conacher, Democracy Watch

Schedule:

0900 – 1040 –	Panel called to session
1040 – 1050 –	Health break
1050 – 1130 –	Observations/questions in response to Party and Other Experts by Commission experts
1130 – 1300 –	Lunch break
1300 – 1400 –	Questioning of Party and Other Experts by Commission Counsel
1400 – 1500 –	Questioning of Party and Other Experts by Parties
1500 – 1515 –	Follow up questions by Parties
1515 – 1600 –	Final comments or observations by Party and Other Experts

* * *

PANEL C: ETHICS AND LOBBYING REGULATION OFFICIALS
Wednesday June 17

The Commission has invited four current ethics and lobbying official to provide their perspective on ethics and lobbying rules regimes and the practical dimensions of implementation and enforcement of ethics and lobbying rules. Each panelist will provide a brief overview of his or her respective role and governing legislation. The panel chair will then ask a series of questions to stimulate discussion among panelists.

Panel chair: Nancy Brooks, Sr. Commission Counsel

Panelists:

Mary Dawson, CM, QC, Federal Conflicts of Interest and Ethics Commissioner
Paul D. K. Fraser, Q.C., Conflicts of Interest Commissioner, British Columbia
Lynn Morrison, Acting Integrity Commissioner, Ontario
Karen E. Shepherd, Federal Interim Commissioner of Lobbyists

Schedule:

0900 – 1100 –	Panel called to session
1100 – 1115 –	Health break
1115 – 1145 –	Observations/questions in response to Ethics and Lobbying Officials by Commission experts
1145 – 1215 –	Questioning of Ethics and Lobbying Officials by Commission Counsel
1215 – 1245 –	Questioning of Ethics and Lobbying Officials by Parties
1245 – 1300 –	Final comments or observations by Ethics and Lobbying Officials

***

PANEL D: FORMER SENIOR POLITICAL AND PUBLIC SERVICE OFFICIALS
Monday, June 22

In this panel, the Commission seeks input from a number of prominent former officials and politicians, to elicit their input into the social, economic, political and cultural environment in which officials transitioning from public office truly operate and the expectations that might reasonably be part of post-public office employment ethics rules. The following are questions that the panel members will be invited to address:

What is the ultimate objective of ethics rules? Is it to shape behaviour, to communicate publicly commitment to values, or something else entirely? Have public expectations concerning the ethics of political leaders changed? Are these expectations realistic? Do you believe that an ethics rule enhance ethics, or is "culture" the more important ingredient to ethical behaviour? How is an ethical "culture" created?

Do you have any views on how ethics rules should be structured to create accountability, but without imposing limitations that have the effect of deterring qualified individuals from seeking public office? What other adverse consequences may flow from the regulating of ethical behaviour?

Do you have any specific thoughts on how ethics rules might ensure that past public office is not exploited in some "improper" manner, while at the same time allowing former public office holders to develop their professional lives upon their return to private life? Should ethics rules be concerned with the activities of former office holders at the international level after they have left office?

Based on your experience, would you have any recommendations on how to design effective and appropriate correspondence handling practices in relation to correspondence directed at a Prime Minister? More specifically, do you have any thoughts on how one designs a system that determines what information can and should be conveyed to the Prime Minister?

Panel chair: Richard Wolson, Q.C., Lead Commission Counsel

Panelists:

The Right Honourable Joseph Clark, P.C., C.C.
Mel Cappe, Institute for Research on Public Policy
Penny Collenette, University of Ottawa
David Mitchell, Public Policy Forum

Schedule:

0900 – 1100 –	Panel called to session
1100 – 1200 –	Open question and answer session

***

Appendix 21

COUNSEL FOR THE COMMISSION, PARTIES, AND WITNESSES

Counsel for the Commission

Richard Wolson, QC	Lead Counsel
Nancy Brooks	Senior Counsel
Evan Roitenberg	Senior Counsel
Guiseppe Battista	Senior Counsel
Sarah Wolson	Junior Counsel
Myriam Corbeil	Junior Counsel
Peter Edgett	Junior Counsel
Martin Lapner	Junior Counsel
Heather Baker	Lawyer
Paul-Matthieu Grondin	Lawyer
Laura Kraft	Lawyer

Counsel for the Attorney General of Canada

Paul B. Vickery
Yannick Landry
Philippe Lacasse
Amy Joslin-Besner

Counsel for the Right Honourable Brian Mulroney

Guy Pratte
Harvey W. Yarosky, QC
A. Samuel Wakim, QC
François Grondin
Jack Hughes
Kate Glover

Counsel for Karlheinz Schreiber

Richard Auger
Edward L. Greenspan, QC
Vanessa Christie
Todd White
Julianna Greenspan

Counsel for Fred Doucet

Robert E. Houston, QC

Counsel for the Honourable Perrin Beatty

Leonard M. Shore

Counsel for William Kaplan

Peter Jacobsen

Counsel for the Honourable Marc Lalonde

Michel Décary, QC

Counsel for the Honourable William McKnight

Richard W. Danyliuk, QC

Counsel for Stanley Hartt

Lorne Morphy

Counsel for the Honourable Jean Charest

André Ryan

Counsel for Paul Smith

Paul Lepsoe

Counsel for Norman Spector

Donald J. Jordan, QC

Appendix 22: Request to Parliamentary Counsel and Response

Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney

Commission d'enquête concernant les allégations au sujet des transactions financières et commerciales entre Karlheinz Schreiber et le très honorable Brian Mulroney

BY FACSIMILE (613) 992-4441

WITHOUT PREJUDICE

March 6, 2009

Mr. R.R. Walsh
LP - Law Clerk and Parliamentary Counsel Office
131 Queen Street, Room 07-02
Ottawa, Ontario
K1A 0A6

Dear Mr. Walsh:

I write on behalf of the Commissioner, appointed by order in council 2008-1092 to conduct the Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney (the "Commission").

The Commissioner requests leave of the House of Commons to refer in Commission proceedings to testimony that was given before the House of Commons Standing Committee on Access to Information, Privacy and Ethics (the "Committee"), as reported on by the Committee in its report of April, 2008.

The Commission has been appointed under the *Inquiries Act* to investigate and report on matters set out in the Commission's terms of reference. These matters all relate to good government and high public office, which are of extreme importance to the Canadian public.

In carrying out its study under its mandate formulated on November 22, 2007 into the "Mulroney Airbus Settlement", the Committee heard from many witnesses who shed light on matters of public interest. Certain of the matters that were investigated by the Committee are now before the Commission of Inquiry.

P.O. Box 2740, Station D
Ottawa, Canada K1P 5W7
613 995-0756
Fax: *613* 995-0785

C.P. 2740 Succursale D
Ottawa, Canada K1P 5W7
613 995-0756
Télécopieur : *613* 995-0785

Canada

The Commission will canvass the evidence before it on all matters falling within its mandate in a thorough and comprehensive manner. The Commission would be assisted in carrying out its mandate if it were permitted to refer at its public hearings to the testimony before the Committee.

The statements made before the Committee were given under oath or, in some cases, upon a recognition by the person testifying of the general expectation that witnesses appearing before Parliamentary committees testify in a truthful and complete manner. The testimony is therefore of value to the Commission for purposes of examination of some of the witnesses who will appear before the Commission.

The Commission does not believe that Parliamentary privilege will be breached if its request for leave to refer to Committee testimony is granted. The Commission does not wish to question the Honourable Members of the Committee on the matters that were before the Committee. Nor does the Commission wish to question the Honourable Members of the Committee on the accuracy of their own questions or remarks made during the course of the Committee's hearings or on their conclusions as expressed in the Committee's report.

Moreover, the Commission is not permitted to express any conclusion or make any recommendation regarding criminal or civil liability. The Commission's sole purpose in seeking to rely on the transcripts of the evidence given before the Committee is to more fully explore what the witnesses, none of whom are sitting Members of Parliament, told the Committee and the Canadian people during the course of their testimony. The Commission's use of the transcripts could well provide Canadians with an enhanced understanding of the Committee's processes and activities.

It is noteworthy that the hearings were televised, transcripts of the testimony are available to the public through the House of Commons website and the testimony has been referred to publicly on a number of occasions, with commentary, by Members of the Committee.

The request to use the Committee's transcript is made with all due respect to the Committee and its members. The Commission is hopeful that the Committee will see its way clear to grant this request in the interests of the Canadian public. However, I note that the request made herein is without prejudice to the Commission's ability to argue that the permission sought is not required in order to use testimony before the Committee in the manner indicated above.

I look forward to receiving your response to this letter in the near future.

Yours very truly,

Nancy Brooks
Sr. Commission Counsel

2009 MAR 18 AM 7:51

HOUSE OF COMMONS
CHAMBRE DES COMMUNES

OFFICE OF THE LAW CLERK AND PARLIAMENTARY COUNSEL
BUREAU DU LÉGISTE ET CONSEILLER PARLEMENTAIRE

March 12, 2009

Ms. Nancy Brooks
Sr. Commission Counsel
Schreiber-Mulroney Commission of Inquiry
P.O. Box 2740, Station D
Ottawa, ON K1P 5W7

Dear Ms. Brooks:

Further to your letter of March 6, 2009, I can report that the House of Commons today affirmed its privileges in respect of the testimony of witnesses before the Standing Committee on Access to Information, Privacy and Ethics in the matter of the "Mulroney Airbus Settlement."

For your information, I enclose a copy of the Third Report of the Standing Committee which was tabled in the House today and received the concurrence of the House and thereby became a resolution of the House.

I trust the enclosed document is a sufficient response to your letter.

Yours truly,

R.R. Walsh

c.c.: Mr. Paul Szabo, Chair
Standing Committee on Access to
Information, Privacy and Ethics

Jacques Maziade, Clerk
Standing Committee on Access to
Information, Privacy and Ethics

7-02 - 131, RUE QUEEN ST., OTTAWA, ONTARIO K1A 0A6 · TEL./TÉL. : (613) 996-6063 · FAX/TÉLEC. : (613) 992-4441

HOUSE OF COMMONS
CHAMBRE DES COMMUNES
OTTAWA, CANADA

40th Parliament, 2nd Session

40e Législature, 2e session

The Standing Committee on Access to Information, Privacy and Ethics has the honour to present its

Le Comité permanent de l'accès à l'information, de la protection des renseignements personnels et de l'éthique a l'honneur de présenter son

THIRD REPORT

TROISIÈME RAPPORT

Pursuant the Standing Order 108(2) and the motion adopted by the Committee on Wednesday, March 11, 2009, your Committee recommended:

Conformément à l'article 108(2) du Règlement et à la motion adoptée par le Comité le mercredi 11 mars 2009, le Comité recommande :

Given that, in accordance with Standing Order 108(2) and the motion adopted by the Committee on Thursday, November 22, 2007, the Committee considered the Mulroney Airbus Settlement;

Attendu que, conformément à l'article 108(2) du Règlement et à la motion adoptée par le Comité le jeudi 22 novembre 2007, le Comité a étudié l'entente Mulroney Airbus;

Given the principle of parliamentary privilege is enshrined in Section 9 of the Bill of Rights of 1689, Section 18 of the Constitution Act 1867, and Section 4 of the Parliament of Canada Act;

Attendu que le principe du privilège parlementaire est enchâssé à l'article 9 de la Déclaration des droits de 1689, à l'article 18 de la Loi constitutionnelle de 1867 et à l'article 4 de la Loi sur le Parlement du Canada;

Given that witnesses who appeared before the Committee were given assurances that any proceedings would be protected by parliamentary privilege, thereby prohibiting the use of testimony in any proceeding outside of the House of Commons;

Attendu que les témoins qui ont comparu devant le Comité ont reçu l'assurance que toutes les délibérations seraient protégées par le privilège parlementaire, ce qui interdit l'utilisation d'un témoignage dans toute procédure intentée à l'extérieur de la Chambre des communes;

And given that the Senior Counsel, Nancy Brooks, on behalf of the Commissioner of the Commission of Inquiry into Certain Allegations Respecting Business and

Et attendu que l'avocate principale, Nancy Brooks, au nom du commissaire de la Commission d'enquête concernant les allégations au sujet des transactions

Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney has requested, by a letter dated March 6th, 2008, leave of the House of Commons to refer in Commission proceedings to testimony that was given before the House of Commons Standing Committee on Access to Information, Privacy and Ethics, as reported on by the Committee in its report of April, 2008;

financières et commerciales entre Karlheinz Schreiber et le très honorable Brian Mulroney a demandé, par lettre datée du 6 mars 2008, à la Chambre des communes l'autorisation d'utiliser, lors des travaux de la Commission, les témoignages rendus devant le Comité permanent de l'accès à l'information, de la protection des renseignements personnels et de l'éthique de la Chambre des communes, tels qu'ils figurent dans le rapport d'avril 2008 du Comité;

The House moves that the privileges, powers and immunities of the House of Commons, as provided by section 18 of the Constitution Act, 1867 and section 4 of the Parliament of Canada Act, include freedom of speech and debate as set out, among other places, in Article 9 of the Bill of Rights, 1689, which provides "that the freedom of speech and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament";

Le Chambre propose que les privilèges, pouvoirs et immunités de la Chambre des communes, établis par l'article 18 de la Loi constitutionnelle de 1867 et l'article 4 de la Loi sur le Parlement du Canada, comprennent la liberté de parole et la liberté de débat qui sont énoncées, entre autres, à l'article 9 du Bill of Rights de 1689, lequel dispose que « ni la liberté de parole, ni celle des débats ou procédures dans le sein du Parlement, ne peut être entravée ou mise en discussion en aucune cour ou lieu quelconque que le Parlement lui-même »;

That the privileges, immunities and proceedings and all evidence, submissions and testimony by all persons participating in the proceedings of the Standing Committee on Access to Information, Privacy and Ethics continue to be protected by all the privileges and immunities of this House, as mentioned in the Fourteenth Report (38th Parliament, 1st Session) of the Standing Committee on Procedure and House Affairs adopted by the House of Commons on November 18, 2004.

Que tous les droits, immunités et délibérations du Comité permanent de l'accès à l'information, de la protection des renseignements personnels et de l'éthique ainsi que les témoignages, observations et dépositions de toutes les personnes qui y participent continuent d'être protégés par les privilèges et immunités de cette Chambre, tels que mentionnés dans le Quatorzième rapport (38e Législature, 1re Session) du Comité permanent de la procédure et des affaires de la Chambre adopté par la Chambre des communes le 18 novembre 2004.

That this privilege prohibits, in a court of law or other proceeding, the tendering or receipt of evidence by way of direct evidence, cross-examination or submissions, of questions asked or statements, submissions or comments made in a parliamentary proceeding;

Qu'en vertu de ce privilège il est interdit, devant un tribunal judiciaire ou dans le cadre d'une autre procédure, de présenter ou de recevoir à titre d'éléments de preuve – par voie de preuve directe, de contre-interrogatoire ou de plaidoirie – des questions posées ou des déclarations, observations ou témoignages faits au cours de délibérations parlementaires;

And that the House of Commons' privilege of freedom of speech and debate precludes receipt of such transcripts by any other proceeding, including a commission of inquiry, for such purposes;

Et que le privilège de la Chambre des communes en matière de liberté de parole et de débat interdit la réception en preuve de ces transcriptions par une autre instance, notamment une commission d'enquête;

A copy of the relevant *Minutes of Proceedings* (Meeting No 9)is tabled.

Un exemplaire des *Procès-verbaux* pertinents (séance no 9) est déposé.

Respectfully submitted,

Respectueusement soumis,

Le président,

PAUL SZABO
Chair

CANADA

CONSOLIDATION

CODIFICATION

Conflict of Interest Act

Loi sur les conflits d'intérêts

S.C., 2006, c. 9, s. 2

L.C., 2006, ch. 9, art. 2

NOTE

[Enacted by section 2 of chapter 9 of the Statutes of Canada, 2006, in force July 9, 2007, *see* SI/2007-75.]

NOTE

[Édictée par l'article 2 du chapitre 9 des Lois du Canada (2006), en vigueur le 9 juillet 2007, *voir* TR/2007-75.]

Current to September 3, 2009

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OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31. (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

Inconsistencies in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1er juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31. (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Incompatibilité — lois

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

An Act to establish conflict of interest and post-employment rules for public office holders

[*Assented to 12th December 2006*]

Loi établissant des règles concernant les conflits d'intérêts et l'après-mandat pour les titulaires de charge publique

[*Sanctionnée le 12 décembre 2006*]

SHORT TITLE

Short title

1. This Act may be cited as the *Conflict of Interest Act*.

TITRE ABRÉGÉ

Titre abrégé

1. *Loi sur les conflits d'intérêts.*

INTERPRETATION

Definitions

2. (1) The following definitions apply in this Act.

"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" means a person who is cohabiting with a public office holder in a conjugal relationship, having so cohabited for a period of at least one year.

"common-law partnership" « *union de fait* »

"common-law partnership" means the relationship between two persons who are cohabiting in a conjugal relationship, having so cohabited for a period of at least one year.

"dependent child" « *enfant à charge* »

"dependent child" means a child of a public office holder, or a child of the public office holder'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 public office holder or public office holder's spouse or common-law partner for financial support.

"former reporting public office holder" « *ex-titulaire de charge publique principal* »

"former reporting public office holder" means a former public office holder who, while in office, was a reporting public office holder.

DÉFINITIONS

Définitions

2. (1) Les définitions qui suivent s'appliquent à la présente loi.

« cadeau ou autre avantage » *"gift or other advantage"*

« cadeau ou autre avantage » S'entend :

a) de toute somme, si son remboursement n'est pas obligatoire;

b) de tout service ou de tout bien ou de l'usage d'un bien ou d'argent, s'ils sont fournis sans frais ou à un prix inférieur à leur valeur commerciale.

« commissaire » *"Commissioner"*

« commissaire » Le commissaire aux conflits d'intérêts et à l'éthique nommé en vertu de l'article 81 de la *Loi sur le Parlement du Canada*.

« conjoint de fait » *"common law partner"*

« conjoint de fait » La personne qui vit avec un titulaire de charge publique dans une relation conjugale depuis au moins un an.

« conseiller ministériel » *"ministerial adviser"*

« conseiller ministériel » La personne, autre qu'un fonctionnaire, qui occupe un poste au cabinet d'un ministre ou d'un ministre d'État et qui fournit des conseils en matière de politiques, de programmes et de finances à un ministre ou ministre d'État sur des questions relevant des attributions de celui-ci en cette qualité et ce, même s'il le fait à temps partiel ou sans rétribution.

"gift or other advantage"
« *cadeau ou autre avantage* »

"gift or other advantage" 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.

"ministerial adviser"
« *conseiller ministériel* »

"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 staff"
« *personnel ministériel* »

"ministerial staff" means those persons, other than public servants, who work on behalf of a minister of the Crown or a minister of state.

"private interest"
« *intérêt personnel* »

"private interest" does not include an interest in a decision or matter

(*a*) that is of general application;

(*b*) that affects a public office holder as one of a broad class of persons; or

(*c*) that concerns the remuneration or benefits received by virtue of being a public office holder.

"public office holder"
« *titulaire de charge publique* »

"public office holder" means

(*a*) a minister of the Crown, a minister of state or a parliamentary secretary;

(*b*) a member of ministerial staff;

(*c*) a ministerial adviser;

(*d*) a Governor in Council appointee, other than the following persons, namely,

(i) a lieutenant governor,

(ii) officers and staff of the Senate, House of Commons and Library of Parliament,

(iii) a person appointed or employed under the *Public Service Employment Act* who is a head of mission within the meaning of subsection 13(1) of the *Department of Foreign Affairs and International Trade Act*,

« enfant à charge »
"*dependent child*"

« enfant à charge » Enfant d'un titulaire de charge publique ou de l'époux ou conjoint de fait de celui-ci, qui n'a pas atteint l'âge de dix-huit ans ou qui, l'ayant atteint, dépend principalement, sur le plan financier, du titulaire ou de son époux ou conjoint de fait.

« entité du secteur public »
"*public sector entity*"

« entité du secteur public » Ministère ou organisme fédéral, société d'État constituée sous le régime d'une loi fédérale ou toute autre entité au sein de laquelle le gouverneur en conseil peut nommer une personne, à l'exception du Sénat et de la Chambre des communes.

« époux »
"*spouse*"

« époux » N'est pas considérée comme un époux la personne dont un titulaire de charge publique est séparé si le partage des obligations alimentaires, du patrimoine familial et des biens familiaux a fait l'objet d'un accord de séparation ou d'une ordonnance judiciaire.

« ex-titulaire de charge publique principal »
"*former reporting public office holder*"

« ex-titulaire de charge publique principal » Ex-titulaire de charge publique qui, pendant son mandat, était titulaire de charge publique principal.

« fonctionnaire »
"*public servant*"

« fonctionnaire » S'entend au sens du paragraphe 2(1) de la *Loi sur la protection des fonctionnaires divulgateurs d'actes répréhensibles*. La présente définition s'applique toutefois aux officiers et aux militaires du rang des Forces canadiennes ainsi qu'aux employés du Service canadien du renseignement de sécurité et du Centre de la sécurité des télécommunications.

