



Office of the Conflict  
of Interest and Ethics  
Commissioner

Commissariat aux  
conflits d'intérêts et à  
l'éthique

## THE CHEQUES REPORT:

The use of partisan or personal identifiers on  
ceremonial cheques or other props for federal  
funding announcements

made under the  
*CONFLICT OF INTEREST ACT*



April 29, 2010

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Conflict of Interest and  
Ethics Commissioner

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042010-17E



## **PREFACE**

The *Conflict of Interest Act* (Act) came into force on July 9, 2007 and replaced the *Conflict of Interest and Post Employment Code for Public Office Holders* (2006 Code).

An examination under the Act may be initiated at the request of a member of the Senate or House of Commons pursuant to subsection 44(1) or on the initiative of the Conflict of Interest and Ethics Commissioner pursuant to subsection 45(1) of the Act.

Pursuant to subsection 44(2) of the Act, the Commissioner may, having regard to all the circumstances of a case, discontinue an examination. Unless an examination is discontinued, subsection 44(7) requires the Commissioner to provide a report to the Prime Minister setting out the facts in question as well as the Commissioner's analysis and conclusions in relation to the examination. Subsection 44(8) provides that, at the same time that a report is provided to the Prime Minister, a copy of the report is also to be provided to the current or former public office holder who is the subject of the report, and made available to the public.



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## OVERVIEW

This is one of two very similar reports that present the findings of my investigation of the use of ceremonial cheques and other props that have partisan or personal identifiers for federal funding announcements. This report is made under the *Conflict of Interest Act* (Act) and the other report is made under the *Conflict of Interest Code for Members of the House of Commons* (Code). The two reports are virtually identical except for the Analysis sections.

Last fall, my Office received numerous requests from opposition Members of the House of Commons under both the Code and the Act for investigations of the use of partisan or personal identifiers – names, signatures, photos, logos – on ceremonial cheques or other props by government Members in making Government of Canada public funding announcements.

More particularly, the requests alleged that many Conservative Members, some of whom were also Ministers and Parliamentary Secretaries and one of whom was a Minister of State, breached their obligations under the Code or the Act by using partisan or personal identifiers in this way. The underlying concern was that the use of these cheques or other props was misleading and served to benefit certain Members, Ministers, Parliamentary Secretaries and a Minister of State, as well as their political party, by enhancing their profiles and improving their electoral prospects, thereby serving to further private interests in contravention of both the Code and the Act.

I decided that, because all of the complaints dealt with what appeared to be a systemic issue, the most appropriate way to proceed would be to conduct a single comprehensive investigation. I also concluded that in light of the number of individuals against whom these complaints were made, it was impractical and would ultimately serve no useful purpose to focus on individual cases.

Beyond the issue of whether private interests were furthered, these requests raise broader questions about the extent to which the political and partisan identities of elected officials should be highlighted when they are representing the Government of Canada.

Part of the role of Members is to inform constituents about government initiatives and policies. The government itself also has an obligation to inform the public about its activities in the interests of accessibility, accountability and transparency. Those raising concerns about ceremonial cheques and other props did not question the acceptability of using these vehicles *per se* to communicate government activities but rather questioned the inclusion of logos and other partisan or personal identifiers.

There is clearly significant disagreement as to the extent to which using ceremonial cheques or other props with partisan or personal identifiers is an acceptable practice. In addition to the requests for investigation received from Members, my Office received an unusually high number of individual complaints from the public expressing concern not only about the cheques, but also more generally about partisan elements in government advertising. This matter was raised in the House of Commons in October 2009, and discussed at a meeting of the House of Commons Standing Committee on Government Operations and Estimates in November. The issue also



received wide coverage in both print and broadcast media. Editorials were generally critical of the practice, while readers' comments were mixed.

The requests raise the concern that the activities complained of could benefit the Members involved and their political party by raising their profile, thus increasing or consolidating their public support and future electoral prospects, and that including partisan or personal elements in government communications could blur the lines between the government and the governing party and potentially mislead the public as to the source of the funding announced. The allegations raised with my Office suggest that the use of ceremonial cheques and props could have left the impression that Members of the Conservative Party of Canada, and not the Government of Canada, were responsible for these public expenditures, despite the fact that the programs announced were government initiatives.

There is a relationship between the requests under consideration in this report and a request for investigation that I received last fall from Ms. Martha Hall Findlay, Member of Parliament for Willowdale. She alleged that various Ministers and Parliamentary Secretaries had breached the Act by using their positions to develop an advertising and communications strategy to promote Canada's Economic Action Plan that incorporated "look and feel" aspects of the Conservative Party of Canada in order to improve its electoral prospects. Ms. Hall Findlay alleged that they had thereby improperly furthered the private interests of another person, namely the Conservative Party of Canada.

I discontinued my inquiry into Ms. Hall Findlay's request because the Conservative Party of Canada is not a "person" under the Act, which made it unnecessary to determine whether "private interests" were at issue. I will address the question of the meaning of "private interest" in this report in relation to the Act and in the other report in relation to the Code.

