



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

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THE HARPER-EMERSON INQUIRY

pursuant to the
CONFLICT OF INTEREST CODE FOR
MEMBERS OF THE HOUSE OF COMMONS



Report made pursuant to requests by Mr Peter Julian, M.P.,
the Honourable Wayne Easter, M.P. and the Honourable Bryon Wilfert, M.P.
for an inquiry in relation to the Right Honourable Stephen Harper, M.P.,
as well as on a self-initiated inquiry on the Honourable David Emerson, M.P.

Bernard J. Shapiro

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EXECUTIVE SUMMARY

On March 2, 2006, at the request of three members of the House of Commons, I launched a preliminary inquiry to determine whether the Right Honourable Stephen Harper contravened the rules of conduct set out in the *Conflict of Interest Code for Members of the House of Commons*. The three members alleged that Mr. Harper offered an inducement to the Honourable David Emerson, the newly re-elected Liberal member of Parliament for Vancouver-Kingsway, to join the Cabinet of the new Conservative government. Given that Mr. Emerson's conduct in this matter was intertwined with that of Mr. Harper, I also decided to conduct, at the same time, an inquiry with respect to Mr. Emerson's involvement. It was, however, always understood that selecting members of the Cabinet is the personal prerogative of the Prime Minister, and this was not, therefore, the subject of the preliminary inquiry.

My conclusion from the preliminary inquiry is that neither Mr. Harper nor Mr. Emerson contravened any of the specific Sections of the Members' Code. I am satisfied that no special inducement was offered by Mr. Harper to convince Mr. Emerson to join his Cabinet and his party. In addition, there is no reason, and certainly no evidence, to contradict Mr. Emerson's own claim that accepting Mr. Harper's offer seemed, at least to him, a way to better serve his city, province and country. I therefore find no reason to pursue these matters further.

That having been said, I believe that the discontent expressed by Canadians on this matter cannot be attributed merely to the machinations of partisan politics. Fairly or unfairly, this particular instance has given many citizens a sense that their vote – the cornerstone of our democratic system – was somehow devalued, if not betrayed. Relative to the Office of the Ethics Commissioner, this disquiet is reflected in the gap between the values underlying the principles of the Members' Code and the detailed conflict of interest rules within the Code itself. While I can administer the rules, the gap can only be addressed through rigorous political debate and the development, through the political process, of the appropriate policies to address it.

The issue of a Member of Parliament "crossing the floor" has clearly captured the public's interest. This is a matter that should be discussed among Canadians and their elected representatives in Parliament. I hope they will engage in that debate soon, so that an approach can be developed that reflects and preserves our collective values, and encourages faith, rather than cynicism, in our electoral and democratic processes.

INTRODUCTION – THE LEGISLATIVE BACKGROUND

Under Subsection 27 (1) of the *Conflict of Interest Code for Members of the House of Commons* ("Members' Code"), which constitutes Appendix 1 of the *Standing Orders of the House of Commons*, a request for an inquiry can be made by a Member of the House of Commons who has reasonable grounds to believe that another Member has not complied with his or her obligations under the Members' Code.

As well, Subsection 27 (4) of the Members' Code allows the Ethics Commissioner, on his own initiative, and on giving the Member concerned reasonable written notice, to conduct an inquiry to determine whether the Member has complied with his or her obligations under the Members' Code. Following the completion of an inquiry, a report is to be provided to the Speaker of the House of Commons who then tables it in the House. Once the report is tabled, it is released to the public. During the dissolution of Parliament, Subsection 28 (3) of the Members' Code provides that the Ethics Commissioner can make the report public after sending a copy of the report to the Speaker.

THE HARPER – EMERSON INQUIRY

THE REQUEST FOR AN INQUIRY

In relation to the Right Honourable Stephen Harper, this inquiry was initiated at the request of Mr. Peter Julian, Member of Parliament for Burnaby-New Westminster, the Honourable Wayne Easter, Member of Parliament for Malpeque and the Honourable Bryon Wilfert, Member of Parliament for Richmond Hill.