« intérêt personnel »
"*private interest*"

« intérêt personnel » N'est pas visé l'intérêt dans une décision ou une affaire :

a) de portée générale;

b) touchant le titulaire de charge publique faisant partie d'une vaste catégorie de personnes;

c) touchant la rémunération ou les avantages sociaux d'un titulaire de charge publique.

« personnel ministériel »
"*ministerial staff*"

« personnel ministériel » Personnes, autres que les fonctionnaires, qui travaillent au sein du cabinet d'un ministre ou d'un ministre d'État.

« titulaire de charge publique »
"*public office holder*"

« titulaire de charge publique »

a) Ministre, ministre d'État ou secrétaire parlementaire;

b) membre du personnel ministériel;

c) conseiller ministériel;

(iv) a judge who receives a salary under the *Judges Act*,

(v) a military judge within the meaning of subsection 2(1) of the *National Defence Act*, and

(vi) an officer of the Royal Canadian Mounted Police, not including the Commissioner;

(*d.1*) a ministerial appointee whose appointment is approved by the Governor in Council; and

(*e*) a full-time ministerial appointee designated by the appropriate minister of the Crown as a public office holder.

"public sector entity" « *entité du secteur public* »

"public sector entity" means a department or agency of the Government of Canada, a Crown corporation established by or under an Act of Parliament or any other entity to which the Governor in Council may appoint a person, but does not include the Senate or the House of Commons.

"public servant" « *fonctionnaire* »

"public servant" has the meaning assigned by subsection 2(1) of the *Public Servants Disclosure Protection Act*, but includes officers and non-commissioned members of the Canadian Forces and employees of the Canadian Security Intelligence Service or the Communications Security Establishment.

"reporting public office holder" « *titulaire de charge publique principal* »

"reporting public office holder" means a public office holder who is

(*a*) a minister of the Crown, minister of state or parliamentary secretary;

(*b*) a member of ministerial staff who works on average 15 hours or more a week;

(*c*) a ministerial adviser;

(*d*) a Governor in Council appointee, or a ministerial appointee whose appointment is approved by the Governor in Council, who exercises his or her official duties and functions on a part-time basis but receives an annual salary and benefits;

(*e*) a Governor in Council appointee, or a ministerial appointee whose appointment is approved by the Governor in Council, who exercises his or her official duties and functions on a full-time basis; or

d) titulaire de charge nommé par le gouverneur en conseil, à l'exception :

(i) des lieutenants-gouverneurs,

(ii) des cadres et du personnel du Sénat, de la Chambre des communes et de la Bibliothèque du Parlement,

(iii) des chefs de mission au sens du paragraphe 13(1) de la *Loi sur le ministère des Affaires étrangères et du Commerce international* qui sont nommés ou employés sous le régime de la *Loi sur l'emploi dans la fonction publique*,

(iv) des juges qui touchent un traitement sous le régime de la *Loi sur les juges*,

(v) des juges militaires au sens du paragraphe 2(1) de la *Loi sur la défense nationale*,

(vi) des officiers de la Gendarmerie royale du Canada autres que le commissaire;

d.1) titulaire d'une nomination ministérielle lorsque celle-ci est approuvée par le gouverneur en conseil;

e) titulaire d'une nomination ministérielle à temps plein désigné comme titulaire de charge publique par le ministre compétent.

« titulaire de charge publique principal » "*reporting public office holder*"

« titulaire de charge publique principal » Titulaire de charge publique qui :

a) est un ministre, ministre d'État ou secrétaire parlementaire;

b) est un membre du personnel ministériel qui travaille en moyenne quinze heures ou plus par semaine;

c) est un conseiller ministériel;

d) est nommé par le gouverneur en conseil ou par le ministre sur approbation de celui-ci et exerce ses fonctions officielles à temps partiel, reçoit une rémunération annuelle et bénéficie d'avantages;

e) est nommé par le gouverneur en conseil ou par le ministre sur approbation de celui-ci et exerce ses fonctions officielles à temps plein;

f) est nommé et désigné comme tel par le ministre compétent et exerce ses fonctions officielles à temps plein.

(*f*) a full-time ministerial appointee designated by the appropriate minister of the Crown as a reporting public office holder.

« union de fait » Relation qui existe entre deux conjoints de fait. « union de fait » "*common-law partnership*"

"spouse" « *époux* »

"spouse" does not include a person from whom a public office holder is separated if all support obligations and family property or patrimony have been dealt with by a separation agreement or a court order.

Family members

(2) The following are the members of a public office holder's family for the purposes of this Act:

(*a*) his or her spouse or common-law partner; and

(*b*) his or her dependent children and the dependent children of his or her spouse or common-law partner.

(2) Sont considérés comme des membres de la famille d'un titulaire de charge publique pour l'application de la présente loi : Membres de la famille

a) son époux ou conjoint de fait;

b) son enfant à charge et celui de son époux ou conjoint de fait.

Relatives

(3) Persons who are related to a public office holder by birth, marriage, common-law partnership, adoption or affinity are the public office holder's relatives for the purposes of this Act unless the Commissioner determines, either generally or in relation to a particular public office holder, that it is not necessary for the purposes of this Act that a person or a class of persons be considered a relative of a public office holder.

(3) Toute personne apparentée à un titulaire de charge publique par les liens du mariage, d'une union de fait, de la filiation ou de l'adoption ou encore liée à lui par affinité est un parent de celui-ci pour l'application de la présente loi, à moins que le commissaire n'en vienne à la conclusion que, de façon générale ou à l'égard d'un titulaire de charge publique en particulier, il n'est pas nécessaire pour l'application de la présente loi de considérer telle personne ou catégorie de personnes comme un parent du titulaire. Parent

PURPOSE

OBJET

Purpose of the Act

3. The purpose of this Act is to

(*a*) establish clear conflict of interest and post-employment rules for public office holders;

(*b*) minimize the possibility of conflicts arising between the private interests and public duties of public office holders and provide for the resolution of those conflicts in the public interest should they arise;

(*c*) provide the Conflict of Interest and Ethics Commissioner with the mandate to determine the measures necessary to avoid conflicts of interest and to determine whether a contravention of this Act has occurred;

(*d*) encourage experienced and competent persons to seek and accept public office; and

(*e*) facilitate interchange between the private and public sector.

3. La présente loi a pour objet : Objet de la présente loi

a) d'établir à l'intention des titulaires de charge publique des règles de conduite claires au sujet des conflits d'intérêts et de l'après-mandat;

b) de réduire au minimum les possibilités de conflit entre les intérêts personnels des titulaires de charge publique et leurs fonctions officielles, et de prévoir les moyens de régler de tels conflits, le cas échéant, dans l'intérêt public;

c) de donner au commissaire aux conflits d'intérêts et à l'éthique le mandat de déterminer les mesures nécessaires à prendre pour éviter les conflits d'intérêts et de décider s'il y a eu contravention à la présente loi;

d) d'encourager les personnes qui possèdent l'expérience et les compétences requises à solliciter et à accepter une charge publique;

e) de faciliter les échanges entre les secteurs privé et public.

PART 1

CONFLICT OF INTEREST RULES

Conflict of interest

4. For the purposes of this Act, a public office holder is in a conflict of interest when he or she exercises an official power, duty or function that provides an opportunity to further his or her private interests or those of his or her relatives or friends or to improperly further another person's private interests.

General duty

5. Every public office holder shall arrange his or her private affairs in a manner that will prevent the public office holder from being in a conflict of interest.

Decision-making

6. (1) No public office holder shall make a decision or participate in making a decision related to the exercise of an official power, duty or function if the public office holder knows or reasonably should know that, in the making of the decision, he or she would be in a conflict of interest.

Abstention from voting

(2) No minister of the Crown, minister of state or parliamentary secretary shall, in his or her capacity as a member of the Senate or the House of Commons, debate or vote on a question that would place him or her in a conflict of interest.

Preferential treatment

7. No public office holder shall, in the exercise of an official power, duty or function, give preferential treatment to any person or organization based on the identity of the person or organization that represents the first-mentioned person or organization.

Insider information

8. No public office holder shall use information that is obtained in his or her position as a public office holder and that is not available to the public to further or seek to further the public office holder's private interests or those of the public office holder's relatives or friends or to improperly further or to seek to improperly further another person's private interests.

Influence

9. No public office holder shall use his or her position as a public office holder to seek to influence a decision of another person so as to

PARTIE 1

RÈGLES RÉGISSANT LES CONFLITS D'INTÉRÊTS

Conflits d'intérêts

4. Pour l'application de la présente loi, un titulaire de charge publique se trouve en situation de conflit d'intérêts lorsqu'il exerce un pouvoir officiel ou une fonction officielle qui lui fournit la possibilité de favoriser son intérêt personnel ou celui d'un parent ou d'un ami ou de favoriser de façon irrégulière celui de toute autre personne.

Obligation

5. Le titulaire de charge publique est tenu de gérer ses affaires personnelles de manière à éviter de se trouver en situation de conflit d'intérêts.

Prise de décision

6. (1) Il est interdit à tout titulaire de charge publique de prendre une décision ou de participer à la prise d'une décision dans l'exercice de sa charge s'il sait ou devrait raisonnablement savoir que, en prenant cette décision, il pourrait se trouver en situation de conflit d'intérêts.

Abstention de voter

(2) Il est interdit à tout ministre, ministre d'État ou secrétaire parlementaire de participer, en tant que membre du Sénat ou de la Chambre des communes, à un débat ou à un vote sur une question à l'égard de laquelle il pourrait se trouver dans une situation de conflit d'intérêts.

Traitement de faveur

7. Il est interdit à tout titulaire de charge publique d'accorder, dans l'exercice de ses fonctions officielles, un traitement de faveur à une personne ou un organisme en fonction d'une autre personne ou d'un autre organisme retenu pour représenter l'un ou l'autre.

Renseignements d'initiés

8. Il est interdit à tout titulaire de charge publique d'utiliser les renseignements qu'il obtient en sa qualité de titulaire de charge publique et qui ne sont pas accessibles au public, afin de favoriser ou chercher à favoriser son intérêt personnel ou celui d'un parent ou d'un ami ou de favoriser ou de chercher à favoriser de façon irrégulière celui de toute autre personne.

Influence

9. Il est interdit à tout titulaire de charge publique de se prévaloir de ses fonctions officielles pour tenter d'influencer la décision d'une

further the public office holder's private interests or those of the public office holder's relatives or friends or to improperly further another person's private interests.

Offers of outside employment

10. No public office holder shall allow himself or herself to be influenced in the exercise of an official power, duty or function by plans for, or offers of, outside employment.

Gifts and other advantages

11. (1) No public office holder or member of his or her family shall accept any gift or other advantage, including from a trust, that might reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function.

Exception

(2) Despite subsection (1), a public office holder or member of his or her family may accept a gift or other advantage

(*a*) that is permitted under the *Canada Elections Act*;

(*b*) that is given by a relative or friend; or

(*c*) that is received as a normal expression of courtesy or protocol, or is within the customary standards that normally accompany the public office holder's position.

Forfeiture

(3) When a public office holder or a member of his or her family accepts a gift or other advantage referred to in paragraph (2)(*c*) that has a value of $1,000 or more, the gift or other advantage is, unless otherwise determined by the Commissioner, forfeited to Her Majesty in right of Canada.

Travel

12. No minister of the Crown, minister of state or parliamentary secretary, no member of his or her family and no ministerial adviser or ministerial staff shall accept travel on non-commercial chartered or private aircraft for any purpose unless required in his or her capacity as a public office holder or in exceptional circumstances or with the prior approval of the Commissioner.

Contracts with public sector entities

13. (1) No minister of the Crown, minister of state or parliamentary secretary shall knowingly be a party to a contract with a public sector entity under which he or she receives a benefit, other than a contract under which he or she is entitled to pension benefits.

autre personne dans le but de favoriser son intérêt personnel ou celui d'un parent ou d'un ami ou de favoriser de façon irrégulière celui de toute autre personne.

Offres d'emploi de l'extérieur

10. Il est interdit à tout titulaire de charge publique de se laisser influencer dans l'exercice de ses fonctions officielles par des projets ou des offres d'emploi de l'extérieur.

Cadeaux et autres avantages

11. (1) Il est interdit à tout titulaire de charge publique et à tout membre de sa famille d'accepter un cadeau ou autre avantage, y compris celui provenant d'une fiducie, qui pourrait raisonnablement donner à penser qu'il a été donné pour influencer le titulaire dans l'exercice de ses fonctions officielles.

Exceptions

(2) Le titulaire de charge publique ou un membre de sa famille peut toutefois accepter :

a) un cadeau ou autre avantage qui est permis au titre de la *Loi électorale du Canada*;

b) un cadeau ou autre avantage qui provient d'un parent ou d'un ami;

c) un cadeau ou autre avantage qui est une marque normale ou habituelle de courtoisie ou de protocole ou qui est habituellement offert dans le cadre de la charge du titulaire.

Confiscation

(3) À moins d'avis contraire du commissaire, en cas d'acceptation, par le titulaire de charge publique ou un membre de sa famille, d'un cadeau ou autre avantage visé à l'alinéa (2)*c*) et ayant une valeur égale ou supérieure à 1 000 $, le cadeau ou l'avantage est confisqué au profit de Sa Majesté du chef du Canada.

Voyages

12. Il est interdit à tout ministre, ministre d'État ou secrétaire parlementaire et à tout membre de leur famille, à tout conseiller ministériel ou à tout personnel ministériel de voyager à bord d'avions non commerciaux nolisés ou privés pour quelque raison que ce soit, sauf si leurs fonctions de titulaire de charge publique l'exigent ou sauf dans des circonstances exceptionnelles ou avec l'approbation préalable du commissaire.

Contrats avec une entité du secteur public

13. (1) Il est interdit à tout ministre, ministre d'État ou secrétaire parlementaire d'être sciemment partie à un contrat conclu avec une entité du secteur public — autre qu'un contrat de rente — aux termes duquel il reçoit un avantage.

Partnerships and private companies

(2) No minister of the Crown, minister of state or parliamentary secretary shall have an interest in a partnership or private corporation that is a party to a contract with a public sector entity under which the partnership or corporation receives a benefit.

Exception

(3) Subsections (1) and (2) do not apply if the Commissioner is of the opinion that the contract or interest is unlikely to affect the exercise of the official powers, duties and functions of the minister of the Crown, minister of state or parliamentary secretary.

Contracting

14. (1) No public office holder who otherwise has the authority shall, in the exercise of his or her official powers, duties and functions, enter into a contract or employment relationship with his or her spouse, common-law partner, child, sibling or parent.

Public sector entity — public office holders

(2) No public office holder, other than a minister of the Crown, minister of state or parliamentary secretary, who otherwise has the authority shall permit the public sector entity for which he or she is responsible, or to which he or she is assigned, to enter into a contract or employment relationship with his or her spouse, common-law partner, child, sibling or parent except in accordance with an impartial administrative process in which the public office holder plays no part.

Public sector entity — ministers

(3) No minister of the Crown, minister of state or parliamentary secretary who otherwise has the authority shall permit the public sector entity for which he or she is responsible, or to which he or she is assigned, to enter into a contract or employment relationship with his or her spouse, common-law partner, child, sibling or parent.

Other ministers or party colleagues

(4) No minister of the Crown, minister of state or parliamentary secretary who otherwise has the authority shall permit anyone acting on his or her behalf to enter into a contract or employment relationship with a spouse, common-law partner, child, sibling or parent of another minister of the Crown, minister of state or parliamentary secretary or party colleague in Parliament, except in accordance with an impartial administrative process in which the minister of the Crown, minister of state or parliamentary secretary plays no part.

Sociétés de personnes et sociétés privées

(2) Il est interdit à tout ministre, ministre d'État ou secrétaire parlementaire d'avoir un intérêt dans une société de personnes ou dans une société privée qui est partie à un contrat conclu avec une entité du secteur public aux termes duquel la société reçoit un avantage.

Exception

(3) Les paragraphes (1) et (2) ne s'appliquent pas si le commissaire estime que le contrat ou l'intérêt n'aura vraisemblablement aucune incidence sur l'exercice par le ministre, ministre d'État ou secrétaire parlementaire de ses fonctions officielles.

Contrats

14. (1) Il est interdit à tout titulaire de charge publique, qui en a d'ailleurs le pouvoir, dans l'exercice de ses fonctions officielles, de conclure un contrat ou d'entretenir une relation d'emploi avec son époux, son conjoint de fait, son enfant, son frère, sa soeur, sa mère ou son père.

Entité du secteur public : titulaires de charge publique

(2) Il est également interdit au titulaire de charge publique qui n'est ni un ministre, ni un ministre d'État, ni un secrétaire parlementaire, qui en a d'ailleurs le pouvoir, de permettre à l'entité du secteur public dont il est responsable ou à laquelle il a été affecté de conclure un contrat ou d'entretenir une relation d'emploi avec son époux, son conjoint de fait, son enfant, son frère, sa soeur, sa mère ou son père, sauf conformément à un procédé administratif impartial dans lequel le titulaire ne joue aucun rôle.

Entité du secteur public : ministres

(3) Il est interdit à tout ministre, ministre d'État ou secrétaire parlementaire, qui en a d'ailleurs le pouvoir, de permettre à l'entité du secteur public dont il est responsable ou à laquelle il a été affecté de conclure un contrat ou d'entretenir une relation d'emploi avec son époux, son conjoint de fait, son enfant, son frère, sa soeur, sa mère ou son père.

Autres parlementaires

(4) Il est interdit à tout ministre, ministre d'État ou secrétaire parlementaire, qui en a d'ailleurs le pouvoir, de permettre à quiconque agit en son nom de conclure un contrat ou d'entretenir une relation d'emploi avec l'époux, le conjoint de fait, l'enfant, le frère, la soeur, la mère ou le père d'un autre ministre, ministre d'État ou secrétaire parlementaire ou d'un autre parlementaire de son parti, sauf conformément à un procédé administratif impartial dans lequel le ministre, ministre d'État ou secrétaire parlementaire, selon le cas, ne joue aucun rôle.

Restriction

(5) Subsection (4) does not apply in respect of the appointment of a member of ministerial staff or a ministerial adviser.

Certain contracts excluded

(6) This section does not apply to a contract for goods or services offered by a public sector entity on the same terms and conditions as to the general public.

Prohibited activities

15. (1) No reporting public office holder shall, except as required in the exercise of his or her official powers, duties and functions,

(*a*) engage in employment or the practice of a profession;

(*b*) manage or operate a business or commercial activity;

(*c*) continue as, or become, a director or officer in a corporation or an organization;

(*d*) hold office in a union or professional association;

(*e*) serve as a paid consultant; or

(*f*) be an active partner in a partnership.

Exception

(2) Despite paragraph (1)(*c*), a reporting public office holder who is a director or officer in a Crown corporation as defined in section 83 of the *Financial Administration Act* may continue as, or become, a director or officer in a financial or commercial corporation but only if the Commissioner is of the opinion that it is not incompatible with his or her public duties as a public office holder.

Exception

(3) Despite paragraph (1)(*c*), a reporting public office holder may continue as, or become, a director or officer in an organization of a philanthropic, charitable or non-commercial character but only if the Commissioner is of the opinion that it is not incompatible with his or her public duties as a public office holder.

Political activities

(4) Nothing in this section prohibits or restricts the political activities of a reporting public office holder.

Fundraising

16. No public office holder shall personally solicit funds from any person or organization if it would place the public office holder in a conflict of interest.

Restriction : membre exempté

(5) Le paragraphe (4) ne s'applique pas à la nomination d'un membre du personnel ministériel ou d'un conseiller ministériel.

Certains contrats exclus

(6) Le présent article ne s'applique pas à un contrat de biens ou de services offert par l'entité du secteur public selon les mêmes conditions que le public en général.

Activités interdites

15. (1) À moins que ses fonctions officielles ne l'exigent, il est interdit à tout titulaire de charge publique principal :

a) d'occuper un emploi ou d'exercer une profession;

b) d'administrer ou d'exploiter une entreprise ou une activité commerciale;

c) d'occuper ou d'accepter un poste d'administrateur ou de dirigeant dans une société ou un organisme;

d) d'occuper un poste dans un syndicat ou une association professionnelle;

e) d'agir comme consultant rémunéré;

f) d'être un associé actif dans une société de personnes.

Exception : titulaire de charge publique principal

(2) Malgré l'alinéa (1)*c*), le titulaire de charge publique principal qui occupe un poste d'administrateur ou de dirigeant dans une société d'État au sens de l'article 83 de la *Loi sur la gestion des finances publiques* peut occuper ou accepter un poste d'administrateur ou de dirigeant dans une société commerciale ou financière si le commissaire estime que ce poste n'est pas incompatible avec sa charge publique.

Autre exception

(3) Malgré l'alinéa (1)*c*), le titulaire de charge publique principal peut occuper ou accepter un poste d'administrateur ou de dirigeant dans un organisme philanthropique, caritatif ou à but non lucratif si le commissaire estime que ce poste n'est pas incompatible avec sa charge publique.

Activités politiques

(4) Le présent article n'a pas pour effet d'interdire ou de restreindre les activités politiques d'un titulaire de charge publique principal.