The use of cheques and other props with partisan or personal identifiers may have helped to raise the profile of the Members, Ministers, Minister of State and Parliamentary Secretaries in question, thereby helping them gain partisan advantage or improve their electoral prospects and those of the Conservative Party of Canada. I conclude, however, as explained in the analysis section of each report, that these activities do not further "private interests" within the meaning of the Code or the Act. I have found that the interest in enhancing political profiles is a partisan political interest and not a private interest, and have found accordingly that none of the individuals named in the requests received by my Office has contravened the Code or the Act.

At the same time, the practice of using partisan or personal identifiers in announcing government initiatives goes too far and has the potential to diminish public confidence in the integrity of elected public officials and the governing institutions they represent. I recognize that Members have political interests and these interests are important to them and their parties. It is to be expected that Members will look for occasions to enhance their images with constituents. However, public spending announcements are government activities, not partisan political activities, and it is not appropriate to brand them with partisan or personal identifiers. One of the purposes of the Code is to maintain and enhance public confidence and trust in the integrity of Members and the House of Commons. It is also one of the rationales underlying the Act in relation to public office holders, including Ministers, Ministers of State and Parliamentary Secretaries.





Following the analysis of the specific allegations under the Act, this report will consider the extent to which the use of partisan or personal identifiers in government communications is currently regulated federally, and, after taking a look at how some other jurisdictions deal with similar issues, offer some observations on how potential gaps might be covered.



## THE REQUESTS

Between October 14, 2009 and November 6, 2009, my Office received 63 requests from four Members of the House of Commons asking that I investigate a total of 60 Members of the House of Commons under the *Conflict of Interest Code for Members of the House of Commons* (Code) and, in some cases, under the *Conflict of Interest Act* (Act). The 60 Members are identified in Schedule I. My Office received an additional four requests that did not meet the requirements of the Code or the Act and no investigation was conducted in relation to those requests.

The Honourable Wayne Easter, Member of Parliament for Malpeque, made 59 separate requests that I investigate Members under the Code and requested that 14 of them also be investigated under the Act. Mr. Peter Stoffer, Member of Parliament for Sackville-Eastern Shore, requested investigations of two Members under the Code. Mr. Yvon Godin, Member of Parliament for Acadie-Bathurst, requested that one Member be investigated under the Code. The Honourable Geoff Regan, Member of Parliament for Halifax West, also made a request for investigation of another Member under the Code.

The requests related to the use of ceremonial cheques or other props to announce federal funding initiatives. More particularly, the requests alleged that many Conservative Members, some of whom were also Ministers or Parliamentary Secretaries and one of whom was a Minister of State, breached their obligations under the Code or the Act by participating in public spending announcements during which partisan identifiers were used. The substance of the allegations is that the use of these cheques or other props was misleading and served to benefit certain Members, Ministers, Parliamentary Secretaries and a Minister of State, as well as their political party, by enhancing their profiles and improving their electoral prospects, thereby serving to further private interests in contravention of both the Code and the Act.

The requests were accompanied by dozens of photographs, all but one depicting a Member, Minister or Parliamentary Secretary holding a ceremonial cheque or other prop in connection with the announcement of a federal funding initiative. The exception was a cheque presentation for a private charity. Four Members, including one Minister and two Parliamentary Secretaries, used ceremonial cheques or props that contained a Conservative Party of Canada logo. Nine Members used a total of 36 ceremonial cheques that included the slogan “Protecting Canada’s Future” against a blue background. This slogan also appeared prominently on the website of the Conservative Party of Canada. All ceremonial cheques or other props that were used included personal identifiers, specifically the name or signature of a Member, a Minister or the Prime Minister.

The requests differed in level of detail and the specific sections of the Code and Act that were cited. The main allegation was that the Members who used these ceremonial cheques or other props were in a conflict of interest. Several sections of both the Code and the Act were cited in support of this.

Under the Code, it was alleged that sections 2(b) and (c) were contravened. They require that Members arrange their affairs so as to avoid conflicts of interest and to perform their official duties and functions and arrange their private affairs in a manner that bears the closest public



scrutiny. It was also argued that the use of these cheques or other props with partisan or personal identifiers served to further the private interests of the individual Members and the Conservative Party of Canada in violation of section 8 of the Code.

Under the Act, it was argued that the use of ceremonial cheques or props with partisan identifiers placed the Ministers, Minister of State and Parliamentary Secretaries in a conflict of interest under section 4. In connection with this, it was alleged that these individuals failed to uphold their general duty to arrange their affairs in a manner that prevents them from being in a conflict of interest, as required by section 5 of the Act.