In his letter dated February 10, 2006 (attached as Appendix 1), Mr. Julian requested that I conduct an inquiry into the conduct of the Right Honourable Stephen Harper, Member of Parliament for Calgary Southwest. Mr. Julian alleged that Mr. Harper induced the Honourable David Emerson, Member of Parliament for Vancouver-Kingsway, to "cross the floor" and join the Conservative Cabinet. Mr. Julian alleged that the considerable increase in salary, augmented potential pension, staff and assorted perks enjoyed by members of the Cabinet resulted in furthering Mr. Emerson's private interests and as such, Mr. Harper may have engaged in an activity prohibited under Section 8 of the Members' Code.

On the same day, I also received a letter from Mr. Easter (attached as Appendix 2) asking me to undertake an inquiry in relation to Mr. Harper, indicating that he believed an inducement was offered to Mr. Emerson in order to "cross the floor" and join Mr. Harper's Cabinet. Mr. Easter alleged that this offer and its acceptance constituted a violation of Sections 8 and 10 of the Members' Code.

Finally, in a letter dated February 13, 2006 (attached as Appendix 3), Mr. Wilfert requested that I conduct an inquiry into the offer made by Mr. Harper to Mr. Emerson to join his Cabinet. Mr. Wilfert believed the event in its entirety constituted a violation of Sections 8, 9 and 10 of the Members' Code.

THE SELF-INITIATED INQUIRY

In relation to the inquiry initiated in connection with the Honourable David Emerson, no request was received from a member of the House of Commons.

However, given the fact that the conduct of Mr. Emerson is intertwined with the allegations made against Mr. Harper by Messrs. Julian, Easter and Wilfert, and that numerous requests were received by my office from the public to conduct an inquiry with respect to Mr. Emerson, the question of whether I should self-initiate an inquiry on Mr. Emerson was considered.

As I already indicated to the Standing committee on Procedure and House Affairs, in deciding whether to conduct a self-initiated inquiry, I would utilize the same test as set out in section 27(2) of the Code, i.e. consideration on whether to self-initiate an inquiry would be based upon reasonable grounds to believe that specific provisions of the Members' Code may not have been complied with.

THE ALLEGATIONS

The Right Honourable Stephen Harper

Subsection 27 (2) of the Members' Code stipulates that a request for an inquiry from a Member of the House of Commons must (1) be in writing; (2) identify the alleged non-compliance with the Code; and (3) set out the reasonable grounds for the Member's belief that the obligations have not been complied with.

In light of the foregoing, the requests submitted by Messrs. Julian, Easter and Wilfert alleged that an inducement was offered by Mr. Harper to Mr. Emerson to change political party and join the Conservative Cabinet, and that it constituted a breach of Section 8 of the Members' Code:

“(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 private interest.”

In addition, the request from Mr. Wilfert alleged that the conduct of Mr. Harper also contravened Section 9 of the Members' Code:

“(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 private interests.”

Furthermore, the requests of Messrs. Easter and Wilfert alleged that this same conduct contravened Section 10 of the Members' Code:

“(10) 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 private interests.”

After careful consideration of the information provided by the three members, I am satisfied that the three allegations, as set out in their combined requests in writing, specifically identified the provisions of the Code which they alleged have been contravened, and that they have set out the reasonable grounds for their belief. Accordingly, the decision was made to proceed with a preliminary inquiry. If the results of the preliminary inquiry indicate that a more extensive and detailed full inquiry is warranted, then that course of action would be followed.

The Honourable David Emerson

My consideration to conduct a self-initiated inquiry on Mr. Emerson was also based on the expressed concern by the public, who specifically identified Principles 2(b) and 2(e), and Sections 8 and 9 of the Members' Code as the provisions that might have been breached by Mr. Emerson.

Since Sections 8 and 9 have been referred to above, it is not necessary to refer to them again. However, Principles 2(b) and 2(e) of the Members' Code provide:

“2) Given that the service in Parliament is a public trust, the House of Commons recognizes and declares that Members are expected:

“(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;

“(e) not to accept any gift or benefit connected with their position that might reasonably be seen to compromise their personal judgement or integrity except in accordance with the provisions of the Code”.

Based on the public's concerns expressed to me in relation to possible breach to these Principles and Sections of the Code by Mr. Emerson, I was satisfied that there were reasonable grounds to justify proceeding with a self-initiated preliminary inquiry.