Sollicitation de fonds

16. Il est interdit à tout titulaire de charge publique de solliciter personnellement des fonds d'une personne ou d'un organisme si l'exercice d'une telle activité plaçait le titulaire en situation de conflit d'intérêts.

Divestiture of controlled assets

17. No reporting public office holder shall, unless otherwise provided in Part 2, hold controlled assets as defined in that Part.

Anti-avoidance

18. No public office holder shall take any action that has as its purpose the circumvention of the public office holder's obligations under this Act.

Condition of appointment or employment

19. Compliance with this Act is a condition of a person's appointment or employment as a public office holder.

PART 2

COMPLIANCE MEASURES

Interpretation

Definitions

20. The following definitions apply in this Part.

"assets" « *bien* »

"assets" includes any trusts in respect of which a public office holder or a member of his or her family is a beneficiary.

"controlled assets" « *bien contrôlé* »

"controlled assets" means assets whose value could be directly or indirectly affected by government decisions or policy including, but not limited to, the following:

(*a*) publicly traded securities of corporations and foreign governments, whether held individually or in an investment portfolio account such as, but not limited to, stocks, bonds, stock market indices, trust units, closed-end mutual funds, commercial papers and medium-term notes;

(*b*) self-administered registered retirement savings plans, self-administered registered education savings plans and registered retirement income funds composed of at least one asset that would be considered controlled if held outside the plan or fund;

(*c*) commodities, futures and foreign currencies held or traded for speculative purposes; and

(*d*) stock options, warrants, rights and similar instruments.

"exempt assets" « *bien exclu* »

"exempt assets" means assets and interests in assets for the private use of public office holders and the members of their family and assets that are not of a commercial character, including the following:

17. Sauf disposition contraire de la partie 2, il est interdit à tout titulaire de charge publique principal de détenir des biens contrôlés au sens de cette partie.

Dessaisissement de biens contrôlés

18. Il est interdit à tout titulaire de charge publique de faire quoi que ce soit dans le but de se soustraire aux obligations auxquelles il est assujetti sous le régime de la présente loi.

Anti-évitement

19. La nomination ou l'emploi de tout titulaire de charge publique est subordonné à l'observation de la présente loi.

Condition de la nomination ou de l'emploi

PARTIE 2

MESURES D'OBSERVATION

Définitions

Définitions

20. Les définitions qui suivent s'appliquent à la présente partie.

« bien » "assets"

« bien » S'entend notamment de toute fiducie dont le titulaire de charge publique ou un membre de sa famille est bénéficiaire.

« bien contrôlé » "controlled assets"

« bien contrôlé » Tout bien dont la valeur peut être influencée directement ou indirectement par les décisions ou les politiques du gouvernement, notamment :

a) les valeurs cotées en bourse de sociétés et les titres de gouvernements étrangers, qu'ils soient détenus individuellement ou dans un portefeuille de titres, par exemple, les actions, les obligations, les indices des cours de la bourse, les parts de fiducie, les fonds communs de placement à capital fixe, les effets de commerce et les effets à moyen terme négociables;

b) les régimes enregistrés d'épargne-retraite et d'épargne-études et les fonds enregistrés de revenu de retraite qui sont autogérés et composés d'au moins un bien qui serait considéré comme un bien contrôlé s'il était détenu à l'extérieur du régime ou du fonds;

c) les marchandises, les marchés à terme et les devises étrangères détenus ou négociés à des fins de spéculation;

d) les options d'achat d'actions, les bons de souscription d'actions, les droits de souscription et autres effets semblables.

« bien exclu » "exempt assets"

« bien exclu » Tout bien — y compris tout intérêt afférent — réservé à l'usage personnel du titulaire de charge publique et de sa famille ain-

(*a*) primary and secondary residences, recreational property and farm land and buildings used or intended for use by public office holders or the members of their family;

(*b*) household goods and personal effects;

(*c*) works of art, antiques and collectibles;

(*d*) automobiles and other personal means of transportation;

(*e*) cash and deposits;

(*f*) Canada Savings Bonds and other similar investments issued or guaranteed by any level of government in Canada or agencies of those governments;

(*g*) registered retirement savings plans and registered education savings plans that are not self-administered or self-directed;

(*h*) investments in open-ended mutual funds;

(*i*) guaranteed investment certificates and similar financial instruments;

(*j*) public sector debt financing not guaranteed by a level of government, such as university and hospital debt financing;

(*k*) annuities and life insurance policies;

(*l*) pension rights;

(*m*) money owed by a previous employer, client or partner;

(*n*) personal loans receivable from the public office holder's relatives, and personal loans of less than $10,000 receivable from other persons if the public office holder has loaned the moneys receivable;

(*o*) money owed under a mortgage or hypothec of less than $10,000;

(*p*) self-administered or self-directed registered retirement savings plans, registered education savings plans and registered retirement income funds composed exclusively of assets that would be considered exempt if held outside the plan or fund; and

(*q*) investments in limited partnerships that are not traded publicly and whose assets are exempt assets.

si que tout bien de nature non commerciale, notamment :

a) le domicile principal ou secondaire et les propriétés agricoles réservés à l'usage personnel présent et futur du titulaire ou de sa famille;

b) les articles ménagers et les effets personnels;

c) les oeuvres d'art, les antiquités et les objets de collection;

d) les automobiles et autres moyens de transport personnels;

e) les liquidités et les dépôts;

f) les obligations d'épargne du Canada et autres titres semblables émis ou garantis par tout ordre de gouvernement ou organisme canadien;

g) les régimes enregistrés d'épargne-retraite et d'épargne-études qui ne sont pas autogérés;

h) les investissements dans des fonds communs de placement à capital variable;

i) les certificats de placement garanti et les instruments financiers semblables;

j) les titres d'emprunt du secteur public non garantis par un ordre de gouvernement, comme les titres d'emprunt d'une université ou d'un hôpital;

k) les rentes et les polices d'assurance-vie;

l) les droits à pension;

m) les créances à recouvrer d'un ancien employeur, client ou associé;

n) les prêts personnels consentis à des parents du titulaire et les prêts personnels de moins de 10 000 $ consentis à d'autres personnes;

o) toute somme due au titre d'un prêt hypothécaire de moins de 10 000 $;

p) les régimes enregistrés d'épargne-retraite et d'épargne-études et les fonds enregistrés de revenu de retraite qui sont autogérés et composés uniquement de biens qui seraient considérés comme des biens exclus s'ils étaient détenus à l'extérieur du régime ou du fonds;

q) les placements dans les sociétés en commandite dont les actions ne sont pas offertes au public et dont les biens sont des biens exclus.

Recusal

Duty to recuse

21. A public office holder shall recuse himself or herself from any discussion, decision, debate or vote on any matter in respect of which he or she would be in a conflict of interest.

Confidential Disclosure

Confidential report

22. (1) A reporting public office holder shall, within 60 days after the day on which he or she is appointed as a public office holder, provide a confidential report to the Commissioner.

Content of report

(2) The report required under subsection (1) must contain the following:

(*a*) a description of all of the reporting public office holder's assets and an estimate of their value;

(*b*) a description of all of the reporting public office holder's direct and contingent liabilities, including the amount of each liability;

(*c*) a description of all income received by the reporting public office holder during the 12 months before the day of appointment and all income the reporting public office holder is entitled to receive in the 12 months after the day of appointment;

(*d*) a description of all activities referred to in section 15 in which the reporting public office holder was engaged in the two-year period before the day of appointment;

(*e*) a description of the reporting public office holder's involvement in philanthropic, charitable or non-commercial activities in the two-year period before the day of appointment;

(*f*) a description of all of the reporting public office holder's activities as trustee, executor or liquidator of a succession or holder of a power of attorney in the two-year period before the day of appointment; and

(*g*) any other information that the Commissioner considers necessary to ensure that the

Récusation

Devoir de récusation

21. Le titulaire de charge publique doit se récuser concernant une discussion, une décision, un débat ou un vote, à l'égard de toute question qui pourrait le placer en situation de conflit d'intérêts.

Communication confidentielle

Rapport confidentiel

22. (1) Dans les soixante jours suivant sa nomination, le titulaire de charge publique principal présente au commissaire un rapport confidentiel.

Contenu du rapport

(2) Le rapport contient :

a) la liste détaillée de tous les biens du titulaire de charge publique principal avec leur valeur estimative;

b) la liste détaillée de la totalité de ses dettes réelles et éventuelles, avec le montant de chacune d'elles;

c) la liste détaillée de tous les revenus qu'il a reçus au cours des douze mois précédant la date de sa nomination et de tous ceux auxquels il a droit au cours des douze mois suivants;

d) la liste détaillée de toutes les activités visées à l'article 15 auxquelles il a participé au cours des deux années précédant la date de sa nomination;

e) la liste détaillée de toutes les activités philanthropiques, caritatives ou à but non lucratif auxquelles il a participé au cours des deux années précédant la date de sa nomination;

f) la liste détaillée de toutes les activités qu'il a exercées à titre de fiduciaire, de liquidateur d'une succession, d'exécuteur ou de mandataire au cours des deux années précédant la date de sa nomination;

g) tout autre renseignement que le commissaire estime nécessaire pour s'assurer que le titulaire de charge publique principal se conforme à la présente loi.

reporting public office holder is in compliance with this Act.

Additional content

(3) A minister of the Crown, minister of state or parliamentary secretary shall make reasonable efforts to include in the report the information referred to in subsection (2) for each member of his or her family.

Benefits from contracts

(4) A reporting public office holder shall include in the report a description of all benefits that he or she, any member of his or her family or any partnership or private corporation in which he or she or a member of his or her family has an interest is entitled to receive during the 12 months after the day of appointment, as a result of a contract with a public sector entity and the report must include a description of the subject-matter and nature of the contract.

Notification of material change

(5) If there is a material change in any matter in respect of which a reporting public office holder is required to provide a confidential report under this section, the reporting public office holder shall, within 30 days after the change, file a report with the Commissioner describing the material change.

Disclosure of gifts

23. If the total value of all gifts or other advantages accepted by a reporting public office holder or a member of his or her family exceeds $200 from any one source other than relatives and friends in a 12-month period, the reporting public office holder shall disclose the gifts or other advantages to the Commissioner within 30 days after the day on which the value exceeds $200.

Disclosure of offers

24. (1) A reporting public office holder shall disclose in writing to the Commissioner within seven days all firm offers of outside employment.

Disclosure of acceptance

(2) A reporting public office holder who accepts an offer of outside employment shall within seven days disclose his or her acceptance of the offer in writing to the Commissioner as well as to the following persons:

(*a*) in the case of a minister of the Crown or minister of state, to the Prime Minister;

(*b*) in the case a parliamentary secretary, to the minister whom the parliamentary secretary assists;

Contenu supplémentaire du rapport

(3) Il incombe au ministre, ministre d'État ou secrétaire parlementaire de déployer des efforts raisonnables pour inclure dans le rapport les renseignements visés au paragraphe (2) pour tous les membres de sa famille.

Avantages provenant de contrats avec l'administration fédérale

(4) Il incombe à tout titulaire de charge publique principal d'inclure dans le rapport tout avantage que lui-même ou un membre de sa famille, ainsi que toute société de personnes ou société privée dans laquelle lui-même ou un membre de sa famille détient un intérêt, est en droit de recevoir au cours des douze mois suivant la date de sa nomination en raison de tout contrat conclu avec une entité du secteur public, avec explication de l'objet et de la nature du contrat.

Avis de changement important

(5) Si un changement important survient dans quelque affaire pour laquelle le titulaire de charge publique principal doit fournir un rapport confidentiel en vertu du présent article, il incombe à celui-ci, dans les trente jours suivant le changement, de fournir au commissaire un rapport faisant état du changement.

Déclaration de cadeaux et autres avantages

23. Si la valeur totale de tous les cadeaux et autres avantages acceptés par le titulaire de charge publique principal ou un membre de sa famille d'une même source autre que les parents et les amis du titulaire excède 200 $ sur une période de douze mois, il incombe à ce dernier d'en faire état au commissaire dans les trente jours suivant celui où la valeur des cadeaux et avantages excède ce montant.

Communication des offres

24. (1) Le titulaire de charge publique principal communique par écrit au commissaire, dans les sept jours, toute offre ferme d'emploi de l'extérieur.

Communication de l'acceptation

(2) S'il accepte une offre d'emploi de l'extérieur, il en avise par écrit, dans les sept jours, le commissaire et les personnes suivantes :

a) le premier ministre, dans le cas d'un ministre ou d'un ministre d'État;

b) le ministre auprès de qui il a été affecté, dans le cas d'un secrétaire parlementaire;

c) le greffier du Conseil privé, dans le cas d'un administrateur général;

(*c*) in the case of deputy heads, to the Clerk of the Privy Council; and

(*d*) in the case of any other reporting public office holder, to the appropriate minister.

d) le ministre en cause, dans le cas de tout autre titulaire de charge publique principal.

PUBLIC DECLARATION

Public declaration — recusal

25. (1) If a reporting public office holder has recused himself or herself to avoid a conflict of interest, the reporting public office holder shall, within 60 days after the day on which the recusal took place, make a public declaration of the recusal that provides sufficient detail to identify the conflict of interest that was avoided.

Public declaration — certain assets

(2) A reporting public office holder shall, within 120 days after the day on which he or she is appointed as a public office holder, make a public declaration of all of his or her assets that are neither controlled assets nor exempt assets.

Public declaration — liabilities

(3) A minister of the Crown, minister of state or parliamentary secretary shall, within 120 days after the day on which he or she is appointed, make a public declaration with respect to all of his or her liabilities of $10,000 or more that provides sufficient detail to identify the source and nature of the liability but not the amount.

Public declaration — outside activities

(4) If a reporting public office holder holds a position referred to in subsection 15(2) or (3), the reporting public office holder shall, within 120 days after the day on which he or she is appointed, make a public declaration of that fact.

Public declaration — gifts

(5) If a reporting public office holder or a member of his or her family accepts any single gift or other advantage that has a value of $200 or more, other than one from a relative or friend, the reporting public office holder shall, within 30 days after accepting the gift or other advantage, make a public declaration that provides sufficient detail to identify the gift or other advantage accepted, the donor and the circumstances under which it was accepted.

Public declaration — travel

(6) If travel has been accepted in accordance with section 12, from any source, the minister of the Crown, minister of state or parliamentary secretary concerned shall, within 30 days after the acceptance, make a public declaration that

DÉCLARATION PUBLIQUE

Déclaration publique : récusation

25. (1) Si un titulaire de charge publique principal se récuse pour éviter un conflit d'intérêts, il lui incombe de faire, dans les soixante jours suivant la récusation, une déclaration publique dans laquelle il fournit des détails suffisants pour exposer le conflit d'intérêts évité.

Déclaration publique : certains biens

(2) Il incombe au titulaire de charge publique de faire, dans les cent vingt jours suivant sa nomination, une déclaration publique de ses biens qui ne sont ni des biens contrôlés ni des biens exclus.

Déclaration publique : dettes

(3) Le ministre, le ministre d'État ou le secrétaire parlementaire, dans les cent vingt jours suivant sa nomination, est tenu de faire, concernant toute dette égale ou supérieure à 10 000 $, une déclaration publique dans laquelle il fournit des détails suffisants pour en identifier la source et la nature, mais non la valeur.

Déclaration publique : activités extérieures

(4) Le titulaire de charge publique principal qui occupe un poste visé aux paragraphes 15(2) ou (3) est tenu, dans les cent vingt jours suivant sa nomination, de faire une déclaration publique à cet effet.

Déclaration publique : cadeaux et autres avantages

(5) Si le titulaire de charge publique principal ou un membre de sa famille accepte un cadeau ou autre avantage d'une valeur de 200 $ ou plus, à l'exclusion d'un cadeau ou autre avantage provenant d'un parent ou d'un ami, il lui incombe de faire, dans les trente jours suivant l'acceptation du cadeau ou de l'avantage, une déclaration publique dans laquelle il fournit des détails suffisants pour identifier le cadeau ou l'avantage accepté, le nom du donateur et les circonstances dans lesquelles le don a été accepté.

Déclaration publique : voyages

(6) Si un voyage a été accepté au titre de l'article 12, de quelque source que ce soit, le ministre, le ministre d'État ou le secrétaire parlementaire est tenu, dans les trente jours suivant l'acceptation du voyage, de faire une déclara-

provides sufficient detail to identify the source and the circumstances under which the travel was accepted.

Summary statement

26. (1) A reporting public office holder shall, within 120 days after the day on which he or she is appointed, sign a summary statement containing the information required under subsection (2) and provide it to the Commissioner.

Content

(2) The summary statement must contain the following:

(*a*) for each controlled asset of the reporting public officer holder, and for each asset of the reporting public office holder that the Commissioner has ordered divested under section 30, a description of the asset and the method used to divest it;

(*b*) for each matter in respect of which the Commissioner has ordered a reporting public office holder to recuse himself or herself under section 30, a description of the matter and information regarding the process to be put in place by the reporting public office holder and others to effect the recusal; and

(*c*) for any other matter in respect of which the Commissioner has issued an order to the reporting public office holder under section 30, a description of the matter and the order, and the steps taken to comply with the order.

DIVESTMENT

Divestment on appointment

27. (1) Subject to subsections (9) and (10), a reporting public office holder shall, within 120 days after the day on which he or she is appointed as a reporting public office holder, divest each of his or her controlled assets by doing one of the following:

(*a*) selling it in an arm's-length transaction; or

(*b*) placing it in a blind trust that meets the requirements of subsection (4).

Divestment of gift or bequest

(2) Subject to subsections (9) and (10), a reporting public office holder shall, within 120 days after the day on which he or she receives controlled assets by way of gift or testamentary disposition or in any other way over which the reporting public office holder has no control, divest the controlled assets in the manner required by subsection (1).

tion publique dans laquelle il fournit des détails suffisants au sujet de la source et des circonstances dans lesquelles le voyage a été accepté.

Déclaration sommaire

26. (1) Il incombe au titulaire de charge publique principal de signer et de fournir au commissaire, dans les cent vingt jours suivant sa nomination, une déclaration sommaire contenant les renseignements visés au paragraphe (2).

Contenu

(2) La déclaration sommaire contient les renseignements suivants :

a) pour tout bien contrôlé du titulaire de charge publique principal et tout bien de celui-ci qui fait l'objet d'une ordonnance de dessaisissement en vertu de l'article 30, la liste des biens et des dispositions qu'il a prises pour s'en dessaisir;

b) pour toute affaire qui fait l'objet d'une ordonnance de récusation en vertu de l'article 30, une description de l'affaire et les renseignements concernant les dispositions à prendre par lui ou toute autre personne par suite de sa récusation;

c) pour toute autre affaire qui fait l'objet d'une ordonnance en vertu de l'article 30, une description de l'affaire, de l'ordonnance et des dispositions qu'il a prises pour se conformer à l'ordonnance.

DESSAISISSEMENT

Dessaisissement : nomination

27. (1) Sous réserve des paragraphes (9) et (10), il incombe au titulaire de charge publique principal, dans les cent vingt jours suivant sa nomination, de se dessaisir de ses biens contrôlés de l'une des façons suivantes :

a) vente à un tiers avec qui il n'a aucun lien de dépendance;

b) dépôt dans une fiducie sans droit de regard qui satisfait aux exigences du paragraphe (4).

Dessaisissement : cadeaux ou legs

(2) Sous réserve des paragraphes (9) et (10), il lui incombe également, dans les cent vingt jours suivant leur réception, de se dessaisir des biens contrôlés qu'il a reçus en cadeau, par legs ou de quelque autre manière indépendante de sa volonté de l'une des façons prévues au paragraphe (1).

Prohibition on blind management agreement

(3) For greater certainty, a reporting public office holder may not divest his or her controlled assets by any measure other than one referred to in subsection (1), including by placing them in a blind management agreement.

Blind trust requirements

(4) The terms of a blind trust must provide that

(*a*) the assets to be placed in trust shall be registered to the trustee unless they are in a registered retirement savings plan account;

(*b*) the reporting public office holder shall not have any power of management or control over the trust assets;

(*c*) the trustee shall not seek or accept any instruction or advice from the reporting public office holder concerning the management or the administration of the assets;

(*d*) the assets placed in the trust shall be listed on a schedule attached to the instrument or contract establishing the trust;

(*e*) the term of any trust shall be for as long as the reporting public office holder who establishes the trust continues to hold his or her office, or until the trust assets have been depleted;

(*f*) the trustee shall deliver the trust assets to the reporting public office holder when the trust is terminated;

(*g*) the trustee shall not provide information about the trust, including its composition, to the reporting public office holder, except for information that is required by law to be filed by the reporting public office holder and periodic reports on the overall value of the trust;

(*h*) the reporting public office holder may receive any income earned by the trust, and add to or withdraw from the capital funds in the trust;

(*i*) the trustee shall be at arm's length from the reporting public office holder and the Commissioner is to be satisfied that an arm's length relationship exists;

(*j*) the trustee must be

(i) a public trustee,

(ii) a public company, including a trust company or investment company, that is

Précision

(3) Il est entendu qu'il ne peut se dessaisir de ses biens contrôlés autrement que de l'une des façons prévues au paragraphe (1), notamment en les assujettissant à une convention de gestion sans droit de regard.