A number of other allegations were also made under both the Code and the Act. Under the Code, it was argued that decisions involving the set-up and execution of the events where the ceremonial cheques or other props were used may have constituted a breach of section 9 of the Code, in that Members used their positions to influence another person, and may have breached section 10, in that inside information was used to further a private interest. With respect to the Act, it was alleged that these actions constituted preferential treatment of the Conservative Party of Canada or of the individuals identified on the ceremonial cheques, in contravention of section 7. Furthermore, it was argued that decisions involving the set-up and execution of these events may have breached both sections 8 and 9 of the Act relating to influence and insider information.



## THE PROCESS

A request for an inquiry by a Member under the *Conflict of Interest Code for Members of the House of Commons* (Code) must be signed and a request for an examination under the *Conflict of Interest Act* (Act) must be in writing. Both regimes require that a Member set out his or her reasonable grounds for believing that a contravention has occurred.

There are, however, important procedural differences between the two investigative regimes. Under the Act, an examination begins immediately upon my Office receiving a request in writing from a Member that meets the requirements under the Act. An inquiry under the Code can begin only after the Member against whom the request has been made has been given 30 days to respond to the allegations. Once the 30-day period expires, I have up to 15 working days to conduct a preliminary review. If I believe an inquiry is warranted under the Code, I may commence it at that point. Both regimes also provide that I may conduct an investigation on my own initiative.

Beginning on October 21, 2009, I forwarded copies of the relevant requests to the 60 Members concerned. I indicated to all of them that the Code allows 30 days for them to provide me with a response to the allegations under the Code, that I would review their responses to determine if an inquiry was warranted under the Code and that I would inform them of my decision within 15 working days thereafter. I explained that if I did not receive a response within the 30-day period, I would commence my preliminary review at the end of that period.

Of the 60 Members named, 25 were also public office holders, specifically Ministers and Parliamentary Secretaries and one Minister of State. I informed them that I would be looking at this matter under the Act as well as under the Code. Although the requests for investigation specifically requested an examination under the Act in relation to 14 of these individuals, I included in the examination the remaining 11 Members who were also subject to the Act. I asked all 25 Members to provide me with their views as to whether they had breached any of their obligations under the Act as a result of the actions that were referred to in the request made against them.

After completing my preliminary review under the Code of each of the responses received, I wrote to all the Members concerned to notify them that I had decided to proceed with an inquiry under the Code. In my letters to the 25 Members who were subject to the Act, I confirmed that I would continue with the examination under the Act as well and would deal with that examination at the same time and in the same manner as the inquiry under the Code.

I explained that I would conduct one comprehensive inquiry to cover all the requests and would issue two public reports, one under the Code and one under the Act. I noted that, because the requests for investigation related to a practice that raised concerns of public interest, I would be looking in a general way at the practice of using ceremonial cheques and other props that contain partisan and personal identifiers when making government funding announcements. Furthermore, I had concluded that the large volume of requests made it impractical to conduct a full investigation into the factual situation of each individual public presentation. I decided that I would not make any specific findings or conclusions about any of the individual Members who were named in the requests.



In order to understand how and why the cheques or other props were used, and the circumstances in which they were used, I sent a list of questions seeking factual information with my letter to each of the Members named. Those questions are set out in Schedule II. The same questions were used for review under the Code and the Act. I received 56 responses between December 7 and December 22, 2009.

Once I had reviewed the responses, I concluded that it was not necessary to seek further information from the Members named. The responses included enough information on the activities complained of to begin my deliberations on the application of the Code and the Act. I did not follow my usual practice of providing the Members named in the requests with a draft of factual parts of my two reports before releasing them because I did not identify Members in the reports and I did not find anyone in contravention of the Code or the Act. My observations in this report address the growing practice of using ceremonial cheques or other props with partisan or personal identifiers when making funding announcements and are not directed to particular Members.

To assist in the preparation of my analysis of the issues before me, my Office considered previous instances of the use of ceremonial cheques and partisan identifiers. We also reviewed the applicable rules that regulate the use of ceremonial cheques or other props at the federal level and in other jurisdictions. As part of this process, I conducted an interview with Michelle d'Auray, Secretary of the Treasury Board. My staff also spoke with staff from the Office of the Auditor General of Ontario, the Government of Alberta Public Affairs Bureau and the Alberta Legislature, Ontario and Alberta being the only Canadian jurisdictions that I am aware of with rules relating to these activities.



## THE FINDINGS OF FACT

The purpose of this section is to set out the circumstances surrounding the use of the ceremonial cheques or other props. Although the Analysis section does not draw heavily on this information, it is relevant for the Observations section of this report.

I relied on information that I received from Members identified in the requests. As expected, the responses that I received indicated that there were a variety of circumstances underlying the use of the ceremonial cheques and other props. The following is an overview of the responses I received.

### *The responses*

On November 19, 2009, my Office began to receive responses under both the *Conflict of Interest Code for Members of the House of Commons* (Code) and the *Conflict of Interest Act* (Act). Fifty Members replied with initial responses that were virtually identical, concentrating on arguments supporting a request that I not pursue the matter.

Several of those Members, including one Minister and two Parliamentary Secretaries, indicated that they made an announcement on behalf of a Minister at the request of his or her office and that they had no part in the design or production of the cheque used at the event. One Member indicated that he has been using the same format of cheques since 2004 to announce federal funding initiatives.