THE PROCESS

The process associated with this preliminary inquiry consisted of 3 steps:

First step: following the receipt of the requests received from Messrs. Julian and Easter on February 10, 2006, the Registrar, Inquiries from my office acknowledged in writing the receipt of their requests on February 13, 2006.

On February 13, 2006, a third letter requesting that I undertake an inquiry in relation to Mr. Harper was received from Mr. Wilfert. On February 16, 2006, the Registrar, Inquiries acknowledged the receipt of his letter.

Second step: I contacted the three members who requested the inquiry in order to give them an opportunity to convey any additional information they wished to provide in relation to their allegations that the conduct of Mr. Harper had breached Sections 8, 9 and 10 of the Members' Code. No additional information was provided by the members. The members confirmed their desire for me to proceed with an inquiry on Mr. Harper.

On the basis of the mandate given to the Ethics Commissioner, and after careful assessment of the information the three members had provided, I concluded that their allegations were not frivolous or vexatious, nor were they made in bad faith. I also concluded that there were reasonable grounds to believe that a preliminary inquiry was warranted in order to determine whether Mr. Harper and Mr. Emerson had breached any of their obligations under the Members' Code.

Consequently, on March 2, 2006, I wrote to the Speaker to inform him of my decision to undertake this preliminary inquiry. I enclosed a copy of the written requests received from Messrs. Julian, Easter and Wilfert, as well as a copy of the letters I had sent to the Members for whom an inquiry had been commenced. A letter was also sent to each Member who had requested an inquiry, informing them of my decision to proceed.

In accordance with the provisions of Subsection 27 (4) of the Members' Code, on the same day, Mr. Harper and Mr. Emerson were informed of my intent to proceed with an inquiry, and were provided with notice of the nature of the allegations being made against them.

Third step: On March 6, 2006, both Mr. Harper and Mr. Emerson responded in writing, addressing the allegations that were contained in the Notices of March 2, 2006. As well, in the Prime Minister's response, he referred to a conversation I had with him regarding this matter on March 2, 2006.

THE FACTS

On November 28, 2005, the government was defeated on a motion of non-confidence in the House of Commons. At that time, the Honourable David Emerson was a member of the Liberal Caucus and Minister of Industry.

On November 29, 2005, the Right Honourable Paul Martin met with the Governor General, Her Excellency the Right Honourable Michaëlle Jean, and presented her with an Instrument of Advice recommending that the 38th Parliament of Canada be dissolved.

Consequently, the Governor General, issued three Proclamations dated November 29, 2005 (SI/2005-130, SI/2005-131 and SI/2005-132) and published in the *Canada Gazette* Part II on December 1, 2005. The first Proclamation dissolved the 38th Parliament; the second issued the writs of election and set January 23, 2006 as the polling day; and the third Proclamation summoned the Parliament to reconvene on February 20, 2006. The third Proclamation was issued in order to assure the continuity of the Parliament during the interval between its dissolution and the meeting of its successor¹.

On December 13, 2005, Elections Canada received the notification of confirmation that Mr. Emerson was the candidate for the Liberal Party of Canada for the electoral district of Vancouver-Kingsway. It is noted that Sections 66 to 68 of the *Canada Elections Act* provide that "...an instrument in writing, signed by the leader of the political party...that states that the prospective candidate is endorsed by the party..." must also accompany the filing of the nomination papers with the returning officer for an electoral district.

¹ See Erskine May, *Parliamentary Practice*, 23rd edition, Lexis-Nexis, Butterworths, London, 2004, p. 273 and Robert Marleau and Camille Montpetit, *House of Commons Procedure and Practice*, Chenelière/McGraw Hill, Montreal, 2000, p.310

The general elections took place on January 23, 2006. On January 24, 2006, Elections Canada validated the results of the elections and indicated that the official results for the electoral district of Vancouver-Kingsway were:

Party	Candidate	Votes	% Votes
Canadian Action	Connie Fogal	143	0.3
Communist	Kimball Cariou	162	0.4
Conservative	Kanman Wong	8,679	18.8
Green Party	Arno Schortinghuis	1,307	2.8
Liberal	David Emerson	20,062	43.5
Libertarian	Matt Kadioglu	277	0.6
Marxist-Leninist	Donna Peterson	68	0.1
N.D.P.	Ian Waddell	15,470	33.5
Total number of valid votes:		46,168	
Rejected ballots:		274	
Total number of votes:		46,442	

Source: Elections Canada, http://enr.elections.ca/ElectoralDistricts_e.aspx?type=3&criteria=Vancouver%20Kingsway

On January 26, 2006, the Governor General met with Mr. Harper and asked him to form a government. It was also agreed that Mr. Harper would be sworn in as Prime Minister, along with his Cabinet, on February 6, 2006.