Fiducies sans droit de regard : exigences

(4) La convention de fiducie sans droit de regard obéit aux règles suivantes :

a) les biens placés en fiducie sont inscrits au nom du fiduciaire à moins qu'ils ne soient placés dans un régime enregistré d'épargne-retraite;

b) le titulaire ne peut exercer aucun pouvoir de gestion ni de contrôle sur les biens en fiducie;

c) le fiduciaire ne peut ni demander ni recevoir des instructions ou des conseils du titulaire au sujet de la gestion ou de l'administration des biens;

d) la liste des biens en fiducie est annexée à la convention;

e) la fiducie continue d'exister tant que le titulaire de charge publique principal qui l'a établie occupe son poste; elle doit être dissoute dès qu'elle ne contient plus de biens;

f) le fiduciaire remet les biens en fiducie au titulaire dès que la fiducie prend fin;

g) le fiduciaire ne doit fournir que les renseignements requis pour les déclarations exigées par la loi et les rapports périodiques sur la valeur globale de la fiducie, sans jamais fournir de renseignements concernant la composition de celle-ci;

h) le titulaire peut toucher les revenus générés par la fiducie, y déposer ou en retirer des capitaux;

i) le fiduciaire ne doit avoir aucun lien de dépendance avec le titulaire, et le commissaire doit en être convaincu;

j) le fiduciaire doit être :

(i) soit un fiduciaire public,

(ii) soit une société ouverte, telle qu'une société de fiducie ou de placement, qui a qualité pour s'acquitter des fonctions de fiduciaire,

(iii) soit encore un particulier qui peut s'acquitter de ce genre de tâches dans le cadre de son travail;

known to be qualified to perform the duties of a trustee, or

(iii) an individual who may perform trustee duties in the normal course of his or her work; and

(*k*) the trustee shall provide the Commissioner, on every anniversary of the trust, a written annual report verifying as to accuracy the nature and market value of the trust, a reconciliation of the trust property, the net income of the trust for the preceding year, and the fees of the trustee, if any.

k) le fiduciaire est tenu de fournir au commissaire, le jour anniversaire de l'établissement de la fiducie, un rapport annuel écrit indiquant la nature, la valeur marchande et un rapprochement des biens de la fiducie, le bénéfice net de la fiducie de l'année précédente et, le cas échéant, les honoraires du fiduciaire.

General investment instructions

(5) Despite subsection (4), general investment instructions may be included in a blind trust instrument or contract but only with the prior approval of the Commissioner. The instructions may provide for proportions to be invested in various categories of risk, but may not be industry-specific, except if there are legislative restrictions on the type of assets that a public office holder may own.

Instructions générales d'investissement

(5) Malgré le paragraphe (4), des instructions générales d'investissement peuvent être incluses dans une convention de fiducie sans droit de regard pourvu qu'elles soient approuvées au préalable par le commissaire. Les instructions peuvent indiquer la répartition en pourcentage des sommes à investir dans diverses catégories de risque, mais elles ne peuvent faire état de secteurs particuliers d'activités économiques, sauf dans le cas où des dispositions législatives limitent le type de biens que le titulaire d'une charge publique peut posséder.

No oral instructions

(6) For greater certainty, no oral investment instructions may be given with respect to a blind trust contract or instrument.

Aucune instruction verbale

(6) Il est entendu qu'aucune instruction verbale n'est permise à l'égard d'une convention de fiducie sans droit de regard.

Confirmation of sale or trust

(7) A reporting public office holder shall provide to the Commissioner a confirmation of sale or a copy of any contract or instrument establishing the trust in respect of any controlled asset divested under subsection (1).

Confirmation de la vente ou de la fiducie

(7) Le titulaire fournit au commissaire une confirmation de la vente ou une copie de la convention de fiducie pour tout bien contrôlé dont il s'est dessaisi en conformité avec le paragraphe (1).

Information confidential

(8) Unless otherwise required by law, the Commissioner shall keep confidential all information provided by a reporting public office holder relating to a divestment under subsection (1), except the fact that a sale has taken place or that a trust exists.

Renseignements confidentiels

(8) À l'exception de la déclaration confirmant la vente ou l'existence d'une fiducie, les renseignements fournis au commissaire par le titulaire concernant le dessaisissement doivent demeurer confidentiels sauf indication contraire de la loi.

Security

(9) Subject to the approval of the Commissioner, a reporting public office holder is not required to divest controlled assets that are given as security to a lending institution.

Garanties

(9) Sous réserve de l'approbation du commissaire, le titulaire n'est pas tenu de se dessaisir de biens contrôlés qui ont été remis en garantie à un établissement de crédit.

Assets of minimal value

(10) A reporting public office holder who is not a minister of the Crown, a minister of state or a parliamentary secretary is not required to divest controlled assets if, in the opinion of the Commissioner, the assets are of such minimal value that they do not constitute any risk of

Biens de faible valeur

(10) Le titulaire autre qu'un ministre, un ministre d'État ou un secrétaire parlementaire n'est pas tenu de se dessaisir des biens contrôlés qui, de l'avis du commissaire, étant donné leur très faible valeur, ne posent aucun risque

conflict of interest in relation to the reporting public office holder's official duties and responsibilities.

de conflit d'intérêts par rapport à ses fonctions officielles.

FUNCTIONS OF THE COMMISSIONER

FONCTIONS DU COMMISSAIRE

Annual review

28. The Commissioner shall review annually with each reporting public office holder the information contained in his or her confidential reports and the measures taken to satisfy his or her obligations under this Act.

Examen annuel

28. Le commissaire et le titulaire de charge publique principal examinent chaque année les renseignements contenus dans les rapports confidentiels ainsi que les mesures prises par le titulaire pour satisfaire les obligations qui incombent à ce dernier en vertu de la présente loi.

Determination of appropriate measures

29. Before they are finalized, the Commissioner shall determine the appropriate measures by which a public office holder shall comply with this Act and, in doing so, shall try to achieve agreement with the public office holder.

Détermination des mesures pertinentes

29. Le commissaire détermine, avant qu'elle ne soit définitive, la mesure à appliquer pour que le titulaire de charge publique se conforme aux mesures énoncées dans la présente loi, et tente d'en arriver à un accord avec le titulaire de charge publique à ce sujet.

Compliance order

30. In addition to the specific compliance measures provided for in this Part, the Commissioner may order a public office holder, in respect of any matter, to take any compliance measure, including divestment or recusal, that the Commissioner determines is necessary to comply with this Act.

Ordonnance

30. Outre les mesures d'observation prévues dans la présente partie, le commissaire peut ordonner au titulaire de charge publique de prendre, à l'égard de toute affaire, toute autre mesure qu'il estime nécessaire pour assurer l'observation de la présente loi, y compris le dessaisissement ou la récusation.

Reimbursement of costs

31. (1) The Commissioner may order that the following administrative costs incurred by a public office holder be reimbursed:

(*a*) in relation to a divestment of assets,

(i) reasonable legal, accounting and transfer costs to establish and terminate a trust determined to be necessary by the Commissioner,

(ii) annual, actual and reasonable costs to maintain and administer the trust, in accordance with rates set from time to time by the Commissioner,

(iii) commissions for transferring, converting or selling assets where determined necessary by the Commissioner,

(iv) costs of other financial, legal or accounting services required because of the complexity of the arrangements for the assets, and

(v) commissions for transferring, converting or selling assets if there are no provisions for a tax deduction under the *Income Tax Act*; and

Remboursement des frais

31. (1) Le commissaire peut ordonner le remboursement au titulaire de charge publique des frais d'administration suivants :

a) s'agissant du dessaisissement de biens :

(i) les frais juridiques et les frais de comptabilité et de transfert engagés pour établir ou mettre fin à la fiducie que le commissaire a jugée nécessaire,

(ii) les frais annuels, réels et raisonnables, engagés pour le maintien et l'administration de la fiducie selon les tarifs établis par le commissaire,

(iii) les commissions pour le transfert, la conversion ou la vente des biens que le commissaire a jugé nécessaire,

(iv) les frais relatifs aux autres services financiers, juridiques ou comptables nécessaires en raison de la complexité des arrangements,

(v) les commissions afférentes au transfert, à la conversion ou à la vente de biens lorsque la *Loi de l'impôt sur le revenu* ne prévoit aucune déduction fiscale;

(*b*) in relation to a withdrawal from activities, the costs of removing a public office holder's name from federal or provincial registries of corporations.

b) s'agissant du retrait des activités, les frais engagés pour faire rayer le nom du titulaire des registres fédéraux et provinciaux des sociétés.

Restriction

(2) The following administrative costs are not eligible to be reimbursed under subsection (1):

(*a*) charges for the day-to-day operations of a business or commercial entity;

(*b*) charges associated with winding down a business;

(*c*) costs for acquiring permitted assets using proceeds from the required sale of other assets; and

(*d*) any income tax adjustment that may result from the reimbursement of trust costs.

(2) Ne peuvent être remboursés, au titre du paragraphe (1), les frais suivants :

a) les frais d'exploitation quotidiens d'une entreprise ou d'une entité commerciale;

b) les frais relatifs à la fermeture d'une entreprise;

c) le coût d'acquisition des biens autorisés achetés avec le produit de la vente d'autres biens;

d) le rajustement de l'impôt sur le revenu qui peut découler du remboursement des frais de fiducie.

Restrictions

Post-employment obligations

32. Before a public office holder's last day in office, the Commissioner shall advise the public office holder of his or her obligations under Part 3.

32. Avant le départ officiel d'un titulaire de charge publique, le commissaire lui fait part de ses obligations d'après-mandat au titre de la partie 3.

Obligations d'après-mandat : rappel

PART 3

POST-EMPLOYMENT

PARTIE 3

L'APRÈS-MANDAT

Rules for All Former Public Office Holders

Règles régissant tous les ex-titulaires de charge publique

Prohibitions after leaving office

33. No former public office holder shall act in such a manner as to take improper advantage of his or her previous public office.

33. Il est interdit à tout ex-titulaire de charge publique d'agir de manière à tirer un avantage indu de sa charge antérieure.

Interdictions d'après-mandat

Previously acting for Crown

34. (1) No former public office holder shall act for or on behalf of any person or organization in connection with any specific proceeding, transaction, negotiation or case to which the Crown is a party and with respect to which the former public office holder had acted for, or provided advice to, the Crown.

34. (1) Il est interdit à tout ex-titulaire de charge publique d'agir au nom ou pour le compte d'une personne ou d'un organisme relativement à une instance, une opération, une négociation ou une autre affaire à laquelle la Couronne est partie et dans laquelle il a représenté ou conseillé celle-ci.

Représentation antérieure de la Couronne

Improper information

(2) No former public office holder shall give advice to his or her client, business associate or employer using information that was obtained in his or her capacity as a public office holder and is not available to the public.

(2) Il est interdit à tout ex-titulaire de charge publique de donner à ses clients, ses associés en affaires ou son employeur des conseils fondés sur des renseignements non accessibles au public obtenus lors de son mandat.

Renseignements inappropriés

Rules for Former Reporting Public Office Holders

Règles régissant les ex-titulaires de charge publique principaux

Prohibition on contracting

35. (1) No former reporting public office holder shall enter into a contract of service with, accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he or she had direct and

35. (1) Il est interdit à tout ex-titulaire de charge publique principal de conclure un contrat de travail ou d'accepter une nomination au conseil d'administration d'une entité avec laquelle il a eu des rapports officiels directs et

Interdiction : contrats

significant official dealings during the period of one year immediately before his or her last day in office.

Prohibition on representations

(2) No former reporting public office holder shall make representations whether for remuneration or not, for or on behalf of any other person or entity to any department, organization, board, commission or tribunal with which he or she had direct and significant official dealings during the period of one year immediately before his or her last day in office.

Prohibition on former ministers

(3) No former reporting public office holder who was a minister of the Crown or minister of state shall make representations to a current minister of the Crown or minister of state who was a minister of the Crown or a minister of state at the same time as the former reporting public office holder.

Time limits: former reporting public office holder

36. (1) With respect to all former reporting public office holders except former ministers of the Crown and former ministers of state, the prohibitions set out in subsections 35(1) and (2) apply for the period of one year following the former reporting public office holder's last day in office.

Time limits: former ministers

(2) With respect to former ministers of the Crown and former ministers of state, the prohibitions set out in subsections 35(1) to (3) apply for a period of two years following their last day in office.

Report to Commissioner

37. (1) A former reporting public office holder who, during the applicable period under section 36, has any communication referred to in paragraph 5(1)(*a*) of the *Lobbying Act* or arranges a meeting referred to in paragraph 5(1)(*b*) of that Act shall report that communication or meeting to the Commissioner.

Requirement to file return

(2) The former reporting public office holder shall file a return that

(*a*) sets out, with respect to every communication or meeting referred to in subsection (1),

(i) the name of the public office holder who was the object of the communication or meeting,

(ii) the date of the communication or meeting,

importants au cours de l'année ayant précédé la fin de son mandat, ou d'accepter un emploi au sein d'une telle entité.

Interdiction : représentations

(2) Il est interdit à tout ex-titulaire de charge publique principal d'intervenir, contre rémunération ou non, pour le compte ou au nom de toute personne ou entité, auprès d'un ministère, d'un organisme, d'un conseil, d'une commission ou d'un tribunal avec lequel il a eu des rapports officiels directs et importants au cours de l'année ayant précédé la fin de son mandat.

Interdiction : anciens ministres

(3) Il est interdit à tout ex-titulaire de charge publique principal qui était ministre ou ministre d'État d'intervenir auprès d'un ancien collègue faisant encore partie du cabinet.

Période de restriction : ex-titulaires de charge publique principaux

36. (1) Dans le cas de tout ex-titulaire de charge publique principal qui n'était pas ministre ou ministre d'État, les interdictions visées aux paragraphes 35(1) et (2) s'appliquent pendant un an à compter de la fin de son mandat.

Période de restriction : anciens ministres

(2) Dans le cas de tout ancien ministre ou ministre d'État, les interdictions visées aux paragraphes 35(1) à (3) s'appliquent pendant deux ans à compter de la fin de son mandat.

Rapport au commissaire

37. (1) L'ex-titulaire de charge publique principal qui communique, en vertu de l'alinéa 5(1)*a*) de la *Loi sur le lobbying*, ou qui obtient une entrevue, en vertu de l'alinéa 5(1)*b*) de cette loi, avec un titulaire de charge publique durant la période applicable visée à l'article 36 est tenu d'en faire rapport au commissaire.

Déclaration

(2) L'ex-titulaire de charge publique principal fournit une déclaration dans laquelle figurent les renseignements suivants :

a) relativement à toute communication ou entrevue visée au paragraphe (1), le nom du titulaire, la date de la communication ou de l'entrevue, les renseignements utiles à la détermination de l'objet de la communication ou de l'entrevue et tout autre renseignement exigé par le commissaire;

b) tout changement des renseignements contenus dans la déclaration ainsi que tout ren-

(iii) particulars to identify the subject-matter of the communication or meeting, and

(iv) any other information that the Commissioner requires; and

(*b*) if any information contained in the return is no longer correct or additional information that the former reporting public office holder would have been required to provide in the return has come to his or her knowledge after the return was filed, provides the corrected or additional information.

2006, c. 9, ss. 2 "37", 36.

seignement additionnel qu'il aurait été tenu de fournir dans la déclaration mais qui n'a été porté à sa connaissance qu'après la transmission de sa déclaration.

2006, ch. 9, art. 2 « 37 » et 36.

Exemption

38. (1) The Commissioner may, on application, exempt from the application of section 35 or 37 a former reporting public office holder who, while in office, was a member of ministerial staff who worked on average 15 hours or more a week.

38. (1) Le commissaire peut, sur demande, soustraire à l'application des articles 35 ou 37 l'ex-titulaire de charge publique principal qui, pendant son mandat, était membre du personnel ministériel et travaillait en moyenne quinze heures ou plus par semaine.

Exemption

Criteria

(2) An exemption may only be granted under subsection (1) in respect of a person based on the following criteria:

(*a*) the person was not a senior member of ministerial staff;

(*b*) the person's functions did not include the handling of files of a political or sensitive nature, such as confidential cabinet documents;

(*c*) the person had little influence, visibility or decision-making power in the office of a minister of the Crown or a minister of state; and

(*d*) the person's salary level was not commensurate with the person having an important role in that office.

(2) L'exemption ne peut être accordée qu'après la prise en compte des critères suivants :

a) l'intéressé n'était pas membre supérieur d'un personnel ministériel;

b) ses fonctions ne lui donnent pas accès à des dossiers de nature politique ou délicate, tels que des documents confidentiels du cabinet;

c) il avait peu d'influence, de visibilité ou de pouvoir de prendre des décisions au sein du cabinet d'un ministre ou ministre d'État;

d) son niveau de salaire n'indiquait pas un rôle déterminant au sein du cabinet.

Critères

Notice of decision

(3) The decision made by the Commissioner shall be communicated in writing to the person who applied for the exemption.

(3) La décision prise par le commissaire est communiquée par écrit à la personne qui a demandé l'exemption.

Communication de la décision

Publication

(4) If the Commissioner has granted an exemption in accordance with this section, the Commissioner shall publish the decision and the reasons in the public registry maintained under section 51.

(4) Si le commissaire a accordé une exemption en vertu du présent article, il publie sa décision motivée dans le registre visé à l'article 51.

Publication

FUNCTIONS OF THE COMMISSIONER

FONCTIONS DU COMMISSAIRE

Waiver or reduction of limitations

39. (1) On application by a reporting public office holder or a former reporting public office

39. (1) À la demande d'un titulaire de charge publique principal ou d'un ex-titulaire de charge publique principal, le commissaire peut

Réduction ou annulation de la période de restriction

holder, the Commissioner may waive or reduce any applicable period set out in section 36.

réduire ou annuler la période de restriction prévue à l'article 36.

Balancing

(2) In exercising his or her discretion under subsection (1), the Commissioner shall consider whether the public interest in granting the waiver or reduction outweighs the public interest in maintaining the prohibition.

(2) Pour décider si une telle mesure est opportune, le commissaire doit se demander si l'intérêt public serait mieux servi par la réduction ou l'annulation de cette période que par le maintien de celle-ci.

Soupeser l'intérêt public

Factors to be considered

(3) In determining the public interest for the purposes of subsection (2), the Commissioner shall consider the following factors:

(3) Pour ce faire, il tient compte des facteurs suivants :

Facteurs à considérer

(*a*) the circumstances under which the reporting public office holder left his or her office;

a) les circonstances du départ de l'intéressé;

(*b*) the general employment prospects of the reporting public office holder or former reporting public office holder;

b) ses perspectives générales d'emploi;

(*c*) the nature, and significance to the Government of Canada, of information possessed by the reporting public office holder or former reporting public office holder by virtue of that office holder's public office;

c) la nature et l'importance que l'État attache aux renseignements obtenus par l'intéressé dans le cadre de ses fonctions officielles;

(*d*) the facilitation of interchange between the private and public sector;

d) la facilitation des échanges entre les secteurs privé et public;

(*e*) the degree to which the new employer might gain unfair commercial advantage by hiring the reporting public office holder or former reporting public office holder;

e) la mesure dans laquelle le nouvel employeur pourrait tirer un avantage commercial indu de l'engagement de l'intéressé;

(*f*) the authority and influence possessed by the reporting public office holder or former reporting public office holder while in public office; and

f) l'autorité et l'influence qu'exerçait l'intéressé durant l'accomplissement de ses fonctions officielles;

(*g*) the disposition of other cases.

g) les dispositions prises dans d'autres cas.

Notice of decision

(4) The decision made by the Commissioner shall be communicated in writing to the applicant referred to in subsection (1).

(4) Le commissaire communique sa décision par écrit à l'intéressé.

Communication de la décision

Publication

(5) If the Commissioner has granted a waiver or reduction in accordance with this section, the Commissioner shall publish the decision and the reasons in the public registry maintained under section 51.

(5) Lorsque le commissaire accorde une réduction ou une annulation en vertu du présent article, il publie sa décision, et les motifs à l'appui, dans le registre public tenu conformément à l'article 51.

Publication

Decision of Commissioner

40. On receipt of a report under section 37, the Commissioner shall immediately determine whether the former reporting public office holder is complying with his or her obligations under this Part.

40. Sur réception du rapport prévu à l'article 37, le commissaire vérifie sans délai si l'ex-titulaire de charge publique principal s'est conformé aux obligations qui lui incombent en vertu de la présente partie.

Décision du commissaire

Order: official dealings

41. (1) If the Commissioner determines that a former reporting public office holder is not

41. (1) S'il conclut qu'un ex-titulaire de charge publique principal ne s'est pas conformé

Ordonnance — rapports officiels

complying with his or her obligations under this Part, the Commissioner may order any current public office holders not to have official dealings with that former reporting public office holder.

Duty to comply with order

(2) All current public officer holders shall comply with an order of the Commissioner made under subsection (1).