Another Member said that, while there was no intent to misrepresent, the use of cheques in announcements serves to assist re-election by associating the name of the Member with the current government's infrastructure plans. One Member who was a Parliamentary Secretary said that the use of the Conservative Party of Canada logo on a ceremonial cheque was a mistake and an oversight, and that there was no intent to misrepresent or defraud the public.

Almost all the Members responded to the set of specific written questions that my Office sent them after receiving their initial responses. The questions are set out in Schedule II.

### **Who made the funding announcements**

Most respondents, including several Ministers, indicated that they had made the funding announcements on behalf of another Minister in their capacities as elected Members for their ridings. More than half of the Members, including a majority of the Ministers and Parliamentary Secretaries, indicated that they had been asked to make the funding announcements. In most cases, these requests came from a Minister's office, or a government department, that also organized the event. Only two Ministers indicated that they had made the announcements in their own capacities as Ministers of their own federal departments.

In a small number of cases the announcements were not made on behalf of or at the request of a Minister's office or government department. Some Members and one Minister of State were asked to make an announcement by the organizations in their riding that received the federal funding. Some Parliamentary Secretaries and Members indicated that they had initiated the announcement and that their offices had coordinated the events.



## **The use of ceremonial cheques or other props**

All of the ceremonial cheques or other props used when making federal funding announcements that were depicted in the photographs accompanying the requests received by my Office contained personal identifiers, specifically names or signatures. Some also bore partisan identifiers, such as logos, or colours and slogans, that could be identified with the Conservative Party of Canada.

The majority of respondents indicated that they had decided on their own to use a ceremonial cheque or prop and that they had decided to do so because of its impact as a visual communications tool. Some Members indicated that the use of cheques or props is part of their own communications strategies.

Several Members indicated that they had routinely used cheques and props in government announcements prior to the unveiling of Canada's Economic Action Plan. More than half of the Members indicated that they are aware that the use of ceremonial cheques is a practice that has been followed for some years by politicians of all parties.

Most Members, including a number of Members who made announcements on behalf of a Minister, indicated that they or their staff produced the cheques that they used and that they brought them to the event. The majority of Ministers and Parliamentary Secretaries also indicated that they, or members of their staff, were responsible for developing the cheque and suggesting it be used at an event.

A small number of Members who made an announcement on behalf of a Minister indicated that the cheques used at the announcement were produced by the department they were representing and that they themselves were not personally involved in the design or production of the cheques. One Minister indicated that all of the communications products used at announcements, including cheques, were developed by the department for which that Minister was responsible and were approved by the Privy Council Office. One Minister and one Parliamentary Secretary who were asked to make announcements on behalf of a department were supplied with the cheques in question by the department. In these cases the signature on the cheque was not that of the individual making the funding announcement but that of the Prime Minister or another Minister responsible for the department in question.

A small number of Members said they were unaware that a cheque would be used because neither they nor their staff had organized the event. In these cases, the event was organized by a department or the organization receiving funding.

One Minister and one Parliamentary Secretary indicated that they received requests from the beneficiaries of the funding initiative to bring a ceremonial cheque to the event. One Member indicated that the cheques were produced by the organization receiving funding.

There were three cases where Members, including one Minister and one Parliamentary Secretary, used a prop other than a ceremonial cheque. One Member used a backdrop that included the Conservative Party of Canada logo and his picture. That Member indicated that a miscommunication between his staff and the Conservative Resource Group, a group that provides support to the Conservative caucus, resulted in a mistaken belief that placing the logo



on the backdrop was permitted. One Parliamentary Secretary used a banner with his name, a picture and the Conservative Party logo. This banner, which is kept in the constituency office, was designed and developed after the Member was first elected and is used as a promotional and information tool in his constituency. One Minister was pictured wearing a jersey with the Conservative Party logo and the name of the Prime Minister.

Most Members indicated that they did not receive any guidelines as to the design of the cheques or other props; nor did they receive instructions or advice from the Conservative Party of Canada or any related body with respect to making public announcements. A few Members indicated that they believed that the design was consistent with standard communications products used by the Government of Canada at the time. However, twelve Members (20 per cent of the Members responding) indicated that, while there were no guidelines as to the design or format of the cheque, a cheque template was made available to them on the Conservative Resource Group website and the Members and their staff tailored the template to meet their specific design requirements.





## PRELIMINARY ISSUES

In their responses to my initial letter, many of the Members who are subject to the *Conflict of Interest Act* (Act) as public office holders (Ministers, Parliamentary Secretaries and one Minister of State) argued that I should not proceed to an examination under the Act. They argued that the requests were frivolous, vexatious and made in bad faith. They also argued that the activities described in the requests were a normal part of the duties they perform on behalf of their constituents as Members of the House of Commons. I will deal with each of these issues before turning to my analysis of the substantive allegations that were made.