On February 3, 2006, the Office of the Secretary to the Governor General published the details regarding the transfer of power and the swearing-in ceremony of Mr. Harper and his Cabinet.

On February 6, 2006, at 10:00 a.m., the Right Honourable Paul Martin resigned his position as Prime Minister of Canada.

At 11:00 a.m., the swearing-in ceremony for the new government commenced. During this ceremony, the Honourable David Emerson was sworn in as Minister of International Trade and became a member of the new Conservative Cabinet.

Also on February 6, 2006, the same day as his appointment to Cabinet, pursuant to Section 317 of the *Canada Elections Act*, the Chief Electoral Officer of Canada published in the *Canada Gazette* the name of Mr. Emerson as the elected candidate for the electoral district of Vancouver-Kingsway. This formal act officially recognized Mr. Emerson as the Member of the House of Commons for Vancouver-Kingsway.

Based on the responses provided to me by Mr. Harper and Mr. Emerson, and the conversation I had with Mr. Harper on March 2, 2006, it was confirmed that Mr. Harper approached Mr. Emerson following the election campaign regarding Mr. Emerson's possible appointment to the new Cabinet.

On February 6, 2006, by Proclamation (SI/ 2006-50), published in the *Canada Gazette* on February 9, 2006, the Governor General, on the advice of the Right Honourable Stephen Harper, summoned Parliament to meet on April 3, 2006.

THE FINDINGS

First of all, I would like to address the issue of initiating an inquiry during a period when Parliament is dissolved. Specifically, is there a period of time during the dissolution of Parliament that an inquiry can be initiated, or is the application of the Members' Code completely suspended during dissolution of Parliament?

As noted above, upon the issuance of the Proclamation by the Governor General for the dissolution of Parliament, a Proclamation is also issued summoning the return of Parliament. In this case, Parliament was dissolved on November 29, 2005 and was summoned to return on February 20, 2006. A subsequent instrument issued by the Governor General changed the date for the return of Parliament to April 3, 2006.

Upon dissolution of the 38th Parliament, the House as an Assembly ceased to exist. As a consequence, all activities in the House and before Parliamentary Committees ceased. In addition, members of the House cease to exist constitutionally². However, for the purposes of their continued receipt of salary and benefits, the *Parliament of Canada Act* "deems" them to continue to be members.

Pursuant to subsection 27(1) of the Members' Code, a member may request the Ethics Commissioner to initiate an inquiry. It logically follows from this that the member making the request must have the capacity to do so. Given that, by dissolution, an individual constitutionally ceases to be a member when Parliament is dissolved and thereby does not have the capacity to make such a request, the question is: does that person regain the capacity at some point in time during the period of dissolution, thereby permitting the individual to make such a request?

It is recognized by the authorities³ that once an individual's name appears in the *Canada Gazette* following a federal general election, that person is officially recognized as the "official" member of Parliament for his or her riding. I conclude from this that a member regains the capacity to make a request to the Ethics Commissioner to conduct an inquiry at that point in time.

² Brun, Henri and Tremblay, Guy, *Droit constitutionnel*, 4th edition, Yvon Blais, Cowansville, 2002, p.321.

³ Maingot, Joseph, *Parliamentary Privilege in Canada*, 2nd edition, House of Commons and McGill-Queen's University Press, 1997, pp.21 and 22.

Marleau, Robert and Monpetit, Camille, *House of Commons Procedure and Practice*, Chenelière Hill, Montreal 2000, pp. 168 and 310.