No impact

42. For greater certainty, no exemption granted in respect of a person under section 38 and no waiver or reduction granted in respect of a person under section 39 affects any obligation or prohibition that applies to that person under the *Lobbying Act*.

2006, c. 9, ss. 2 "42", 35.

aux obligations qui lui incombent en vertu de la présente partie, le commissaire peut ordonner à tout titulaire de charge publique en poste de ne pas entretenir de rapports officiels avec l'ex-titulaire de charge publique principal.

Devoir de se conformer à l'ordonnance

(2) Il incombe à tout titulaire de charge publique en poste de se conformer à toute ordonnance du commissaire prise en vertu du paragraphe (1).

Précision

42. Il est entendu que l'exemption accordée à l'égard d'une personne en vertu de l'article 38, ou que la réduction ou l'annulation accordée en vertu de l'article 39 est sans effet sur les obligations et interdictions auxquelles est assujetti l'intéressé sous le régime de la *Loi sur le lobbying*.

2006, ch. 9, art. 2 « 42 » et 35.

PART 4

ADMINISTRATION AND ENFORCEMENT

Mandate and Powers of the Commissioner

Confidential advice

43. In addition to carrying out his or her other duties and functions under this Act, the Commissioner shall

(*a*) provide confidential advice to the Prime Minister, including on the request of the Prime Minister, with respect to the application of this Act to individual public office holders; and

(*b*) provide confidential advice to individual public office holders with respect to their obligations under this Act.

Request from parliamentarian

44. (1) A member of the Senate or House of Commons who has reasonable grounds to believe that a public office holder or former public office holder has contravened this Act may, in writing, request that the Commissioner examine the matter.

Content of request

(2) The request shall identify the provisions of this Act alleged to have been contravened and set out the reasonable grounds for the belief that the contravention has occurred.

Examination

(3) If the Commissioner determines that the request is frivolous or vexatious or is made in bad faith, he or she may decline to examine the matter. Otherwise, he or she shall examine the matter described in the request and, having re-

PARTIE 4

ADMINISTRATION ET APPLICATION

Mission et pouvoirs du commissaire

Avis

43. En plus d'appliquer la présente loi relativement à ses fonctions, le commissaire donne, à titre confidentiel :

a) des avis au premier ministre, notamment, à sa demande, sur l'application de la présente loi à un titulaire de charge publique;

b) des avis au titulaire de charge publique sur les obligations de la présente loi qui lui incombent.

Demande émanant d'un parlementaire

44. (1) Tout parlementaire qui a des motifs raisonnables de croire qu'un titulaire ou ex-titulaire de charge publique a contrevenu à la présente loi peut demander par écrit au commissaire d'étudier la question.

Contenu

(2) La demande énonce les dispositions de la présente loi qui auraient été enfreintes et les motifs raisonnables sur lesquels elle est fondée.

Étude

(3) S'il juge la demande futile, vexatoire ou entachée de mauvaise foi, le commissaire peut refuser d'examiner la question. Sinon, il est tenu de procéder à l'étude de la question qu'elle soulève et peut, compte tenu des circonstances, mettre fin à l'étude.

gard to all the circumstances of the case, may discontinue the examination.

Information from public

(4) In conducting an examination, the Commissioner may consider information from the public that is brought to his or her attention by a member of the Senate or House of Commons indicating that a public office holder or former public office holder has contravened this Act. The member shall identify the alleged contravention and set out the reasonable grounds for believing a contravention has occurred.

Renseignements provenant du public

(4) Dans le cadre de l'étude, le commissaire peut tenir compte des renseignements provenant du public qui lui sont communiqués par tout parlementaire et qui portent à croire que l'intéressé a contrevenu à la présente loi. Le parlementaire doit préciser la contravention présumée ainsi que les motifs raisonnables qui le portent à croire qu'une contravention a été commise.

Confidentiality

(5) If a member of the Senate or House of Commons receives information referred to in subsection (4), the member, while considering whether to bring that information to the attention of the Commissioner, shall not disclose that information to anyone. If the member brings that information to the attention of the Commissioner under that subsection, the member shall not disclose that information to anyone until the Commissioner has issued a report under this section in respect of the information.

Confidentialité

(5) Le parlementaire qui reçoit les renseignements visés au paragraphe (4) ne peut les communiquer à quiconque pendant qu'il décide s'ils devront être communiqués au commissaire en vertu de ce paragraphe. Si le parlementaire communique les renseignements au commissaire, il ne peut les communiquer à quiconque avant d'avoir remis le rapport prévu au présent article.

Referral to Speaker

(6) Where the Commissioner is of the opinion that a member of the Senate or House of Commons has failed to comply with the confidentiality provision of subsection (5), the Commissioner may refer the matter, in confidence, to the Speaker of the Senate or House of Commons.

Soumission au président

(6) Dans les cas où le commissaire est d'avis que le parlementaire n'a pas respecté l'obligation de confidentialité prévue au paragraphe (5), il peut soumettre le cas, en toute confidentialité, au président du Sénat ou de la Chambre des communes.

Report

(7) The Commissioner shall provide the Prime Minister with a report setting out the facts in question as well as the Commissioner's analysis and conclusions in relation to the request. The report shall be provided even if the Commissioner determines that the request was frivolous or vexatious or was made in bad faith or the examination of the matter was discontinued under subsection (3).

Suivi

(7) Le commissaire remet au premier ministre un rapport énonçant les faits, son analyse de la question et ses conclusions, même s'il juge la demande futile, vexatoire ou entachée de mauvaise foi, ou s'il a mis fin à l'étude en vertu du paragraphe (3).

Making report available

(8) The Commissioner shall, at the same time that the report is provided under subsection (7), provide a copy of it to the member who made the request — and the public office holder or former public office holder who is the subject of the request — and make the report available to the public.

Communication

(8) En même temps qu'il remet le rapport, le commissaire en fournit un double à l'auteur de la demande et à l'intéressé, et le rend accessible au public.

Confidentiality

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

Confidentialité

(9) Il ne peut inclure dans le rapport des renseignements dont il est tenu d'assurer la confidentialité.

Examination on own initiative

45. (1) If the Commissioner has reason to believe that a public office holder or former

Étude de son propre chef

45. (1) Le commissaire peut étudier la question de son propre chef s'il a des motifs de croi-

public office holder has contravened this Act, the Commissioner may examine the matter on his or her own initiative.

re qu'un titulaire ou ex-titulaire de charge publique a contrevenu à la présente loi.

Discontinuance

(2) The Commissioner, having regard to all the circumstances of the case, may discontinue the examination.

(2) Il peut, compte tenu des circonstances, interrompre l'étude.

Interruption

Report

(3) Unless the examination is discontinued, the Commissioner shall provide the Prime Minister with a report setting out the facts in question as well as the Commissioner's analysis and conclusions.

(3) À moins qu'il n'ait interrompu l'étude, il remet au premier ministre un rapport énonçant les faits, son analyse de la question et ses conclusions.

Suivi

Making report available

(4) The Commissioner shall, at the same time that the report is provided under subsection (3) to the Prime Minister, provide a copy of it to the public office holder or former public office holder who is the subject of the report and make the report available to the public.

(4) En même temps qu'il remet le rapport, il en fournit un double à l'intéressé visé et le rend accessible au public.

Communication

Presentation of views

46. Before providing confidential advice under paragraph 43(*a*) or a report under section 44 or 45, the Commissioner shall provide the public office holder or former public office holder concerned with a reasonable opportunity to present his or her views.

46. Avant de remettre son avis au titre de l'alinéa 43*a*) ou son rapport au titre des articles 44 ou 45, le commissaire donne à l'intéressé visé la possibilité de présenter son point de vue.

Point de vue

Conclusion in report final

47. A conclusion by the Commissioner set out in a report under section 44 or 45 that a public office holder or former public office holder has or has not contravened this Act may not be altered by anyone but is not determinative of the measures to be taken as a result of the report.

47. Est inattaquable la conclusion tirée par le commissaire, dans le rapport prévu aux articles 44 ou 45, sur la question de savoir si le titulaire ou l'ex-titulaire de charge publique a contrevenu ou non à la présente loi. Elle n'est toutefois pas décisive lorsqu'il s'agit de déterminer les mesures à prendre pour donner suite au rapport.

Caractère définitif

Powers

48. (1) For the purposes of paragraph 43(*a*) and sections 44 and 45, the Commissioner has the power to summon witnesses and require them

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

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

48. (1) Pour l'application de l'alinéa 43*a*) et des articles 44 et 45, le commissaire a le pouvoir d'assigner devant lui des témoins et de leur enjoindre de déposer oralement ou par écrit sous la foi du serment, ou d'une affirmation solennelle si ceux-ci en ont le droit en matière civile, et de produire les documents et autres pièces qu'il juge nécessaires.

Pouvoirs

Enforcement

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

(2) Il a, pour contraindre les témoins à comparaître et à déposer, les pouvoirs d'une cour d'archives en matière civile.

Pouvoir de contrainte

Powers exercised in private

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

(3) Les pouvoirs visés aux paragraphes (1) et (2) sont exercés à huis clos.

Huis clos

Inadmissibility

(4) Information given by a person under this section is inadmissible against the person in a

(4) Les renseignements communiqués dans le cadre du présent article ne sont pas admissi-

Inadmissibilité

court or in any proceeding, other than in a prosecution of the person for an offence under section 131 of the *Criminal Code* (perjury) in respect of a statement made to the Commissioner.

Confidentiality

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

(*a*) the disclosure is, in the opinion of the Commissioner, essential for the purposes of carrying out his or her powers under subsection (1) or establishing the grounds for any conclusion contained in a report under section 44 or 45; or

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

Suspension of examination

49. (1) The Commissioner shall immediately suspend an examination under section 43, 44 or 45 if

(*a*) the Commissioner believes on reasonable grounds that the public office holder or former public office holder has committed an offence under an Act of Parliament in respect of the same subject-matter, in which case the Commissioner shall notify the relevant authorities; or

(*b*) it is discovered that the subject-matter of the examination is also the subject-matter of an investigation to determine whether an offence referred to in paragraph (*a*) has been committed or that a charge has been laid in respect of that subject-matter.

Investigation continued

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

No summons

50. (1) The Commissioner, or any person acting on behalf or under the direction of the Commissioner, is not a competent or compellable witness in respect of any matter coming to his or her knowledge as a result of exercising

bles contre le déposant devant les tribunaux ni dans quelque procédure, sauf dans le cas où il est poursuivi pour infraction à l'article 131 du *Code criminel* (parjure) relativement à sa déposition.

Confidentialité

(5) À moins que cela ne soit légalement requis, le commissaire et les personnes agissant en son nom ou sous son autorité ne peuvent communiquer les renseignements dont ils prennent connaissance dans l'exercice des attributions que le présent article leur confère, sauf dans les cas suivants :

a) la communication des renseignements est essentielle, selon le commissaire, pour l'application du paragraphe (1) ou pour motiver les conclusions contenues dans le rapport prévu aux articles 44 ou 45;

b) les renseignements sont communiqués dans le rapport prévu à l'alinéa *a*) ou dans le cadre de poursuites intentées pour infraction à l'article 131 du *Code criminel* (parjure) relativement à une déposition.

Suspension de l'étude

49. (1) Le commissaire suspend sans délai l'étude visée aux articles 43, 44 ou 45 si, selon le cas :

a) il a des motifs raisonnables de croire que le titulaire ou l'ex-titulaire de charge publique en cause a commis, relativement à l'objet de l'étude, une infraction à une loi fédérale, auquel cas il en avise l'autorité compétente;

b) l'on découvre que l'objet de l'étude est le même que celui d'une enquête menée dans le but de décider si une infraction visée à l'alinéa *a*) a été commise, ou qu'une accusation a été portée à l'égard du même objet.

Poursuite de l'étude

(2) Il ne peut poursuivre l'étude avant qu'une décision définitive n'ait été prise relativement à toute enquête ou à toute accusation portant sur le même objet.

Non-assignation

50. (1) Le commissaire et les personnes agissant en son nom ou sous son autorité n'ont pas qualité pour témoigner ni ne peuvent y être contraints en ce qui concerne les questions venues à leur connaissance dans l'exercice des at-

any powers or performing any duties or functions of the Commissioner under this Act.

Protection

(2) No criminal or civil proceedings lie against the Commissioner, or any person acting on behalf or under the direction of the Commissioner, for anything done, reported or said in good faith in the exercise or purported exercise of any power, or the performance or purported performance of any duty or function, of the Commissioner under this Act.

Clarification

(3) The protection provided under subsections (1) and (2) does not limit any powers, privileges, rights and immunities that the Commissioner may otherwise enjoy under section 86 of the *Parliament of Canada Act*.

PUBLIC REGISTRY

Public registry

51. (1) The Commissioner shall maintain a registry consisting of the following documents for examination by the public:

(*a*) public declarations made under section 25;

(*b*) summary statements made under section 26;

(*c*) notes of every gift or other advantage forfeited under subsection 11(3);

(*c.1*) decisions on exemption applications under section 38 and the accompanying reasons;

(*d*) decisions on waiver or reduction applications under section 39 and the accompanying reasons; and

(*e*) any other documents that the Commissioner considers appropriate.

Confidences of Queen's Privy Council

(2) If a public office holder has recused himself or herself in respect of a matter and a public declaration is made in respect of that recusal under subsection 25(1) or section 30,

(*a*) no publication of the declaration shall be made if the very fact of the recusal could reveal, directly or indirectly, any of the following:

(i) a confidence of the Queen's Privy Council for Canada in respect of which subsection 39(1) of the *Canada Evidence Act* applies, and

tributions que la présente loi confère au commissaire.

Immunité

(2) Ils bénéficient de l'immunité en matière civile ou pénale pour les actes, les rapports ou comptes rendus et les paroles qui lui sont attribuables de bonne foi dans l'exercice effectif ou censé tel des attributions que la présente loi confère au commissaire.

Précision

(3) Cette protection n'a pas pour effet de restreindre de quelque façon les pouvoirs, droits, privilèges et immunités dont le commissaire peut disposer en vertu de l'article 86 de la *Loi sur le Parlement du Canada*.

REGISTRE PUBLIC

Registre public

51. (1) Le commissaire tient un registre contenant les documents ci-après pour consultation publique :

a) les déclarations publiques faites au titre de l'article 25;

b) les déclarations sommaires faites au titre de l'article 26;

c) la liste de tous les cadeaux ou autres avantages confisqués en vertu du paragraphe 11(3);

c.1) les décisions motivées concernant toute demande d'exemption présentée en vertu de l'article 38;

d) les décisions motivées concernant toute demande de réduction ou d'annulation présentée en vertu de l'article 39;

e) tout autre document que le commissaire juge indiqué.

Renseignements confidentiels du Conseil privé de la Reine

(2) Lorsqu'un titulaire de charge publique s'est récusé à l'égard d'une affaire et qu'une déclaration publique a été faite à cet égard conformément au paragraphe 25(1) ou à l'article 30, celle-ci :

a) ne doit pas être rendue publique si elle pourrait avoir pour effet de révéler, directement ou indirectement, ce qui suit :

(i) des renseignements confidentiels du Conseil privé de la Reine pour le Canada visés par le paragraphe 39(1) de la *Loi sur la preuve au Canada*,

(ii) special operational information within the meaning of subsection 8(1) of the *Security of Information Act*; and

(*b*) no publication of the declaration shall include any detail that could reveal, directly or indirectly, any of the following:

(i) a confidence of the Queen's Privy Council for Canada in respect of which subsection 39(1) of the *Canada Evidence Act* applies,

(ii) special operational information within the meaning of subsection 8(1) of the *Security of Information Act*,

(iii) information that is subject to solicitor-client privilege,

(iv) information that is subject to any restriction on disclosure created by or under any other Act of Parliament,

(v) information that could reasonably be expected to cause injury to international relations, national defence or national security, or to the detection, prevention or suppression of criminal, subversive or hostile activities,

(vi) information that could reasonably be expected to cause injury to the privacy interests of an individual, or

(vii) information that could reasonably be expected to cause injury to commercial interests.

(ii) des renseignements opérationnels spéciaux au sens du paragraphe 8(1) de la *Loi sur la protection de l'information*;

b) ne doit pas comporter de détails susceptibles de révéler, directement ou indirectement, ce qui suit :

(i) des renseignements confidentiels du Conseil privé de la Reine pour le Canada visés par le paragraphe 39(1) de la *Loi sur la preuve au Canada*,

(ii) des renseignements opérationnels spéciaux au sens du paragraphe 8(1) de la *Loi sur la protection de l'information*,

(iii) des renseignements protégés par le secret professionnel liant l'avocat à son client,

(iv) des renseignements qui font l'objet de restriction de communication prévue sous le régime d'une autre loi fédérale,

(v) des renseignements dont la communication risquerait vraisemblablement de porter atteinte aux relations internationales ou à la défense ou à la sécurité nationales ou à la détection, la prévention ou la répression d'activités criminelles, subversives ou hostiles,

(vi) des renseignements dont la communication risquerait vraisemblablement de porter atteinte au droit à la vie privée d'une personne,

(vii) des renseignements dont la communication risquerait vraisemblablement de porter atteinte à des intérêts commerciaux.

ADMINISTRATIVE MONETARY PENALTIES

Violation

52. Every public office holder who contravenes one of the following provisions commits a violation and is liable to an administrative monetary penalty not exceeding $500:

(*a*) subsections 22(1), (2) and (5);

(*b*) section 23;

(*c*) subsections 24(1) and (2);

(*d*) subsections 25(1) to (6);

(*e*) subsections 26(1) and (2); and

(*f*) subsection 27(7).

PÉNALITÉS

Violations

52. Le titulaire de charge publique qui contrevient à l'une des dispositions ci-après de la présente loi commet une violation pour laquelle il s'expose à une pénalité d'au plus 500 $:

a) les paragraphes 22(1), (2) et (5);

b) l'article 23;

c) les paragraphes 24(1) et (2);

d) les paragraphes 25(1) à (6);

e) les paragraphes 26(1) et (2);

f) le paragraphe 27(7).

Notice of violation

53. (1) If the Commissioner believes on reasonable grounds that a public office holder has committed a violation, the Commissioner may issue, and shall cause to be served on the public office holder, a notice of violation.

Procès-verbal

53. (1) Le commissaire peut, s'il a des motifs raisonnables de croire qu'une violation a été commise, dresser un procès-verbal qu'il fait signifier à l'auteur présumé.

Contents of notice

(2) A notice of violation must

(*a*) set out the name of the public office holder believed to have committed a violation;

(*b*) identify the violation;

(*c*) set out the penalty that the Commissioner proposes to impose;

(*d*) inform the public office holder that he or she may, within 30 days after the notice is served or within any longer period specified by the Commissioner, pay the penalty set out in the notice or make representations to the Commissioner with respect to the alleged violation or proposed penalty and set out the manner for doing so; and

(*e*) inform the public office holder that, if he or she does not pay the penalty or make representations in accordance with the notice, he or she will be considered to have committed the violation and the Commissioner may impose a penalty in respect of it.

Contenu du procès-verbal

(2) Le procès-verbal mentionne :

a) le nom de l'auteur présumé;

b) les faits reprochés;

c) la pénalité que le commissaire a l'intention de lui imposer;

d) la faculté qu'a l'auteur présumé soit de payer la pénalité, soit de présenter des observations relativement à la violation ou à la pénalité, et ce dans les trente jours suivant la signification du procès-verbal — ou dans le délai plus long que peut préciser le commissaire —, ainsi que les modalités d'exercice de cette faculté;

e) le fait que le non-exercice de cette faculté dans le délai imparti vaut aveu de responsabilité et permet au commissaire d'imposer la pénalité.

Criteria for penalty

(3) The amount of a proposed penalty is, in each case, to be determined taking into account the following matters:

(*a*) the fact that penalties have as their purpose to encourage compliance with this Act rather than to punish;

(*b*) the public office holder's history of prior violations under this Act during the five-year period immediately before the violation; and

(*c*) any other relevant matter.

Critères

(3) La pénalité est déterminée, dans chaque cas, compte tenu des critères suivants :

a) son caractère non punitif, destiné à encourager le respect de la présente loi;

b) les antécédents de l'auteur — violations sous le régime de la présente loi — au cours des cinq ans précédant la violation;

c) tout autre élément pertinent.

Regulations

54. The Governor in Council may make regulations respecting the service of documents required or authorized to be served under sections 53 to 57, including the manner and proof of service and the circumstances under which documents are deemed to be served.

Règlements

54. Le gouverneur en conseil peut, par règlement, régir, notamment par l'établissement de présomptions et de règles de preuve, la signification des documents autorisée ou exigée par les articles 53 à 57.

Payment of penalty

55. If the public office holder pays the penalty proposed in the notice of violation, he or she is considered to have committed the violation and proceedings in respect of it are ended.

Paiement

55. Le paiement de la pénalité en conformité avec le procès-verbal vaut aveu de responsabilité à l'égard de la violation et met fin à la procédure.