### *The requests as frivolous, vexatious and made in bad faith*

In response to Mr. Easter's allegations, some argued that the very public manner in which the requests were made suggested that he was motivated by partisan considerations. They argued that this should lead me to the conclusion that the requests were frivolous, vexatious and made in bad faith within the meaning of subsection 44(3) of the Act and, therefore, that I should decline to examine the matter on that basis. Subsection 44(3) of the Act reads as follows:

*44(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 regard to all the circumstances of the case, may discontinue the examination.*

The manner in which Mr. Easter's requests were made was very cumbersome. In many cases, the initial requests received failed to observe the basic procedural requirements set out in the Act and the Code, including the need to submit signed requests, and it often took an inordinately long time for the requests to be completed. In addition, many requests included minor inaccuracies. These errors and omissions caused delays in triggering the various timelines provided in the Code. While not fatal to any of the requests, they caused my Office to expend considerable additional effort and resources.

The threshold for finding a request to be frivolous, vexatious or made in bad faith is very high. In general, a frivolous request is one that lacks any basis or merit or that was not seriously made or was made for an unreasonable purpose, and a vexatious request is one that is instituted maliciously and without good cause. Similarly, requests under the Act that are "made in bad faith" would include requests made dishonestly for unreasonable or unfounded purposes. The allegations in this case raised substantive issues that on their face warranted investigation. Based on the information I had, I was not prepared to find that the requests were frivolous, vexatious or made in bad faith.

Moreover, the question of whether such activities are covered by the Act, and more generally whether they are acceptable, is clearly an open question, given the mixed reaction on the part of the requesters, the respondents, the media and the general public. In light of this uncertainty, I felt that it was important for me to consider these questions.



### *Activities on behalf of constituents*

In response to the allegations made under the Act, many Members who are subject to the Act (Ministers, Parliamentary Secretaries and a Minister of State) cited subsection 64(1), which provides that public office holders are not prohibited from engaging in those activities that they normally carry out as a Member of the House of Commons. It reads as follows:

*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.*

These Members argued that the use of ceremonial cheques or other props to make federal funding announcements was an activity undertaken by them on behalf of constituents for the purpose of informing them of government initiatives.

Although I do not believe the Act would prohibit Members from using ceremonial cheques in this way, it may be questioned whether it is normal to use ceremonial cheques or other props with partisan logos and personal identifiers in making federal funding announcements. I therefore decided that subsection 64(1) did not prevent me from examining the allegations made.



## ANALYSIS UNDER THE ACT

I have been asked to determine whether the Members who are subject to the *Conflict of Interest Act* (Act) contravened the Act by making federal funding public announcements using ceremonial cheques or other props with political, partisan or personal identifiers. In particular, I have been asked to determine whether they contravened sections 4, 5, 7, 8 or 9 of the Act. I will begin my analysis with section 4 which provides a definition of conflict of interest; I will then turn to sections 5, 8 and 9, which are built on the concept of private interests; and I will conclude my analysis with section 7, which deals with preferential treatment.

### *Section 4 of the Act*

It was alleged that the use of ceremonial cheques or other props with partisan or personal identifiers resulted in a contravention of section 4 of the Act. This provision reads as follows:

*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.*

Section 4 describes what a “conflict of interest” is for the purposes of the Act. It underlies many of the rules of conduct of the Act and will be considered in the analysis that follows.

### *Sections 5, 8 and 9 of the Act*

It was alleged in the requests received by my Office that several specific rules of conduct found in sections 5, 8 and 9 of the Act were breached. Those sections read as follows:

*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.*

[...]

*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 interest 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.*

*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 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.*

Section 5 is general in scope and requires all public office holders to arrange their private affairs so as to prevent themselves from being in a conflict of interest as described in section 4. Public office holders are prohibited by section 8 from making inappropriate use of information not available to the public and by section 9 from using their position to influence decision-making. Sections 8 and 9 do not refer to the term “conflict of interest” directly, but draw upon the language used in section 4, in that they prohibit the furthering of a private interest. The interpretation of each of these sections depends on the interpretation of the expression “private interests”.

### **Meaning of private interests**

It was alleged that the use of ceremonial cheques or other props with partisan or personal identifiers served to benefit certain Members, as well as their political party. It was suggested that Members used the cheques as a means of shaping public perception or even misleading the public for the purpose of enhancing their profiles and improving their electoral prospects, thereby serving to further private interests in contravention of the Act.

On January 13, 2010, I issued a discontinuance report under the Act in relation to an examination involving distinct but related allegations made by Ms. Hall Findlay, Member of Parliament for Willowdale. She alleged that various Ministers and Parliamentary Secretaries had breached the Act by using their positions to develop an advertising and communications strategy to promote Canada's Economic Action Plan that incorporated “look and feel” aspects of the Conservative Party of Canada in order to improve its electoral prospects. Ms. Hall Findlay alleged that they had thereby improperly furthered the private interests of another person, namely the Conservative Party of Canada.