Parliamentary Information and Research Service of the Library of Parliament, *Government and Canada's 39th Parliament: Questions and Answers*, December 7, 2005, PRB 05-43E, p.2

In the present case, prior to accepting the requests of Messrs. Julian, Easter and Wilfert, it was verified that their names were published in the *Canada Gazette* as the duly elected members of Parliament for their ridings before they made the requests.

This establishes an important precedent, as the capacity of members to make a request alleging a contravention of the Members' Code does not exist during the period of time when a federal general election is ongoing. Once the members' capacity to make a request returns, following the publication of their names in the *Canada Gazette*, these "officially" recognized members may once again request an inquiry.

Since members of the House of Commons have the capacity to request an inquiry once they are officially recognized by the publication of their names in the *Canada Gazette*, it follows, and I have concluded that the capacity of the Ethics Commissioner to self-initiate inquiries also becomes available during this same time frame, following a general election.

I have indicated previously that, because the Standing Orders of the House have no effect during dissolution of Parliament, the Members' Code has no effect. In light of the circumstances in this case, I now do not consider that to be the case. The Members' Code clearly does not cease during dissolution. Indeed, the Members' Code itself provides in Section 20 that a member shall, within 60 days of his or her name appearing in the *Canada Gazette*, file with the Ethics Commissioner his or her confidential Disclosure Statement. As well, Section 28(3) of the Members' Code provides that, during a period of dissolution, the Ethics Commissioner shall make his report public after it has been submitted to the Speaker.

While some may now question the appropriateness of rulings previously made in relation to other requests for inquiries that were made during dissolution, those decisions remain valid, as the reason for not proceeding was also based upon the incapacity of members to request an inquiry during that period of time.

Section 8 of the Members' Code

All three members who requested an inquiry in relation to Mr. Harper have alleged that Section 8 of the Members' Code has been breached:

"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 private interests."

For this Section to have any application in relation to Mr. Harper, one would have to conclude that in selecting the members of his Cabinet, the Prime Minister designate was actually performing a parliamentary duty or function. If this could be established, it would have to be determined whether on a balance of probabilities, Mr. Harper improperly furthered the private interests of another person in doing so. However, based on the separation of powers between the executive and legislative branches of government, it is clear that Mr. Harper, in his capacity as Prime Minister designate, was performing a constitutionally recognized executive function, and not an activity associated with his legislative duties or functions. I have therefore concluded that there is no contravention of this Section by Mr. Harper.

In the case of Mr. Emerson, the issue of whether he was performing parliamentary duties and functions must also be addressed. As well, one would have to consider whether it was Mr. Emerson's intent to further his private interests in engaging in a discussion with the Prime Minister in relation to an appointment to Cabinet.

Each individual, on appointment to Cabinet, receives additional salary and benefits associated with the office (e.g. car, driver and ministerial staff). The increase in salary and benefits alone cannot be considered as an improper inducement. If it was, the appointment of any person to Cabinet could be considered suspect. However, what is important is the intent and the purpose associated with an offer to join Cabinet. Clearly, if the Prime Minister were to approach a member with an offer of a Cabinet position with the sole intent and specific purpose of acquiring that member's vote directly linked to a parliamentary proceeding existing at that time, such conduct would be inappropriate and unacceptable. Conversely, if a member of the House were to approach the Prime Minister indicating that, in exchange for a Cabinet position, his or her vote could be acquired for the sole intent and specific purpose that is directly linked to a parliamentary proceeding existing at that time, that too, would be inappropriate and unacceptable.

In the present case, the activities of the 39th Parliament have not yet commenced. There were therefore no parliamentary proceedings at the time. Mr. Harper initiated and approached Mr. Emerson to join the new Cabinet. I am satisfied that the purpose and intent of the offer from Mr. Harper was not to acquire Mr. Emerson's vote directly linked to an existing and specific parliamentary proceeding. Therefore, I have concluded that the conduct of Mr. Emerson did not contravene Section 8 of the Members' Code.