Representations to Commissioner

56. (1) If the public office holder makes representations to the Commissioner in accordance with the notice of violation, the Commissioner shall decide, on a balance of probabilities, whether the public office holder committed the violation and, if so, may impose the penalty proposed, a lesser penalty or no penalty.

Présentations d'observations

56. (1) Si des observations sont présentées, le commissaire détermine, selon la prépondérance des probabilités, la responsabilité de l'intéressé. Le cas échéant, il peut imposer la pénalité mentionnée au procès-verbal ou une pénalité réduite, ou encore n'imposer aucune pénalité.

Notice of decision

(2) The Commissioner shall cause notice of any decision made under subsection (1) to be served on the public office holder.

Avis de décision

(2) Le commissaire fait signifier sa décision à l'auteur de la violation.

Failure to act

57. A public office holder who neither pays the penalty nor makes representations in accordance with the notice of violation is deemed to have committed the violation. The Commissioner shall impose the penalty proposed and notify the public office holder of the penalty imposed.

Défaut de payer ou de faire des observations

57. Le non-exercice de la faculté mentionnée au procès-verbal dans le délai imparti vaut aveu de responsabilité à l'égard de la violation; le commissaire impose la pénalité mentionnée au procès-verbal et en avise l'auteur de la violation.

Due diligence available

58. (1) Due diligence is a defence in a proceeding in relation to a violation.

Prise de précautions

58. (1) La prise des précautions voulues peut être invoquée dans le cadre de toute procédure en violation.

Common law principles

(2) Every rule and principle of the common law that renders any circumstance a justification or excuse in relation to a charge for an offence applies in respect of a violation to the extent that it is not inconsistent with this Act.

Principes de la common law

(2) Les règles et principes de la common law qui font d'une circonstance une justification ou une excuse dans le cadre d'une poursuite pour infraction s'appliquent à l'égard de toute violation sauf dans la mesure où ils sont incompatibles avec la présente loi.

Evidence

59. In any proceeding, a notice appearing to have been issued under subsection 53(1) or 56(2) is admissible in evidence without proof of the signature or official character of the person appearing to have signed it.

Admissibilité en preuve

59. Sont admissibles en preuve sans qu'il soit nécessaire de prouver l'authenticité de la signature qui y est apposée ni la qualité officielle du signataire le procès-verbal apparemment signifié au titre du paragraphe 53(1) et la décision apparemment signifiée au titre du paragraphe 56(2).

Limitation

60. (1) Proceedings in respect of a violation may be commenced at any time within but not later than five years after the day on which the Commissioner became aware of the subject-matter of the proceedings.

Prescription

60. (1) Les poursuites pour violation se prescrivent par cinq ans à compter de la date où le commissaire a eu connaissance des éléments constitutifs de la violation.

Certificate of Commissioner

(2) A document appearing to have been issued by the Commissioner, certifying the day on which the subject-matter of any proceedings became known to the Commissioner, is admissible in evidence without proof of the signature or official character of the person appearing to have signed the document and is, in the absence of evidence to the contrary, proof of the matter asserted in it.

Certificat du commissaire

(2) Tout document apparemment délivré par le commissaire et attestant la date où ces éléments sont parvenus à sa connaissance fait foi de cette date, en l'absence de preuve contraire, sans qu'il soit nécessaire de prouver l'authenticité de la signature qui y est apposée ni la qualité officielle du signataire.

Recovery of administrative monetary penalties

61. Any administrative monetary penalty required to be paid by a public office holder constitutes a debt due to Her Majesty and may be recovered as a debt from the public office holder in the Federal Court or any other court of competent jurisdiction.

Recouvrement des pénalités

61. Les pénalités à payer sous le régime de la présente loi constituent des créances de Sa Majesté dont le recouvrement peut être poursuivi à ce titre devant la Cour fédérale ou tout autre tribunal compétent.

Publication

62. If an administrative monetary penalty is imposed on a public office holder in respect of a violation, the Commissioner shall make public the nature of the violation, the name of the public office holder who committed it and the amount of the penalty imposed.

Publication

62. Le commissaire doit procéder à la publication de la nature de la violation, du nom de son auteur et du montant de la pénalité imposée.

PART 5

GENERAL

PARTIE 5

GÉNÉRALITÉS

Section 126 of *Criminal Code*

63. Section 126 of the *Criminal Code* does not apply to or in respect of any contravention or alleged contravention of any provision of this Act.

Précision

63. Il est entendu que les contraventions à la présente loi sont soustraites à l'application de l'article 126 du *Code criminel*.

Activities on behalf of constituents

64. (1) Subject to subsection 6(2) and sections 21 and 30, nothing in this Act prohibits a member of the Senate or the House of Commons who is a public office holder or former public office holder from engaging in those activities that he or she would normally carry out as a member of the Senate or the House of Commons.

Activités exercées pour le compte d'électeurs

64. (1) Sous réserve du paragraphe 6(2) et des articles 21 et 30, la présente loi n'interdit pas les activités qu'exercent les titulaires de charge publique et les ex-titulaires de charge publique qui sont membres du Sénat ou de la Chambre des communes.

Rights, etc. not affected

(2) Subject to subsection 6(2) and sections 21 and 30, nothing in this Act abrogates or derogates from any of the privileges, immunities and powers referred to in section 4 of the *Parliament of Canada Act*.

Protection des droits

(2) Sous réserve du paragraphe 6(2) et des articles 21 et 30, la présente loi n'a pas pour effet d'abroger les droits, immunités et attributions visés à l'article 4 de la *Loi sur le Parlement du Canada* ou d'y déroger.

Limitation period

65. Proceedings under this Act may be taken at any time within but not later than five years after the day on which the Commissioner became aware of the subject-matter of the proceedings and, in any case, not later than ten years after the day on which the subject-matter of the proceeding arose.

Prescription

65. Aucune procédure ne peut être engagée au titre de la présente loi plus de cinq ans après la date où le commissaire a eu connaissance des éléments constitutifs de l'infraction et, en tout état de cause, plus de dix ans après la date de la prétendue perpétration.

Orders and decisions final

66. Every order and decision of the Commissioner is final and shall not be questioned or reviewed in any court, except in accordance with the *Federal Courts Act* on the grounds referred to in paragraph 18.1(4)(*a*), (*b*) or (*e*) of that Act.

Ordonnances et décisions définitives

66. Les ordonnances et décisions du commissaire sont définitives et ne peuvent être attaquées que conformément à la *Loi sur les Cours fédérales* pour les motifs énoncés aux alinéas 18.1(4)*a*), *b*) ou *e*) de cette loi.

Review

67. (1) Within five years after this section comes into force, a comprehensive review of the provisions and operation of this Act shall be undertaken by such committee of the Senate, of

Examen

67. (1) Dans les cinq ans qui suivent l'entrée en vigueur du présent article, un examen approfondi des dispositions et de l'application de la présente loi doit être fait par le comité soit

the House of Commons or of both Houses of Parliament as may be designated or established by the Senate or the House of Commons, or by both Houses of Parliament, as the case may be, for that purpose.

du Sénat, soit de la Chambre des communes, soit mixte, que le Parlement ou la chambre en question, selon le cas, désigne ou constitue à cette fin.

Report to Parliament

(2) The committee referred to in subsection (1) shall, within a year after a review is undertaken pursuant to that subsection or within such further time as may be authorized by the Senate, the House of Commons or both Houses of Parliament, as the case may be, submit a report on the review to Parliament, including a statement of any changes that the committee recommends.

(2) Dans l'année qui suit le début de son examen ou dans le délai supérieur que le Parlement ou la chambre en question, selon le cas, lui accorde, le comité visé au paragraphe (1) remet son rapport au Parlement, accompagné des modifications qu'il recommande.

Rapport au Parlement

Referral from Public Sector Integrity Commissioner

68. If a matter is referred to the Commissioner under subsection 24(2.1) of the *Public Servants Disclosure Protection Act*, the Commissioner shall

(*a*) provide the Prime Minister with a report setting out the facts in question as well as the Commissioner's analysis and conclusions;

(*b*) provide a copy of the report to the public office holder or former public office holder who is the subject of the report;

(*c*) provide a copy of the report to the Public Sector Integrity Commissioner; and

(*d*) make the report available to the public.

2006, c. 9, s. 37.

68. Si le commissaire est saisi d'une question en vertu du paragraphe 24(2.1) de la *Loi sur la protection des fonctionnaires divulgateurs d'actes répréhensibles*, il est tenu :

a) de fournir au premier ministre un rapport énonçant les faits, son analyse de la question et ses conclusions;

b) de fournir une copie du rapport à l'intéressé;

c) de fournir une copie au commissaire à l'intégrité du secteur public;

d) de rendre public le rapport.

2006, ch. 9, art. 37.

Commissaire à l'intégrité du secteur public

RELATED PROVISIONS

— 2006, c. 9, s. 3

Positions

3. (1) An employee who occupies a position in the office of the Ethics Commissioner immediately before the day on which section 81 of the *Parliament of Canada Act*, as enacted by section 28 of this Act, comes into force continues in that position, except that from that day the employee occupies that position in the office of the Conflict of Interest and Ethics Commissioner.

Transfer of appropriation

(2) Any amount appropriated, for the fiscal year in which this section comes into force, by an appropriation Act based on the Estimates for that year for defraying the charges and expenses of the office of the Ethics Commissioner that, on the day on which this section comes into force, is unexpended is deemed, on that day, to be an amount appropriated for defraying the charges and expenses of the office of the Conflict of Interest and Ethics Commissioner.

References

(3) Every reference to the Ethics Commissioner in any deed, contract, agreement, instrument or other document executed by that person is to be read as a reference to the Conflict of Interest and Ethics Commissioner, unless the context otherwise requires.

Continuation of proceedings

(4) Any action, suit or other legal or administrative proceeding to which the Ethics Commissioner is a party that is pending on the coming into force of this section may be continued by or against the Conflict of Interest and Ethics Commissioner in a similar manner and to the same extent as it would have been continued by or against the Ethics Commissioner.

Transfer of data

(5) All information that, on the day on which this section comes into force, is in the possession or control of the Ethics Commissioner relating to the exercise of his or her powers, duties and functions under the *Parliament of Canada Act* is, as of that day, under the control of the Conflict of Interest and Ethics Commissioner.

Jurisdiction of the Commissioner

(6) The Conflict of Interest and Ethics Commissioner has, with respect to persons subject to and obligations established by *The Conflict of Interest and Post-Employment Code for Public Office Holders*, as issued from time to time, the same powers, duties and functions that the Ethics Counsellor or Ethics Commissioner had in relation to those persons and obligations. In addition, the Conflict of Interest and Ethics Commissioner has all the powers, duties and functions of the Commissioner under the *Conflict of Interest Act* in relation to those persons and obligations.

Exception

(7) Subsection (6) does not apply to any person or obligation in respect of which the Ethics Counsellor or Ethics Commissioner had reached a final decision.

Request from parliamentarian

(8) A member of the Senate or House of Commons may, with respect to persons subject to and obligations established by *The Conflict of Interest and Post-Employment Code for Public Office Holders*, as

DISPOSITIONS CONNEXES

— 2006, ch. 9, art. 3

Postes

3. (1) L'entrée en vigueur de l'article 81 de la *Loi sur le Parlement*, édicté par l'article 28 de la présente loi, est sans effet sur la situation des employés qui, à la date de cette entrée en vigueur, occupaient un poste auprès du commissaire à l'éthique, à la différence que, à compter de cette date, ils l'occupent auprès du commissaire aux conflits d'intérêts et à l'éthique.

Transferts de crédit

(2) Les sommes affectées — mais non engagées —, pour l'exercice en cours à la date d'entrée en vigueur du présent article par toute loi de crédits consécutive aux prévisions budgétaires de cet exercice, aux frais et dépenses du bureau du commissaire à l'éthique sont réputées être affectées aux frais et dépenses du bureau du commissaire aux conflits d'intérêts et à l'éthique.

Mentions

(3) Sauf indication contraire du contexte, dans les contrats, accords, ententes, actes, instruments et autres documents signés par le commissaire à l'éthique sous son nom, la mention de celui-ci vaut mention du commissaire aux conflits d'intérêts et à l'éthique.

Procédures en cours

(4) Le commissaire aux conflits d'intérêts et à l'éthique prend la suite du commissaire à l'éthique, au même titre et dans les mêmes conditions que celui-ci, comme partie aux procédures judiciaires ou administratives en cours à la date d'entrée en vigueur du présent article et auxquelles le commissaire à l'éthique est partie.

Transfert de renseignements

(5) Est à la disposition du commissaire aux conflits d'intérêts et à l'éthique tout renseignement qui, à la date d'entrée en vigueur du présent article, se trouve à la disposition du commissaire à l'éthique dans le cadre de l'exercice de ses attributions au titre de la *Loi sur le Parlement du Canada*.

Compétence du commissaire

(6) Le commissaire aux conflits d'intérêts et à l'éthique conserve, à l'égard de toute personne assujettie, et des obligation qui figurent, au *Code régissant la conduite des titulaires de charge publique en ce qui concerne les conflits d'intérêts et l'après-mandat*, compte tenu de ses modifications successives, les mêmes attributions que le conseiller ou le commissaire à l'éthique. De plus, il possède, relativement aux mêmes personnes et obligations, les attributions conférées par la *Loi sur les conflits d'intérêts* au commissaire visé par celle-ci.

Exception

(7) Le paragraphe (6) ne s'applique pas à la personne ou à l'obligation pour laquelle le conseiller ou le commissaire à l'éthique avait rendu une décision définitive.

Demande d'un parlementaire

(8) Tout parlementaire peut, à l'égard de toute personne assujettie au *Code régissant la conduite des titulaires de charge publique en ce qui concerne les conflits d'intérêts et l'après-mandat*, compte tenu

issued from time to time, make a request to the Conflict of Interest and Ethics Commissioner in accordance with section 44 of the *Conflict of Interest Act*.

de ses modifications successives, et des obligations qui y figurent, faire une demande au commissaire aux conflits d'intérêts et à l'éthique en conformité avec l'article 44 de la *Loi sur les conflits d'intérêts*.

— 2006, c. 9, s. 3.1

Reference to Act

3.1 (1) In this section, the "other Act" means, before the day on which section 66 of this Act comes into force, the *Lobbyists Registration Act* and, from that day, the *Lobbying Act*.

— 2006, ch. 9, art. 3.1

Définition de « autre loi »

3.1 (1) Au présent article, « autre loi » s'entend, avant la date d'entrée en vigueur de l'article 66 de la présente loi, de la *Loi sur l'enregistrement des lobbyistes* et, à compter de cette date, de la *Loi sur le lobbying*.

Five-year prohibition — lobbying

(2) If, on the day on which section 27 of this Act comes into force, section 10.11 of the other Act, as enacted by section 75 of this Act, is not yet in force, persons who would otherwise be bound by section 29 of the *Conflict of Interest and Post-Employment Code for Public Office Holders* by virtue of their office and who cease to hold that office on or after that day but before the day on which that section 10.11 comes into force, are subject to the obligations established by section 29 of that Code, despite the coming into force of section 27 of this Act.

Interdiction quinquennale

(2) Si, à la date d'entrée en vigueur de l'article 27 de la présente loi, l'article 10.11 de l'autre loi, édicté par l'article 75 de la présente loi, n'est pas en vigueur, les personnes qui seraient par ailleurs assujetties à l'article 29 du *Code régissant la conduite des titulaires de charge publique en ce qui concerne les conflits d'intérêts et l'après-mandat* du fait de leur charge et qui cessent d'occuper celle-ci pendant la période commençant à cette date et se terminant le jour qui précède l'entrée en vigueur de cet article 10.11 sont assujetties aux obligations prévues à l'article 29 de ce code, et ce malgré l'entrée en vigueur de l'article 27 de la présente loi.

Jurisdiction of registrar

(3) The registrar referred to in section 8 of the other Act has, with respect to the persons and obligations referred to in subsection (2), the same powers, duties and functions that the Ethics Commissioner would have in relation to those persons and obligations if section 27 of this Act were not in force.

Directeur de l'enregistrement

(3) Le directeur de l'enregistrement visé à l'article 8 de l'autre loi a, à l'égard des personnes et des obligations visées au paragraphe (2), les mêmes attributions que celles que le commissaire à l'éthique aurait eues à leur égard si l'article 27 de la présente loi n'était pas entré en vigueur.

Appendix 24

CANADA

STANDING ORDERS

OF THE HOUSE OF COMMONS

INCLUDING THE CONFLICT OF INTEREST CODE FOR MEMBERS
(*Consolidated version as of June 19, 2009*)

RÈGLEMENT

DE LA CHAMBRE DES COMMUNES

INCLUANT LE CODE RÉGISSANT LES CONFLITS D'INTÉRÊTS DES DÉPUTÉS
(*Version codifiée au 19 juin 2009*)

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APPENDIX

CONFLICT OF INTEREST CODE
FOR MEMBERS OF
THE HOUSE OF COMMONS

Purposes

1. The purposes of this Code are to

(*a*) maintain and enhance public confidence and trust in the integrity of Members as well as the respect and confidence that society places in the House of Commons as an institution;

(*b*) demonstrate to the public that Members are held to standards that place the public interest ahead of their private interests and to provide a transparent system by which the public may judge this to be the case;

(*c*) provide for greater certainty and guidance for Members in how to reconcile their private interests with their public duties and functions; and

(*d*) foster consensus among Members by establishing common standards and by providing the means by which questions relating to proper conduct may be answered by an independent, non-partisan adviser.

Principles

2. Given that service in Parliament is a public trust, the House of Commons recognizes and declares that Members are expected

(*a*) to serve the public interest and represent constituents to the best of their abilities;

(*b*) to fulfill their public duties with honesty and uphold the highest standards so as to avoid real or apparent conflicts of interests, and maintain and enhance public confidence and trust in the integrity of each Member and in the House of Commons;

(*c*) to perform their official duties and functions and arrange their private affairs in a manner that bears the closest public scrutiny, an obligation that may not be fully discharged by simply acting within the law;

(*d*) to arrange their private affairs so that foreseeable real or apparent conflicts of interest may be prevented from arising, but if such a conflict does arise, to resolve it in a way that protects the public interest; and

(*e*) not to accept any gift or benefit connected with their position that might reasonably be seen to compromise their personal judgment or integrity except in accordance with the provisions of this Code.

[Sect.2.]

ANNEXE

CODE RÉGISSANT LES
CONFLITS D'INTÉRÊTS
DES DÉPUTÉS

Objet

1. Le présent code a pour objet :

a) de préserver et d'accroître la confiance du public dans l'intégrité des députés ainsi que le respect et la confiance de la société envers la Chambre des communes en tant qu'institution;

b) de montrer au public que les députés doivent respecter des normes qui font passer l'intérêt public avant leurs intérêts personnels et d'établir un mécanisme transparent permettant au public de juger qu'il en est ainsi;

c) de fournir des règles claires aux députés sur la façon de concilier leurs intérêts personnels et leurs fonctions officielles;

d) de favoriser l'émergence d'un consensus parmi les députés par l'adoption de normes communes et la mise en place d'un organe indépendant et impartial chargé de répondre aux questions d'ordre déontologique.

Principes

2. Vu que les fonctions parlementaires constituent un mandat public, la Chambre des communes reconnaît et déclare qu'on s'attend à ce que les députés :

a) soient au service de l'intérêt public et représentent au mieux les électeurs;

b) remplissent leurs fonctions avec honnêteté et selon les normes les plus élevées de façon à éviter les conflits d'intérêts réels ou apparents et à préserver et accroître la confiance du public dans l'intégrité de chaque député et envers la Chambre des communes;

c) exercent leurs fonctions officielles et organisent leurs affaires personnelles d'une manière qui résistera à l'examen public le plus minutieux, allant au-delà d'une stricte observation de la loi;

d) prennent les mesures voulues en ce qui touche leurs affaires personnelles pour éviter les conflits d'intérêts réels ou apparents qui sont prévisibles, ceux-ci étant réglés de manière à protéger l'intérêt public;

e) n'acceptent pas de cadeaux ou des avantages qui sont liés à leur charge et qu'on pourrait raisonnablement considérer comme compromettant leur jugement personnel ou leur intégrité, sauf s'ils se conforment aux dispositions du présent code.

[Art. 2.]

Interpretation

Definitions.

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

"all-party caucus" « *caucus multipartite* ».

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

"benefit" « *avantage* ».

"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;

Définitions

Définitions.

3. (1) Les définitions qui suivent s'appliquent au présent code.

« avantage » "benefit".

« avantage » s'entend :

a) de toute somme, si son remboursement n'est pas obligatoire;

b) de tout service ou de tout bien ou de l'usage d'un bien ou d'argent, s'ils sont fournis sans frais ou à un prix inférieur à leur valeur commerciale, autre qu'un service fourni par un bénévole travaillant pour le compte d'un député;

mais n'inclut pas un avantage reçu d'une association de circonscription ou d'un parti politique.

« caucus multipartite » "all-party caucus".

« caucus multipartite » Un caucus ouvert à tous les partis politiques.

« commissaire » "Commissioner".

« commissaire » Le commissaire aux conflits d'intérêts et à l'éthique nommé au titre de l'article 81 de la *Loi sur le Parlement du Canada*.