In that discontinuance report, I determined that because the Conservative Party of Canada was not a person under the Act – that is, neither an individual nor a corporation – it was not necessary for me to consider the question of whether the Conservative Party of Canada had a “private interest” within the meaning of the Act. At that time I questioned whether partisan political interests are included within the meaning of “private interest” under the Act and indicated that I would deal with that issue in an upcoming report. I deal with that issue now from the perspective of the Act, and deal with it from the perspective of the Code in the other report.

Unlike the Code, where the circumstances are set out under which a Member is considered to further a private interest, the Act provides little guidance as to the meaning of “private interest”. It does set out in subsection 2(1) the circumstances where private interests are not engaged, but this of little help in determining where they are engaged. The relevant provision reads as follows:

*“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.*

#### *Private interests of public office holders*

The only other source in determining when private interests are engaged under the Act is Part 2 of the Act. That Part sets out specific measures that reporting public office holders must take in order to achieve and maintain compliance with the Act. Reporting public office holders, upon being appointed, must disclose particular information to my Office under section 22 of the Act, including their assets, liabilities, income, benefits from contracts with a public sector entity and outside activities, as well as those of their family members. These interests are all personal in nature; they arise apart from the public office holder's official duties.

These interests would exist for anyone whether or not he or she were a public official. They are also private in the sense that they would not normally be a matter of public record. Reporting public office holders must disclose this information so that my Office can identify and deal with any conflicts of interest between these private interests and the public duties of the public office holder.

Section 5 requires that all public office holders arrange their private affairs in a manner that will prevent conflicts of interest. The requirements of the Act in this regard, particularly the disclosure and divestment provisions, suggest that it is the personal interests of a public office holder that have the potential to place him or her in a conflict of interest. While the specific interests dealt with in Part 2 of the Act do not need to be taken as an exhaustive list, they do imply that the term "private interest" refers to personal interests rather than those arising out of the public office holder's position.

In brief, the scheme of the Act, which is focused on preventing conflicts of interest, provides for a set of rules focused mainly in a narrow category of largely pecuniary interests, including the value of a person's assets or liabilities, the acquisition of a financial interest, becoming a director or officer in certain types of organizations or the increase in a person's income. In my view, the situations described in the Act do not extend to cover the type of interests cited in the allegations raised in the requests under consideration. The allegations relate to actions that could result in partisan political advantage. Nowhere in the Act is there a suggestion that the expression "private interests" would cover partisan political gain or advantage.

One could make the argument that a Member would have a private pecuniary interest in re-election because securing a seat in the House of Commons comes with a comfortable salary and benefits. Following this argument to its logical conclusion, however, would imply that any actions undertaken by a Member aimed at enhancing his or her image with constituents could be construed as furthering a private interest, and therefore contravene the Act. This cannot be the intent of the Act.



The interests of all Members, including those who are subject to the Act as public office holders, in participating in funding announcements are fundamentally political in nature. They are focused on attempting to raise their public profile by associating themselves and their party with initiatives that their party has put forward as the governing party, and that they believe will be viewed favourably by their constituents. These interests would not arise from purely personal considerations outside of their role as public office holders.

For these reasons, I have concluded that any partisan advantage gained through the use of ceremonial cheques and other props with personal and partisan identifiers is not captured by the concept of “private interest” under the Act. Consequently I conclude that these public office holders could not have contravened the substantive rules of conduct found in sections 5, 8 and 9.

#### *Private interests of the Conservative Party of Canada*

In the discontinuance report relating to a request made by Ms. Hall Findlay referred to above, I determined that the Conservative Party of Canada was not a person under the Act. For the same reasons as are set out in that report, the Members who are public office holders could not have contravened the substantive rules of conduct found in sections 5, 8 and 9 with respect to the allegations that they furthered the private interests of the Conservative Party of Canada when they used cheques and other props with political, partisan or personal identifiers in making federal funding announcements because the Conservative Party of Canada is not an individual or a corporation and therefore not a “person” within the meaning of the Act.

#### **Section 7**

The requests also alleged that the Members who are subject to the Act contravened section 7 of the Act. Section 7 reads as follows:

*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.*

The scope of section 7 appears to be very narrow. It prohibits preferential treatment to a person or organization based on the identity of a representative, most likely a lobbyist or counsel. In the context of this examination, there has been no suggestion that a representative was hired or retained to represent the Conservative Party of Canada as an organization or to represent any of the individual public office holders to which preferential treatment was afforded. In my opinion, section 7 has no application in relation to this examination.

#### **Conclusions**

While the Members named in the requests have not, for the reasons set out above, contravened the substantive rules of conduct set out in sections 5, 7, 8 and 9 of the Act, I believe that using partisan or personal identifiers in making government announcements raises concerns that should be addressed.



It is to be expected that Members will always try to enhance their images with constituents. Members have political interests and these interests are important to them and their party. However, government funding is not a partisan activity, so it is not appropriate to brand federal funding announcements with partisan or personal identifiers. I address this issue in more detail in the next section of this report.