Finally, all three members have referred to the Grewal-Dosanjh Report that I issued in January 2006 in support of their allegations, with particular reference to page 10, upon which the following paragraph appears:

If Mr. Grewal had sought a reward or inducement to cross the floor **at this time**, he would have been acting and/or attempting to act in such a way as to further his private interests. Likewise, if Mr. Dosanjh had offered a reward or inducement to Mr. Grewal to cross the floor, **at this time**, he would have been acting and/or attempting to act in such a way as to improperly further Mr. Grewal's private interests. (emphasis added)

In that report, I was clear that I was not offering an opinion in relation to the practice of "crossing the floor". However, in the context of that case, there was a looming non-confidence vote in the House of Commons, where the outcome was far from certain, and the numbers were too close to call. The paragraph referred to above was developed in that context.

The situation in the present case is quite different. Although the 39th Parliament was summoned to return February 20, 2006, that date was subsequently changed to April 3, 2006. Accordingly, the House as an Assembly has not yet resumed its activities. Therefore, no inducement or reward was being offered or sought in relation to a specific parliamentary proceeding.

Section 9 of the Members' Code

In the requests received from the three members of Parliament, only Mr. Wilfert alleged a contravention of Section 9 of the Members' Code by Mr. Harper:

“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 private interests.”

In relation to Mr. Harper, the relevant question is: Did he use his position as a member to influence a decision of another person, i.e. Mr. Emerson, so as to improperly further Mr. Emerson’s private interests?

As noted above, Mr. Harper was exercising his prerogative as Prime Minister designate to select the members of his Cabinet. He was not acting in his capacity as a member. Accordingly, in approaching Mr. Emerson to serve in his Cabinet, Mr. Harper did not contravene Section 9 of the Members’ Code.

In the case of Mr. Emerson, at issue is whether he used his position as a member to influence a decision of Mr. Harper so as to further his own (Mr. Emerson’s) private interests.

While the status of Mr. Emerson throughout this matter can only be that of a member, I am satisfied on the basis of the written information provided by Mr. Harper and the conversation we had on March 2, 2006, that the Prime Minister designate’s decision to select Mr. Emerson was based on his belief that Mr. Emerson would be an important addition to his Cabinet. It certainly was not as a consequence of Mr. Emerson using his position in an attempt to influence Mr. Harper. On that basis, I have concluded that Mr. Emerson has not contravened Section 9 of the Members’ Code.

Section 10 of the Members’ Code

In their requests for an inquiry, both Messrs. Easter and Wilfert alleged that Mr. Harper contravened Section 10 of the Members’ Code:

“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 private interests.

(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 private interests.”

The essence of the allegation is that Mr. Harper used information obtained in his position as a member that is not generally available to the public to improperly further the private interests of Mr. Emerson.

Once again, it is quite clear from the facts of this case that Mr. Harper was acting in his executive capacity as Prime Minister designate. Accordingly, I find that there was no contravention or indeed, application of this Section in relation to Mr. Harper.

Given these facts and the relatively straight forward findings reported above, there was, in my view, no need to proceed further than the preliminary inquiry which has now been completed.

COMMENTS

THE PRELIMINARY INQUIRY

One may question why the Ethics Commissioner proceeded with an inquiry in relation to the Prime Minister when the conclusion reached with respect to each allegation was that there was no contravention.

Although some requests for inquiry may be partisan and politically motivated, each one must be given due consideration as to whether a member, in exercising his or her prerogative under the Members' Code to make a request, has provided reasonable grounds in support of the allegations he or she has made against another member. In the present case, not one but three members of the House of Commons independently requested that an inquiry be initiated. Furthermore, when I spoke with each of these members prior to my decision to proceed, they believed strongly that the circumstances of this case warranted an inquiry.

Upon the receipt of a request, a determination must be made, whether on reasonable grounds, that the allegations have been made out.

There is no dispute as to a Prime Minister's or a Prime Minister designate's prerogative to choose the members of his or her own Cabinet. In making such selection, the Prime Minister may choose someone from another political party. The prerogative of the Prime Minister, however, was not the subject of the preliminary inquiry. The request for an inquiry submitted by the three Members of Parliament was related not to Mr. Harper's power to select members of his Cabinet – this was never in question – but rather to whether any special inducement was made by Mr. Harper to Mr. Emerson in order to convince him to “cross the floor” and join the Cabinet.