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

« conjoint de fait » La personne qui vit dans une relation conjugale avec un député depuis au moins un an.

« époux » "spouse".

« époux » N'est pas considérée comme un époux la personne dont un député est séparé et dont les obligations alimentaires et les biens familiaux ont fait l'objet d'un accord de séparation ou d'une ordonnance judiciaire.

Intérêts personnels.

(2) Sous réserve du paragraphe (3), sont de nature à favoriser les intérêts personnels d'une personne, y compris ceux du député, les actes de celui-ci qui ont pour effet, même indirectement :

a) d'augmenter ou de préserver la valeur de son actif;

b) de réduire la valeur de son passif ou d'éliminer celui-ci;

c) de lui procurer un intérêt financier;

d) d'augmenter son revenu à partir d'une source visée au paragraphe 21(2);

e) d'en faire un dirigeant ou un administrateur au sein d'une personne morale, d'une association ou d'un syndicat;

f) d'en faire un associé au sein d'une société de personnes.

Exclusions.

(3) Pour l'application du présent code, ne sont pas considérés comme les intérêts personnels d'un député ou d'une autre personne ceux :

a) qui sont d'application générale;

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

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

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

b) qui le concernent en tant que membre d'une vaste catégorie de personnes;

b.1) qui ont trait au fait d'être partie à une action en justice relative à des actes posés par le député dans l'exercice de ses fonctions;

c) qui ont trait à la rémunération ou aux avantages accordés au député au titre d'une loi fédérale.

Family members.

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

(4) Pour l'application du présent code, sont considérés comme des membres de la famille d'un député :

Membres de la famille.

(*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.

a) son époux ou conjoint de fait;

b) ses fils ou ses filles, les fils et les filles de son époux ou conjoint de fait, qui n'ont pas atteint l'âge de dix-huit ans ou qui, l'ayant atteint, dépendent principalement, sur le plan financier, du député ou de son époux ou conjoint de fait.

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.

3.1 Pour l'interprétation et l'application des obligations prévues dans le présent code, le Commissaire peut tenir compte de l'objet et des principes énoncés aux articles 1 et 2.

Interprétation : objet et principes.

Application

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.

4. Les dispositions du présent code régissent les conflits d'intérêts de tous les députés, y compris ceux qui sont ministres ou secrétaires parlementaires, lorsqu'ils exercent la charge de député.

Application aux députés.

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.

5. Le député ne manque pas à ses obligations aux termes du présent code s'il exerce une activité à laquelle les députés se livrent habituellement et à bon droit pour le compte des électeurs.

Défense des intérêts des électeurs.

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.

6. Le présent code n'a pas pour effet de limiter la compétence du Bureau de régie interne de la Chambre des communes pour ce qui est de décider si les députés utilisent convenablement les fonds, les biens, les services ou les locaux mis à leur disposition pour l'exercice de leurs fonctions parlementaires.

Compétence du Bureau de régie interne.

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:

7. Le présent code n'a pas pour effet d'empêcher les députés qui ne sont pas ministres ou secrétaires parlementaires, dès lors qu'ils s'y conforment :

Activités extra-parlementaires.

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

(*b*) carrying on a business;

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

(*d*) being a partner in a partnership.

a) d'occuper un emploi ou d'exercer une profession;

b) d'exploiter une entreprise;

c) d'être un dirigeant ou un administrateur au sein d'une personne morale, d'une association, d'un syndicat ou d'un organisme à but non lucratif;

d) d'être un associé au sein d'une société de personnes.

Rules of Conduct		Règles de déontologie	
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.	**8.** Le député ne peut, dans l'exercice de ses fonctions parlementaires, agir de façon à favoriser ses intérêts personnels ou ceux d'un membre de sa famille ou encore, d'une façon indue, ceux de toute autre personne ou entité.	Favoritisme.
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.	**9.** Le député ne peut se prévaloir de sa charge pour influencer la décision d'une autre personne de façon à favoriser ses intérêts personnels ou ceux d'un membre de sa famille ou encore, d'une façon indue, ceux de toute autre personne ou entité.	Influence.
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.	**10.** (1) Le député ne peut utiliser les renseignements qu'il obtient dans le cadre de sa charge et qui ne sont généralement pas à la disposition du public pour favoriser ses intérêts personnels ou ceux d'un membre de sa famille ou encore, d'une façon indue, ceux de toute autre personne ou entité.	Utilisation de renseignements.
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.	(2) Le député ne peut communiquer ces renseignements s'il sait ou devrait raisonnablement savoir que ceux-ci peuvent servir à favoriser ses intérêts personnels ou ceux d'un membre de sa famille ou encore, d'une façon indue, ceux de toute autre personne ou entité.	Communication de renseignements.
Attempts.	**11.** A Member shall not attempt to engage in any of the activities prohibited under sections 8 to 10.	**11.** Le député ne peut tenter de se livrer à aucune des activités interdites aux termes des articles 8 à 10.	Tentatives.
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.	**12.** (1) Lorsqu'il participe à l'étude d'une question dont la Chambre ou un comité dont il est membre est saisi, le député est tenu de divulguer dans les plus brefs délais, verbalement ou par écrit, la nature générale des intérêts personnels qu'il détient dans cette question et qui pourraient être visés. Le greffier de la Chambre doit sans délai être avisé par écrit de la nature générale des intérêts personnels.	Divulgation des intérêts personnels : Chambre et comité.
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.	(2) Si le député se rend compte ultérieurement de l'existence d'intérêts personnels qui auraient dû être divulgués aux termes du paragraphe (1), il doit sans délai les faire connaître de la façon requise.	Divulgation subséquente.
Disclosure recorded.	(3) The Clerk of the House shall cause the disclosure to be recorded in the *Journals* and shall send the disclosure to the Commissioner, who shall file it with the Member's public disclosure documents.	(3) Le greffier de la Chambre fait inscrire la divulgation dans les *Journaux* et communique ces renseignements au commissaire, qui les classe avec les documents du député relatifs à la divulgation publique.	Publication.
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.	(4) Dans les cas non prévus au paragraphe (1) qui mettent en cause ses fonctions parlementaires, le député est tenu, s'il a des intérêts personnels qui pourraient être visés, de déclarer verbalement ou par écrit dans les plus brefs délais la nature générale de ces intérêts à la partie concernée. Le député donne aussi un avis écrit concernant les intérêts personnels au commissaire, qui les classe avec les documents du député relatifs à la divulgation publique.	Divulgation des intérêts personnels : autres circonstances.

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.

13. Le député ne peut participer à un débat ou voter sur une question dans laquelle il a un intérêt personnel.

Débat ou vote.

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).

13.1 Pour l'application des articles 12 et 13, « intérêts personnels » s'entend des intérêts qui peuvent être favorisés de la façon décrite au paragraphe 3(2), mais ne vise pas les questions mentionnées au paragraphe 3(3).

Intérêts personnels.

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.

14. (1) Le député ou un membre de sa famille ne peut accepter, même indirectement, de cadeaux ou d'autres avantages, sauf s'il s'agit d'une rétribution autorisée par la loi, qu'on pourrait raisonnablement donner à penser qu'ils ont été donnés pour influencer le député dans l'exercice de sa charge de député.

Interdiction : cadeaux et autres avantages.

(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.

(1.1) Il est entendu que le paragraphe (1) s'applique aux cadeaux et autres avantages :

a) liés à la participation à un événement bénéfice ou politique; et

b) reçus d'un caucus multipartite formé aux fins d'un sujet ou d'un intérêt précis.

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.

(2) Malgré le paragraphe (1), le député ou un membre de sa famille peut accepter les cadeaux ou autres avantages qui sont des marques normales ou habituelles de courtoisie ou de protocole ou des marques d'accueil habituellement reçues dans le cadre de la charge du député.

Exception.

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.

(3) Si un cadeau ou un autre avantage offert dans le cadre de la charge du député est accepté en vertu du présent article et a une valeur de 500 $ ou plus, ou si, sur une période de douze mois, des cadeaux ou autres avantages de même provenance ont une valeur totale supérieure à cette somme, le député dépose auprès du commissaire, dans les soixante jours suivant la date de la réception du cadeau ou de l'avantage ou celle à laquelle la valeur totale est de 500 $ ou plus, une déclaration mentionnant la nature de chaque cadeau ou avantage, sa provenance et les circonstances dans lesquelles il a été donné.

Déclaration : cadeaux et autres avantages.

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).

(4) Ce qui est divulgué en application de l'article 15 n'a pas à être déclaré comme un cadeau ou un autre avantage aux termes du paragraphe (3).

Exception.

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.

15. (0.1) Malgré le paragraphe 14(1), le député peut accepter, pour lui-même et ses invités, des déplacements parrainés liés à sa charge de député ou découlant de celle-ci.

Déplacements parrainés.

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.

(1) Si les frais de déplacement dépassent 500 $ et ne sont pas entièrement ou en grande partie pris en charge par le Trésor, par lui-même ou son parti, ou par un groupe d'amitié ou une association interparlementaire reconnu par la Chambre, le député dépose auprès du commissaire une déclaration faisant état du déplacement, dans les soixante jours qui en suivent la fin.

Déclaration : déplacements parrainés.

[Sect. 15(1)] [Art. 15.(1)]

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.

(2) La déclaration comporte le nom de la personne ou de l'organisation qui prend en charge les frais de déplacement, le nom de toute personne accompagnant le député, la ou les destinations, le but et la durée du déplacement, la nature des avantages reçus et leur valeur, ainsi que des documents justificatifs pour les frais de transport et de logement.

Contenu de la déclaration.

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.

(3) Au plus tard le 31 mars de chaque année, le commissaire établit une liste de tous les déplacements parrainés de l'année civile précédente, en y incluant les détails prévus au paragraphe (2), et le Président la dépose sur le Bureau à la prochaine séance de la Chambre.

Publication.

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.

16. (1) Le député ne peut sciemment être partie, directement ou par voie de sous-contrat, à un contrat conclu avec le gouvernement du Canada ou un organisme fédéral, qui lui procure un avantage, sauf si le commissaire estime que le député ne risque pas, du fait de ce contrat, de manquer à ses obligations aux termes du présent code.

Contrats.

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.

(2) Le député peut participer à un programme qui est exploité ou financé, en tout ou en partie, par le gouvernement du Canada et qui lui procure un avantage, si les conditions suivantes sont respectées :

a) il satisfait aux critères d'admissibilité du programme;

b) il ne reçoit pas de traitement préférentiel en ce qui concerne sa participation;

c) il ne reçoit pas d'avantages particuliers auxquels d'autres participants n'ont pas droit.

Précision.

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.

17. (1) Le député peut posséder des titres dans une société publique ayant des liens d'affaires avec le gouvernement du Canada, sauf si le commissaire estime, en raison de l'importance de la quantité de ces titres, que le député risque de manquer à ses obligations aux termes du présent code.

Sociétés publiques.

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.

(2) Si le commissaire estime qu'il y a un risque que le député manque à ses obligations aux termes du présent code dans les circonstances exposées au paragraphe (1), le député peut se conformer au présent code en mettant ses titres en fiducie selon les modalités prévues à l'article 19 que le commissaire juge appropriées.

Fiducie.

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.

18. Le député ne peut détenir, dans une société de personnes ou une société privée qui est partie, directement ou par voie de sous-contrat, à un contrat conclu avec le gouvernement du Canada, un intérêt qui procure un avantage à celle-ci, sauf si le commissaire estime que le député ne risque pas de manquer à ses obligations aux termes du présent code.

Sociétés privées ou de personnes.

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.

19. (1) Les articles 16 et 18 ne s'appliquent pas au contrat conclu avant l'élection du député à la Chambre des communes, mais ils s'appliquent au renouvellement ou à la prorogation d'un tel contrat.

Contrats préexistants.

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;

Fiducie.

(2) L'article 18 ne s'applique pas si le député a mis en fiducie auprès d'un ou de plusieurs fiduciaires l'intérêt qu'il détient dans une société de personnes ou une société privée qui est partie à un contrat conclu avec le gouvernement du Canada dans le cadre duquel elle obtient un avantage, dès lors que les règles suivantes sont respectées :

a) le commissaire a approuvé les modalités de la fiducie;

b) les fiduciaires n'ont aucun lien de dépendance avec le député et ont reçu l'agrément du commissaire;

c) les fiduciaires ne peuvent consulter le député sur la gestion de la fiducie, mais ils peuvent consulter le commissaire;

d) les fiduciaires peuvent toutefois consulter le député, sur autorisation du commissaire et en sa présence, s'il se produit un événement extraordinaire susceptible d'avoir des incidences importantes sur l'actif de la fiducie;

e) dans le cas d'un intérêt dans une personne morale, le député est tenu de démissionner de tout poste d'administrateur ou de dirigeant de celle-ci;

f) les fiduciaires remettent au commissaire un rapport annuel en même temps que le député dépose sa déclaration annuelle qui précise la nature et la valeur de l'actif de la fiducie, le revenu net de celle-ci au cours de l'année précédente et, le cas échéant, leurs honoraires;

g) les fiduciaires donnent au député les renseignements suffisants pour lui permettre de fournir les déclarations requises par la *Loi de l'impôt sur le revenu* et donnent les mêmes renseignements à l'Agence des douanes et du revenu du Canada.

Intérêt acquis par succession.

(3) Les articles 16 à 18 ne visent pas l'intérêt acquis par succession avant la date du premier anniversaire de l'acquisition.

Déclaration.

20. (1) Dans les soixante jours qui suivent l'annonce de son élection dans la *Gazette du Canada* et tous les ans par la suite, au plus tard à la date fixée par le commissaire, le député dépose auprès de celui-ci une déclaration complète de ses intérêts personnels et des intérêts personnels des membres de sa famille.

Efforts raisonnables.

(2) L'information concernant les intérêts personnels des membres de la famille est fournie au mieux de la connaissance du député. Le député doit faire des efforts raisonnables en ce sens.

Confidentialité.

(3) Le commissaire assure la confidentialité de la déclaration.

Contenu.

21. (1) La déclaration contient les renseignements suivants :

a) les éléments d'actif et de passif du député et des membres de sa famille, ainsi que la valeur de ces éléments qui;

(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.

Source of income.

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

(i) dans le cas d'un solde de carte de crédit, dépasse 10 000 $ et est en souffrance depuis plus de six mois;

(ii) dans tout autre cas, dépasse 10 000 $;

b) le montant et la source de tout revenu de plus de 1 000 $ que le député et les membres de sa famille ont touché au cours des douze mois précédents et sont en droit de recevoir au cours des douze prochains mois;

b.1) Malgré l'alinéa *b*), le député déclare au commissaire toute fiducie dont il connaît l'existence et dont il pourrait, soit immédiatement, soit à l'avenir, tirer un avantage ou un revenu, directement ou indirectement;

c) tout avantage que le député et les membres de sa famille, ainsi que toute société privée dans laquelle lui ou un membre de sa famille détient un intérêt, ont reçu au cours des douze mois précédents ou sont en droit de recevoir au cours des douze prochains mois du fait d'être partie, directement ou par voie de sous-contrat, à un contrat conclu avec le gouvernement du Canada, et une description de l'objet et de la nature du contrat ou du sous-contrat;

c.1) Pour l'application de l'alinéa (1)*c*), sont considérées comme des avantages les indemnités découlant d'une expropriation reçues du gouvernement du Canada;

d) si elle fait mention d'une société privée :

(i) les renseignements sur ses activités et les sources de ses revenus que le député peut raisonnablement obtenir,

(ii) le nom des autres personnes morales affiliées à cette société,

(iii) le nom et l'adresse des personnes qui détiennent des intérêts dans cette société;

(iv) les biens réels ou les immeubles dont cette société est propriétaire.

e) les postes de dirigeant ou d'administrateur que le député ou un membre de sa famille occupe au sein d'une personne morale, d'une association commerciale ou professionnelle et d'un syndicat, ainsi que les noms des sociétés de personnes dont le député ou un membre de sa famille est un associé;

f) tout autre renseignement que le commissaire peut exiger.

(2) Pour l'application de l'alinéa (1)*b*) : Source de revenu.

[Sect. 21.(2)] [Art. 21.(2)]

(*a*) in the case of income from employment, the employer;

(*b*) in the case of income from a contract, the party with whom the contract is made; and

(*c*) in the case of income arising from a business or profession, that business or profession.

a) l'employeur est la source du revenu tiré d'un emploi;

b) le cocontractant est la source du revenu tiré d'un contrat;

c) l'entreprise ou la profession est la source du revenu d'entreprise ou de profession.

Statement: material change.

(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.

(3) Le député dépose une déclaration faisant état de tout changement important apporté aux renseignements contenus dans la déclaration, dans les soixante jours suivant le changement.

Déclaration : changements importants.

Meeting with the Commissioner.

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.

22. Après avoir examiné la déclaration visée à l'article 20 ou au paragraphe 21(3), le commissaire peut exiger de rencontrer le député et demander la présence des membres de sa famille si ces derniers sont disponibles, en vue de vérifier la conformité de la déclaration et de discuter des obligations du député aux termes du présent code.

Rencontre avec le commissaire.

Disclosure summary.

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.

23. (1) Le commissaire établit à partir de la déclaration du député un sommaire qu'il soumet à l'examen de celui-ci.

Sommaire.

Public inspection.

(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.

(2) Le sommaire est gardé au bureau du commissaire et rendu accessible au public pour examen pendant les heures normales d'ouverture et il est affiché sur le site Web du commissaire. Chaque sommaire est aussi accessible au public, sur demande, par télécopieur ou par courrier.

Consultation.

Content of disclosure summary.

24. (1) The summary shall

24. (1) Le sommaire comporte les éléments suivants :

Contenu.

(*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;

a) sous réserve du paragraphe (3), une mention de la source et de la nature, mais non de la valeur, du revenu et des éléments d'actif et de passif indiqués dans la déclaration du député déposée conformément à l'article 20;

(*b*) identify any contracts or subcontracts referred to in paragraph 21(1)(*c*) and describe their subject-matter and nature;

b) tout contrat ou sous-contrat mentionné à l'alinéa 21(1)*c*), ainsi que l'objet et la nature de ces derniers;

(*c*) list the names of any affiliated corporations referred to in that statement;

c) les noms des personnes morales affiliées mentionnées dans cette déclaration;

(*d*) include a copy of any statements of disclosure filed by the Member under subsections 14(3), 15(1) and 21(3);

d) une copie des déclarations visées aux paragraphes 14(3), 15(1) et 21(3);

(*e*) list the positions and corporations, trade or professional associations and trade unions disclosed under paragraph 21(1)(*e*); and

e) les postes ainsi que les personnes morales, les associations commerciales ou professionnelles et les syndicats déclarés au titre de l'alinéa 21(1)*e*);

(*f*) list any trusts disclosed under paragraph 21(1)(*b.1*).

f) toute fiducie déclarée au titre de l'alinéa 21(1)*b.1*).

Categorization of interests.

(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.

(2) Le commissaire peut qualifier l'intérêt détenu dans une société de personnes ou une personne morale de « symbolique », « important » ou « majoritaire », s'il estime que l'intérêt public le justifie.

Qualification.

Items not to be disclosed.

(3) The following shall not be set out in the summary:

(*a*) an asset or liability with a value of less than $10,000;

(*b*) a source of income of less than $10,000 during the 12 months before the relevant date;

(*c*) real property or immovables that the Member uses as a principal residence or uses principally for recreational purposes;

(*d*) personal property or movable property that the Member uses primarily for transportation, household, educational, recreational, social or aesthetic purposes;

(*e*) cash on hand or on deposit with a financial institution that is entitled to accept deposits;

(*f*) fixed-value securities issued or guaranteed by a government or by a government agency;

(*g*) a registered retirement savings plan that is not self-administered or self-directed;

(*h*) investments in a registered retirement savings plan that is self-administered or self-directed that would not be publicly disclosed under this section if held outside the plan;

(*i*) an interest in a pension plan, employee benefit plan, annuity or life insurance policy;

(*j*) an investment in an open-ended mutual fund;

(*k*) a guaranteed investment certificate or similar financial instrument;

(*k.1*) any information relating to the place or manner of employment of a son or daughter of the Member, or a son or daughter of the Member's spouse or common-law partner; and

(*l*) any other asset, liability or source of income that the Commissioner determines should not be disclosed because

(i) the information is not relevant to the purposes of this Code, or

(ii) a departure from the general principle of public disclosure is justified in the circumstances.

Evasion.

25. A Member shall not take any action that has as its purpose the circumvention of the Member's obligations under this Code.

Exceptions.