## OBSERVATIONS

### *Background on the use of ceremonial cheques*

Political parties try to win votes by putting forth what they hope will be popular public policies and by emphasizing, sometimes quite selectively, their accomplishments. The governing party has an advantage in this regard. It is the public face of government. Ministers initiate public policy and oversee its implementation. They are also supported by the machinery of government, including the public service. They, and the government Members they designate to represent them, also have more opportunities to communicate with the Canadian public in a wider variety of forums than do Members of other political parties. They play a special role in informing Canadians about what the government is doing. I believe that Canadians accept this as an inherent feature of our parliamentary political system.

Some Members have used ceremonial cheques or other props to make announcements in their local communities for decades. These were usually plain, bearing only the Canadian flag or coat of arms, and did not display a name or signature. The use of ceremonial cheques has become more widespread over the past 15 years, and more recently there also seems to have been an increasing tendency for elected representatives in various jurisdictions to include personal identifiers on them, in particular names and signatures.

The concerns that have been raised about the use of ceremonial cheques or other props when announcing federal funding initiatives relate to design and format of those cheques and props, specifically to the inclusion of party logos or other partisan or personal identifiers on them.

### *The existing federal rules*

These concerns around the use of ceremonial cheques bearing partisan or personal identifiers in connection with government funding announcements are part of a larger issue of politicizing what one would expect to be non-partisan government communications. The rules governing these types of activities seem to be quite limited.

The Board of Internal Economy, which governs how Members use the allowances and services provided to them by the House of Commons, restricts the use of some of these benefits for partisan political purposes. For example, Members may not use printing services to solicit memberships in, or contributions to, political parties. There are also restrictions on the use of advertising and printing services for election purposes. However, there do not appear to be any rules governing the production and use of ceremonial cheques and, even if there were such rules, they would only apply if funds from a Member's office budget, allocated by the Board, were used.

Two Treasury Board policies, the *Communications Policy of the Government of Canada* and the *Federal Identity Program Policy*, appear to have limited applicability in this area. The Communications Policy specifically requires that public servants provide communications services in a non-partisan fashion and that institutions focus their communications activities on





matters pertaining to the programs they administer, leaving political matters to the exclusive domain of Ministers and their offices. While the Communications Policy also provides that institutions must not participate in or lend support to partisan events organized for political party purposes, it does not spell out clearly what the requirement for non-partisanship entails.

Discussions with the Secretary of the Treasury Board, Michelle d'Auray, indicate that the inclusion of a political party logo on a ceremonial cheque prepared by a department for a ministerial event would clearly contravene the rules. Less clear is whether those rules would prohibit the use of slogans, or the names or signatures of Members, Ministers, Ministers of State or Parliamentary Secretaries. There are no rules relating to the use of colours representing political parties or otherwise.

In any event, these Treasury Board policies do not apply to Ministers' offices. They apply only to the activities of government institutions, and therefore to communications products that are prepared by and used at an event organized by a government department, agency, board, council, commission or other body identified in Schedule I, I.1 or II of the *Financial Administration Act*. They do not apply to events that are not organized by institutions for official ministerial activities, for example events organized independently by Ministers, Parliamentary Secretaries, Members or their staff. Nor do they generally apply to materials prepared by a Member who independently chooses to use them in the context of an event organized by a government department. There are therefore a wide variety of situations in which the use of a ceremonial cheque or other prop by a Member is not regulated by any government policy.

### **Observations**

The use of partisan identifiers during government announcements may appear to some to be of little significance. It may well be that few who are present for these types of government announcements or who see photographs of ceremonial cheques or other props notice names, signatures, slogans or colours used by, or associated with, the Conservative Party of Canada. That being said, when the use of these cheques or props was raised in the House of Commons and in the media, it quickly became a source of significant public and political controversy.

Prior to the start of my investigation, Prime Minister Stephen Harper commented publicly that the use of cheques with a Conservative Party of Canada logo was improper. He was quoted in the media as saying: "I think the Member in question admitted that was a mistake and should not be repeated." (*Globe and Mail*, October 15, 2009). He stated in the House of Commons the following week that: "I said clearly last week and the government said very clearly, when we heard of this abuse, that the use of a partisan logo on a government announcement was not correct." (*Hansard*, Number 096, Tuesday, October 20, 2009)

As well, my Office received an unusually high number of individual complaints from the public about the use of the partisan identifiers expressing concerns not only about the specific instances that had been identified, but also more generally about partisan elements in government advertising and the perceived abuse of public funds.



The practice of using partisan identifiers was discussed in the House of Commons in October 2009 and studied by the House of Commons Standing Committee on Government Operations and Estimates in November. There was widespread coverage of this issue in the print media, in particular between October 15 and October 23, 2009, when more than 75 articles were published. These included several editorials and columns that were critical of the practice, in both national and regional papers. It was also discussed on the televised news services of CBC, CTV and SRC. I believe this reflects a legitimate concern on the part of Canadians about the potential for partisan messaging to find its way into government communications.