I am satisfied that (a) the original approach was at the initiative of the Prime Minister, not Mr. Emerson, (b) no special inducement was offered by Mr. Harper to convince Mr. Emerson to join his Cabinet, and (c) that although it is easy to ascribe any number of motives to Mr. Emerson's acceptance of the offer, there is no reason and certainly no evidence to contradict Mr. Emerson's own claim that accepting the offer seemed, at least to him, a way to better serve his city, his province and his country.

Therefore, my conclusion is that neither Mr. Harper nor Mr. Emerson contravened any of the specific Sections of the Members' Code.

THE FUTURE CHALLENGES

Given that there has been - as some individuals asserted from the very beginning - no contravention by either Mr. Harper or Mr. Emerson of the specific Principles and Sections of the Members' Code, what are the possible explanations for what appears to be a relatively widespread public discontent surrounding the offer of a Cabinet position by Mr. Harper and the acceptance of the offer by Mr. Emerson?

This discomfort can be partly explained simply by partisan politics. It is always a matter of some delicacy to determine whether a request for a specific inquiry arises from a genuine concern for compliance with the Members' Code as opposed to, for example, an attempt to gain partisan advantage.

In this case, however, I believe that partisan politics – in the very best sense of that phrase – is an insufficient explanation. “Crossing the floor” in the House of Commons is not at all unusual in Canadian parliamentary history. However, the closeness in time of Mr. Harper's offer and Mr. Emerson's acceptance of it to the general election heightened the issues – ethical and political – that always lay beneath a decision by a Member of Parliament to cross the floor and become affiliated with a political party other than the one under whose umbrella he or she campaigned and was elected. Fairly or unfairly, this particular instance seems to have given many citizens a “sense” that their vote – the cornerstone of our democratic system – was somehow devalued, if not betrayed.

Relative to the Office of the Ethics Commissioner, this disquiet is reflected in the large gap between the values underlying the Preamble to the Members' Code and the detailed conflict of interest rules within the Code itself. The Members' Code sets out in its Preamble the principles upon which the rules of conduct are premised. Of particular note, I refer to Principle 2 (b) which reads as follows:

“2. Given that service in Parliament is a public trust, the House of Commons recognizes and declares that Members are expected

(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; “(emphasis added).

Accordingly, although technically there has been no violation to the rules of conduct of the Members' Code, the incident in question does raise the whole issue of whether the Principles upon which it relies have been respected.

The Preamble to the Code is both general and wide ranging, and can be understood to apply to a wide range of ethical principles, including but not limited to conflict of interest. The Code – to which my mandate as Ethics Commissioner is limited – deals only with conflicts of interest. Canadian citizens, however (at least as represented by those who have contacted my office), have expressed more of an interest in values (as represented in the Preamble) and, possibly, in character, than in rules (as represented by the Code itself). I believe the issues of addressing this “gap” and how to handle similar events in the future warrant an open, rigorous and political debate, so that the appropriate public policy can be developed through the political process. In this present case, the issue of crossing the floor has been brought to the forefront and engaged the public's interest. This matter should be discussed among Canadians, but primarily in Parliament, so that an approach can be developed that reflects and preserves our collective values and encourages belief in, rather than cynicism in, our electoral and democratic processes.

In the final analysis, the most appropriate place to settle issues of this kind is not in the Office of the Ethics Commissioner but in Parliament itself. My office is a parliamentary entity, but in the midst of the very center of partisan politics (in the best sense of that phrase), it must strive to maintain its independent, non-partisan nature and avoid becoming a tool or forum for important and appropriately partisan political debates. In this and other related areas, the Office of the

Ethics Commissioner can be of some assistance, but the center of concern should remain within the political process and in Parliament, and not simply within the functions of the Office of the Ethics Commissioner when inquiries are being conducted.

The challenge, therefore, is for Parliament itself to find a path on which to move forward. There may not be easy answers, but the task is worth doing, for nothing is more crucial than having Canadians believe that their participation in the democratic process is, as a civic duty, both meaningful and worthwhile.

Respectfully submitted,

A handwritten signature in cursive script, reading "Bernard J. Shapiro". The signature is written in dark ink on a light-colored background.