(3) Ne sont pas mentionnés dans le sommaire :

a) l'élément d'actif ou de passif d'une valeur inférieure à 10 000 $;

b) la source de revenu de moins de 10 000 $ durant les douze mois qui précèdent la date considérée;

c) le bien immeuble ou réel que le député utilise comme résidence principale ou principalement à des fins de loisir;

d) le bien meuble ou personnel que le député utilise principalement à des fins de transport, domestiques, éducatives, décoratives, sociales ou de loisir;

e) les sommes d'argent en caisse ou en dépôt dans une institution financière habilitée à accepter des dépôts;

f) les valeurs mobilières à valeur fixe émises ou garanties par un gouvernement ou un organisme gouvernemental;

g) le régime enregistré d'épargne-retraite qui n'est pas autogéré;

h) le placement dans un régime enregistré d'épargne-retraite autogéré qui ne serait pas déclaré au titre du présent article s'il était détenu hors du régime;

i) l'intérêt dans un régime de retraite, un régime de prestations aux employés, une rente ou une police d'assurance-vie;

j) le placement dans un fonds mutuel de placement à capital variable;

k) le certificat de placement garanti ou un instrument financier analogue;

k.1) tout renseignement concernant le lieu ou la nature de l'emploi des fils ou des filles du député, ou des fils et des filles de son époux ou conjoint de fait;

l) tout autre élément d'actif ou de passif et toute autre source de revenu qui, de l'avis du commissaire, ne doit pas être divulgué :

(i) soit parce qu'un tel renseignement n'est pas pertinent pour l'application du présent code,

(ii) soit parce qu'une dérogation au principe de déclaration publique se justifie en l'espèce.

Contournement.

25. Le député ne peut prendre de mesures dont l'effet est de contourner les obligations prévues au présent code.

Opinions

Request for opinion.

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

Confidentiality.

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

Opinion binding.

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

Publication.

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

Timely response.

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

Inquiries

Request for an inquiry.

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

Form of request.

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

Direction by the House.

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

Notice.

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

Preliminary review.

(3.2) The Commissioner shall:

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

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

Avis

Demande d'avis.

26. (1) Sur demande écrite d'un député, le commissaire donne un avis, assorti des recommandations qu'il juge indiquées, sur toute question concernant les obligations du député aux termes du présent code.

Confidentialité.

(2) L'avis est confidentiel et ne peut être rendu public que par le député, avec son consentement écrit ou si le député a rendu l'avis public.

Nouvelle demande.

(3) Le commissaire est lié par son avis dans toute nouvelle demande portant sur l'objet de celui-ci, pourvu que tous les faits pertinents dont le député avait connaissance lui aient été communiqués.

Publication.

(4) Le présent article n'empêche pas le commissaire de publier des avis pour guider les députés, à condition de ne pas révéler de détails permettant d'identifier un député.

Réponse sans tarder.

(5) Dans les cas visés par le présent article et dans toute autre situation où un député demande un avis au commissaire, celui-ci donne suite à cette demande sans tarder.

Enquêtes

Demande d'enquête.

27. (1) Le député qui a des motifs raisonnables de croire qu'un autre député n'a pas respecté ses obligations aux termes du présent code peut demander au commissaire de faire une enquête.

Forme de la demande.

(2) La demande d'enquête est présentée par écrit et signée et elle énonce les motifs pour lesquels il est raisonnable de croire que le présent code n'a pas été respecté.

Ordre de la Chambre.

(3) La Chambre peut, par résolution, ordonner au commissaire de faire une enquête pour déterminer si un député s'est conformé à ses obligations aux termes du présent code.

Avis.

(3.1) Le commissaire transmet sans délai la demande d'enquête au député qui en fait l'objet et lui accorde la possibilité d'y répondre dans les trente jours.

Examen préliminaire.

(3.2) Le commissaire :

(*a*) fait un examen préliminaire de la demande et de la réponse afin de déterminer si une enquête s'impose;

(*b*) communique par écrit sa décision aux deux députés dans les 15 jours ouvrables suivant la réception de la réponse.

[Sect. 27.(3.2)] [Art. 27.(3.2)]

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.

(4) Si, après avoir donné un avis écrit au député lui accordant un délai de trente jours pour répondre à ses préoccupations, le commissaire a des motifs raisonnables de croire que le député ne s'est pas conformé à ses obligations aux termes du présent code, le commissaire peut, de sa propre initiative, faire une enquête pour déterminer si celui-ci s'est conformé à ses obligations aux termes du présent code.

Enquête à l'initiative du commissaire.

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.

(5.1) Le commissaire ne peut commenter publiquement un examen préliminaire ou une enquête, mais il peut confirmer qu'une demande a été reçue à cet effet ou encore qu'un examen ou une enquête a commencé ou a pris fin.

Commentaires publics.

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.

(6) S'il est d'avis qu'une demande d'enquête était frivole ou vexatoire ou n'a pas été présentée de bonne foi, le commissaire le précise lorsqu'il rejette la demande dans un rapport fait conformément au paragraphe 28(6) et il peut de plus recommander que des mesures soient prises à l'égard du député qui a fait la demande.

Demande non fondée.

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.

(7) Le commissaire procède à l'enquête à huis clos et avec toute la diligence voulue, en donnant au député, à tous les stades de l'enquête, la possibilité d'être présent et de lui faire valoir ses arguments par écrit ou en personne ou par l'entremise d'un conseiller ou d'un autre représentant.

Huis clos.

Cooperation.

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

(8) Les députés sont tenus de collaborer avec le commissaire dans toute enquête.

Collaboration.

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.

28. (1) Une fois son enquête terminée, le commissaire remet sans délai un rapport d'enquête au Président, lequel présente le rapport à la Chambre à sa prochaine séance.

Rapport à la Chambre.

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.

(2) Le rapport du commissaire est accessible au public dès qu'il est déposé à la Chambre ou, pendant une période d'ajournement ou de prorogation, dès qu'il est reçu par le Président.

Publicité du rapport.

Report after dissolution.

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

(3) Si le Parlement est dissous, le commissaire rend son rapport public.

Rapport en cas de dissolution.

No contravention.

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

(4) Si le commissaire conclut que le présent code n'a pas été enfreint, il l'indique dans son rapport.

Aucune infraction.

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.

(5) S'il conclut que le député ne s'est pas conformé à une obligation aux termes du présent code, mais qu'il a pris toutes les précautions raisonnables pour éviter de l'enfreindre, ou que l'infraction est sans gravité, est survenue par inadvertance ou est imputable à une erreur de jugement commise de bonne foi, le commissaire l'indique dans son rapport et peut recommander qu'aucune sanction ne soit imposée.

Infraction sans gravité.

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.

(6) S'il conclut que le député n'a pas respecté une obligation aux termes du présent code et qu'aucune des circonstances énoncées au paragraphe (5) ne s'applique, ou s'il est d'avis qu'une demande d'enquête est frivole ou vexatoire ou n'a pas été présentée de bonne foi, le commissaire l'indique dans son rapport et peut recommander l'application des sanctions appropriées.

Sanctions.

Reasons.

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

(7) Le commissaire motive ses conclusions et recommandations dans son rapport.

Motifs.

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.

(8) Le commissaire peut formuler dans son rapport sur l'affaire des recommandations concernant l'interprétation générale du présent code ou sa modification, eu égard à son objet et son esprit.

Recommandations générales.

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.

(9) Dans les dix jours de séance suivant le dépôt à la Chambre du rapport du commissaire, le député qui fait l'objet du rapport a le droit de faire une déclaration à la Chambre immédiatement après la période des questions, sous réserve que son intervention ne dépasse pas vingt minutes.

Déclaration du député.

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.

(10) Une motion portant adoption du rapport visé aux paragraphes (4) ou (5) peut être proposée pendant la période réservée aux affaires courantes. Si une telle motion n'est pas proposée et soumise à une décision dans les trente jours de séance suivant le dépôt du rapport, une motion portant adoption du rapport est réputée proposée et adoptée à la fin de ce délai.

Adoption d'office.

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.

(11) Une motion concernant le rapport visé au paragraphe (6) peut être proposée pendant la période réservée aux affaires courantes où elle est prise en considération durant au plus deux heures; à la fin de cette période, le Président interrompt les délibérations de la Chambre et met aux voix, sur-le-champ et successivement, sans autre débat ni amendement, toutes les questions nécessaires à la prise d'une décision. Pendant le débat sur la motion, aucun député ne peut parler plus d'une fois, ni plus de dix minutes.

Étude du rapport.

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.

(12) Si aucune motion proposée aux termes du paragraphe (11) n'a fait l'objet d'une décision dans les trente jours de séance suivant le dépôt du rapport, une motion portant adoption du rapport est réputée proposée à la fin de cette période, et le Président met immédiatement aux voix toutes les questions nécessaires à la prise d'une décision.

Vote.

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.

(13) À tout moment avant d'avoir pris connaissance du rapport, par disposition présumée ou autrement, la Chambre peut le renvoyer au commissaire afin qu'il l'examine à nouveau, avec instructions.

Renvoi.

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

29. (1) Le commissaire suspend l'enquête sans délai :

a) s'il y a des motifs raisonnables de croire que le député a commis une infraction à une loi fédérale, auquel cas il en avise les autorités compétentes;

Sursis.

[Sect. 29.(1)] [Art. 29.(1)]

(*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.

b) s'il est constaté que les faits – actes ou omissions – visés par l'enquête font l'objet :

(i) soit d'une autre enquête visant à établir s'ils constituent une infraction à une loi fédérale,

(ii) soit d'une accusation.

Inquiry continued.

(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.

(2) Le commissaire ne peut poursuivre son enquête qu'à l'issue de l'autre enquête ou que s'il a été statué en dernier ressort sur l'accusation.

Reprise de l'enquête.

Miscellaneous

Dispositions diverses

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.

30. (1) Le commissaire soumet au Comité permanent de la procédure et des affaires de la Chambre tout projet de lignes directrices sur la procédure et l'interprétation et tous les formulaires relatifs au présent code.

Lignes directrices et formulaires.

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.

(2) Les lignes directrices et les formulaires agréées par le Comité font l'objet d'un rapport présenté à la Chambre et entrent en vigueur dès l'adoption du rapport par celle-ci.

Dépôt.

Confidential until tabled.

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

(3) Avant d'être déposés à la Chambre, les lignes directrices et les formulaires doivent demeurer confidentiels.

Confidentiel jusqu'au dépôt.

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.

31. Le commissaire garde les documents relatifs à un député pendant les douze mois suivant la cessation de ses fonctions parlementaires. Ces documents sont ensuite détruits, sauf si une enquête est en cours aux termes du présent code ou qu'une accusation a été portée contre le député au titre d'une loi fédérale et que les documents peuvent être pertinents.

Archives.

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.

31.1 À moins que la Chambre ou un tribunal n'en ordonne autrement, ou dans les circonstances requises pour l'application du présent code, le commissaire tient confidentiels les documents et renseignements reçus aux termes du présent code, y compris ceux reçus dans le cadre d'une enquête qu'il a suspendue conformément à l'alinéa 29(1)*a*) et ceux visés à l'article 31.

Confidentialité.

Educational activities.

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

32. Le commissaire organise des activités afin de renseigner les députés et le public sur son rôle et sur le présent code.

Activités éducatives.

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.

33. Tous les cinq ans à compter de l'examen exhaustif précédent, le Comité permanent de la procédure et des affaires de la Chambre procède à un examen exhaustif des dispositions du présent code et de son application, et présente un rapport assorti des modifications qu'il recommande, le cas échéant.

Examen par le comité.

Part of the Standing Orders.

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

34. Le présent code fait partie du Règlement de la Chambre des communes.

Règlement.

[Sect. 34.] [Art. 34.]

Acknowledgements

I conclude my Report by acknowledging the immeasurable support, assistance, and guidance I was fortunate to receive from many people during the course of the work of this Commission.

Heading this public inquiry through its various stages – including staffing, carrying out the necessary investigations, amassing the relevant documentary evidence, interviewing witnesses, conducting the hearings, and writing this Report – was a massive task. It would have been impossible for me to accomplish it without both the assistance of a team of very competent, dedicated individuals and the support of many others, including family and friends.

From the outset, it was interesting and gratifying for me to be able to observe a group of individuals from various walks of life come together with a common purpose – namely, to fulfill successfully the government's mandate as set forth in the Terms of Reference. That group of individuals evolved into a cohesive, smoothly running team, with the result that my task as Commissioner was made much easier than it might otherwise have been.

The first person whose work and support I acknowledge is Mary O'Farrell, who served as my executive assistant. I enjoyed working with Ms. O'Farrell throughout the course of the Commission and was always aware that she was more than capable of performing any task I assigned to her both quickly and well.

I selected as lead counsel to the Commission Richard Wolson, QC, of Winnipeg. Because of my work as a judge on the Court of Queen's Bench of Manitoba, Mr. Wolson was well known to me as a skilful practitioner in the field of criminal law. I was well aware of his abilities in the field of advocacy, and I was confident that he would serve me well as lead counsel. Mr. Wolson exceeded my expectations. He demonstrated to the whole country what observers in the legal profession in Manitoba already knew – that he is one of the finest, most talented lawyers in Canada. Through his skill as a negotiator, he was able to bring all counsel together and to resolve, by consensus, the many sensitive, thorny issues that arose from time to time throughout the Inquiry. Scrupulously fair and unbiased, Mr. Wolson demonstrated the persistence that was required if Commission counsel were to get to the bottom of issues raised in the Terms of Reference. In addition to his exemplary work during the hearings, Mr. Wolson provided me with advice and guidance throughout the whole Inquiry, for which I am profoundly grateful.

Nancy Brooks, a civil litigator, brought to the Inquiry not only her legal skills and knowledge of administrative law, but also her organizational and managerial talents. Ms. Brooks, whose work ethic and capacity for work are unmatched, laboured tirelessly during every stage of the Inquiry, including the calling of evidence during the hearing phase. Her approach to witnesses was impartial, but,

where required, she showed how persistence can draw answers from witnesses. Of note was the assistance Ms. Brooks provided to me in managing and coordinating the efforts of the fine team of junior counsel in helping me review and organize the evidence as I prepared to write this Report. I am immensely appreciative of all the help Ms. Brooks provided from the beginning to the end of the work of the Commission.

Evan Roitenberg, also one of my senior counsel, was always there when I needed him. His sense of humour and cheerful disposition made many difficult days much brighter. Mr. Roitenberg demonstrated his notable skills as a litigator during his questioning of some of the major witnesses who testified before me. His skill at cross-examining witnesses was apparent on more than one occasion. His respectful manner in handling witnesses contributed to his success in getting answers to important questions. Mr. Roitenberg provided a great service to the Commission in organizing and presenting the evidence gathered by the Commission's forensic accountants. This evidence was complex, but Mr. Roitenberg's skill in presenting it made it relatively easy to understand. I am deeply indebted to Mr. Roitenberg for his contributions to the success of the Commission.

Giuseppe Battista was the fourth member of my team of senior counsel. Mr. Battista came to the Commission having established a solid reputation as a practitioner in the field of criminal law in Montreal. His many contributions to the Inquiry include interviewing all witnesses who wished to be interviewed in the French language and questioning those witnesses during the hearing phase of the Inquiry. On more than one occasion I was the beneficiary of Mr. Battista's thoughtful, philosophic approach to the various issues facing the Inquiry. I appreciated his open-minded nature and innate sense of fairness in dealing with parties, witnesses, and other counsel. Mr. Battista also has the ability to present the other point of view on any issue, so that various modes of thinking can be brought to bear in approaching a problem. I am most grateful to Mr. Battista for the role that he played with the Commission.

In addition to my senior counsel, I was fortunate to have four junior counsel whose unbridled enthusiasm for work was an inspiration to the rest of us. The team of junior counsel comprised Sarah Wolson and Peter Edgett, both of Winnipeg; Myriam Corbeil of Montreal; and Martin Lapner of Ottawa. During all phases of the Inquiry, the junior counsel worked long hours, sometimes seven days a week. During the early stages of the Inquiry, junior counsel were responsible for reading and reviewing thousands of documents (amassed over the past 25 years) to determine which were relevant to the work of the Commission. They were also responsible for putting together binders to be used in interviewing witnesses prior to the hearings and additional binders for use during the hearings. The junior counsel assisted senior counsel in preparing for the calling of witnesses, with certain of the junior

counsel being assigned to each of the witnesses. Following the hearings, they also provided a great service to me in the writing phase by reviewing and organizing the evidence for me. I could not have asked for more. I extend my very sincere thanks to all my junior counsel for their diligent service throughout the Inquiry. I am proud and privileged to have been associated with them.

Two other lawyers, Paul-Matthieu Grondin and Heather Baker, joined shortly before the commencement of the hearings and, as a result of the volume of work that needed to be done, assisted junior counsel in marshalling the evidence for each witness. As I completed writing each chapter of my Report, Ms. Baker and Laura Kraft carried out the laborious and time-consuming task of footnote- and fact-checking. To each of these lawyers I owe a debt of gratitude.

Professor Craig Forcese of the University of Ottawa was retained by me as research director for the Commission. The work done by Professor Forcese, including writing the consultation paper for the Policy Review phase of the Inquiry and organizing all the panels for the various forums the Commission held, was invaluable. Professor Forcese always made himself available when I called upon him to provide much-needed advice on the policy and ethical issues under consideration by me. For all the foregoing, I extend my very sincere thanks to Professor Forcese.

The Commission was fortunate indeed to have the services of Barry McLoughlin, Laura Peck, and their team at McLoughlin Media handling all its communications and media-related issues. Barry McLoughlin was the spokesperson for the Commission whenever the media requested a statement or information. McLoughlin Media assisted with the Commission's website, and ensured that the media and the general public were fully informed in a timely manner of the ongoing work of the Commission. I am convinced that the excellent media relations enjoyed by the Commission were directly attributable to the hard work and effort expended by Mr. McLoughlin, Ms. Peck, and their team.

No Commission can operate without the benefit of an administrative team. Mary Ann Allen, who came to the Commission having served on other commissions, led the Commission's administrative team as the director of finance and administration. Ms. Allen was ably assisted by her deputy director, Denis Lafrance, and his assistant, Lise Scharf.

During the course of its work, the Commission entered into a multitude of contracts. Alan Quinn ably negotiated and managed those contracts on behalf of the Commission.

Throughout the work of the Commission, the assistance provided by Gail Godbout, the Commission's senior administrative officer, was immeasurable. She attended to many details – some small, some large, but all important – especially during the hearing phase of the Commission. The efforts expended by Ms. Godbout in ensuring that Commission counsel and I were well looked after were boundless.

Marie Dionne served the Commission well in her role as an administrative officer. Ms. Dionne was always there, sometimes on very short notice, when I required assistance, particularly as I was in the process of writing this Report.

Anne Chalmers, the hearings coordinator, managed the day-to-day operation of the Commission during the hearing phase at 111 Sussex Drive and elsewhere. As a result of Ms. Chalmers' efforts, the hearings ran smoothly with no unforeseen delays.

To a large degree, the Commission used computer and other electronic technology in its work. Myles Chalmers, the information systems manager, assisted by Andrew Smith, performed admirably in managing the Commission's website and attending to all other technological issues faced by the Commission.

The management and control of documents leading up to, during, and following the Commission's hearings were extremely important. To give the reader some idea of the complexity of this task, let me simply say that the transcripts of evidence from the hearings exceeded 5,000 pages in number, and there were approximately 15,000 pages of documentary exhibits. In addition to the documents tendered as exhibits during the hearings, the Commission was in possession of tens of thousands of other pages of documents that had to be controlled. The control and management of the transcripts and documents were in the very capable hands of Marjorie Vendrig, whose assistance to me, particularly while I was writing this Report, was immeasurable. In addition to looking after documents used by the Commission, Ms. Vendrig assumed responsibility for the necessary liaison between me, the footnote- and fact-checkers, and the editors during the writing of this Report.

I acknowledge now the great benefit I derived as a result of the efforts of the Commission's editorial team of Dan Liebman, Mary McDougall Maude, and Rosemary Shipton. As a lawyer and judge, I have been writing for more years than I care to remember. Not having enjoyed the benefit of working with editors before I undertook the role of Commissioner, I was somewhat surprised, but very impressed, by the degree to which the work of the editorial team enhanced the quality of the Report.

The important tasks of organizing the Commission's records for transmittal to the Privy Council Office and for then transmitting them following the completion of the Commission's work were the responsibility of the documents manager, Gilles Desjardins. Mr. Desjardins performed both tasks well.

Canada is a wonderful country with two official languages. It is important that all documents generated by the Commission, including this Report, be produced in both English and French. The difficult task of translating this Report from English to French was ably undertaken by Pierre Cremer, Annie Bayeur, Jean-Pierre Thouin, and Pascale Gareau, whose excellent work I now acknowledge.

Alphonse Morissette, the editor of the French-language volumes of this Report, has demonstrated not only his knowledge of the French language but also his ability

to make stylistic changes that improve the quality of that edition. In short, Mr. Morissette performed his role in an exemplary fashion.

To everyone involved in the administrative work of the Commission I extend my heartfelt thanks.

At the outset of these acknowledgements I made a brief reference to family members of those who have worked tirelessly on behalf of this Commission over the past many months. On a very personal note, I cannot leave the subject of acknowledging those responsible for whatever success this particular Commission has achieved without mentioning the assistance I have received from members of my family, particularly my wife, Irene, who left our home to accompany me to Ottawa, where we have lived for almost two years and who has put her life on hold since the Commission's work began. Performing my role as Commissioner would not have been possible for me without Irene's support and encouragement, which I now publicly acknowledge and for which I will be forever grateful.

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