Bernard J. Shapiro,
Ethics Commissioner

March 20, 2006

APPENDIX I

LETTER FROM MR. JULIAN REQUESTING THE INQUIRY

Ottawa, February 10, 2006

Mr. Bernard Shapiro
Ethics Commissioner
Government of Canada
Ottawa ON K1A 0A6

Dear Sir,

Please consider this to be my formal request that your office conduct an inquiry into the conduct of the Member from Calgary Southwest, Mr. Stephen Harper, under Section 8 of the Conflict of Interest Code for Members of the House of Commons in inducing the Member from Vancouver-Kingsway, Mr. David Emerson, to cross the floor and join the Conservative cabinet.

Section 8 of the Conflict of Interest Code for Members of the House of Commons states:

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 private interests.

On page eight of your decision on the Grewal-Dosanjh inquiry published on January 25th of this year you wrote:

"...if Mr. Dosanjh had offered a reward or inducement to Mr. Grewal for crossing the floor at this time, he would have been acting and/or attempting to act in such a way as to improperly further Mr. Grewal's private interests. Either of these would amount to an extremely serious breach of the Members' Code."

It is our opinion that the considerable increase in salary, augmented potential pension, staff and assorted perks enjoyed by members of the Cabinet such as a personal car and driver amount to furthering Mr. Emerson's private interests over what he would have received as an opposition MP. Therefore, in our opinion, Mr. Harper may be in breach of Section 8 of the Conflict of Interest Code and I would ask that you investigate this matter.

Thank you for your consideration.

Peter Julian, MP (Burnaby-New Westminster)
New Democratic Party of Canada

APPENDIX II

LETTER FROM MR. EASTER REQUESTING THE INQUIRY

February 10, 2006

Mr. Bernard Shapiro
Ethics Commissioner
22nd Floor
66 Slater St.
Ottawa

Dear Mr. Commissioner:

I am writing with a request that your office undertake an inquiry into the activities of the Member of Parliament for Calgary Southwest, the Rt. Hon. Stephen Harper.

The allegations which have appeared in the media since the January 23, 2006 election is that Mr. John Reynolds, acting on behalf of Mr. Harper undertook to offer an inducement to Mr. David Emerson, the re-elected Liberal MP, namely with an offer of a Cabinet position, if Mr. Emerson would “cross the floor” and join the Conservative Party and its Caucus.

As you referenced in your report on the Grewal-Dosanjh Inquiry, January 2006 at p. 10, Section 8 and Section 10 of the *Conflict of Interest Code for Members of the House of Commons* expressly prohibit the offering or acceptance of an inducement which would further the interests of an individual Member of the House of Commons.

I submit that there was an inducement offered by Mr. Harper, through Mr. Reynolds to Mr. Emerson of a position within the Cabinet of the newly elected Conservative government and that this offer and its acceptance does constitute a violation of Sections of the Conflict of Interest Code referred to and therefore I would formally request that your office undertake a complete examination of this matter and report those findings publicly as soon as possible.

Sincerely,

Hon. Wayne Easter, PC, MP

APPENDIX III

LETTER FROM MR. WILFERT REQUESTING THE INQUIRY

February 13, 2006

Mr. Bernard Shapiro
Ethics Commissioner
22nd Floor
66 Slater St.
Ottawa, ON K1A 0A6

Dear Mr. Commissioner:

I write in request that your office inquire into the recent activities of the Member of Parliament for Calgary Southwest, the Rt. Honourable Stephen Harper.

There have been an umber of accusations in the media in recent weeks that Mr. Harper along with the assistance of Mr. John Reynolds proposed an offer to Mr. David Emerson, the re-elected Liberal Member of Parliament from Vancouver to “cross the floor” and accept the position of Minister of International Trade under the Conservative government.

You referred in your latest report on the Grewal-Dosanjh, , January 2006 on page 10, Section 11, referring to Section 8 to 10 of the Conflict of Interest Code for Members of the House of Commons which specifically prohibits the offering or acceptance of an inducement which would further the interests of an individual Member of the House of Commons.

I believe that there was an offer made my Mr. Harper with the assistance to Mr. Reynolds to Mr. Emerson for a position within the Conservative Cabinet. This offer in its entirety does constitute a violation of the Sections of the Conflict of Interest code which was referred to above. I therefore would request that your office inquire a complete examination of this manner and report those findings publicly as soon as possible.

Sincerely,

Honourable Bryon Wilfert, M.P.
Richmond Hill