The question of what constitutes a partisan identifier will always be a matter of some debate.

I noted in the previous section of this report that the requests for investigations in this case were related to a separate request for an examination under the Act made last fall by Ms. Martha Hall Findlay, Member of Parliament for Willowdale, relating to the communications strategy employed for the launch of the Economic Action Plan. In her request, Ms. Hall Findlay made specific mention of ceremonial cheques used by Conservative Members, which she argued incorporated “look and feel” aspects of the Conservative Party of Canada’s own advertising and communications materials, including the prominent use of the colour blue. For example, some of the cheques depicted in the photographs included the slogan “Protecting Canada’s Future”, which appears to be associated with the Conservative Party of Canada, and were set against a blue banner.

Political parties in Canada have, since before Confederation, developed an association with a particular colour. Liberal government publications and communications tools have, in the past, emphasized red and white. Beginning in 2006, changes were made to government communications tools, such as the substitution of dark blue for the traditional red on Government of Canada communications tools such as websites, ceremonial cheques and publications. The use of a particular colour would not necessarily imply any particular partisan brand by itself. Indeed, I do not believe anyone can claim exclusive right to the use of a particular colour, even though communications products that adopt the colours, images and slogans associated with a certain political party may contribute to a confusion between that party and the Government of Canada.

Despite these areas of ambiguity, I believe that further clarification is possible. As noted above, these concerns are not addressed in either the *Conflict of Interest Code for Members of the House of Commons* (Code) or the *Conflict of Interest Act* (Act), nor do they appear to be covered by other federal rules.

I am aware of two other Canadian jurisdictions, namely Ontario and Alberta, that have addressed the issue of the politicization of government communications. In Ontario, this is done through legislation, and in Alberta, it is done through guidelines and policies.

The Ontario *Government Advertising Act* gives the Auditor General of Ontario the responsibility of reviewing government advertisements before they are published or broadcast. That Act requires that paid government advertisements not be partisan; nor can a primary objective of the advertisement be to foster either a positive impression of the governing party or a negative impression of a person or entity that is critical of the government.



The Ontario *Government Advertising Act* applies to Ministers and to other Members of the Legislative Assembly of Ontario. It prohibits the use of the name, picture or voice of any Member of the Legislative Assembly (MLA) in any paid government advertising. It does not, however, cover unpaid advertising, and would therefore not apply to the cases under consideration in this report.

The *Government of Alberta Communications Policy*, which regulates partisan activities by elected Members when their activities relate to government business, is similar to the federal communications policy overseen by Canada's Treasury Board Secretariat. However, the Alberta communications policy does not allow MLAs who are not Ministers or official spokespersons to make announcements on provincial funding initiatives. Specifically, only those Members who are chairing a government committee or otherwise leading work or making presentations on behalf of the government are permitted to act as its official spokespersons. They may only do so in relation to those assigned duties, and all materials produced must adhere to established government standards. Compliance with these requirements is monitored and enforced by individual government departments and the Public Affairs Bureau section of the Executive Council Office.

Further to this, all communications between Alberta MLAs and constituents are regulated by the *Members' Service Orders*. There is a prohibition against the distribution of materials paid for out of the MLA's allowance from the legislature that include any recognizable partisan logo, slogan or other defining partisan mark. This would appear to apply to the use of ceremonial cheques or other props. MLAs are only permitted to use symbols approved by the legislature, such as the Alberta coat of arms. To some extent, these regulations, in combination with the Alberta communications policy, prevent elected officials from acting independently to produce materials with partisan markings for announcements related to government initiatives.

Ultimately, it is up to the government and possibly the House of Commons or Parliament to consider whether they are willing to address the politicization of government communications. As an immediate first step, the federal government could consider strengthening existing Treasury Board policies. For example, Ministers could be explicitly prohibited from including partisan or personal identifiers on any communications products whose purpose it is to advertise or inform the public about government programs, without regard to who prepares those products and who organizes the events at which they are used.

Ministers could also be made accountable for ensuring that Members who represent them abide by the same rules. Treasury Board rules already require this in the case of materials produced by government departments. There is no reason why similar rules should not apply to all government announcements. These rules could be further strengthened by requiring Ministers to submit for scrutiny all proposed communications materials, including ceremonial cheques and other props that they, or Members representing them, use to inform the public of government programs to an independent third party, whether within government or outside government.

Although some of these measures could be included in amended Treasury Board policies, there may also be a need to make additions to other rules or policies administered by the government or the House of Commons to ensure coordinated implementation.



I recognize that a government in power might not wish to limit itself from putting a partisan overlay on its public announcements. In addition, regulating all communications based on a controversy specifically related to the use of ceremonial cheques and other props may appear unnecessarily broad. Nonetheless, it does appear that there has been a tendency to increase incrementally the use of partisan or personal identifiers in government communications. I believe that steps should be taken to address this.

I am of the view that the practice of using partisan identifiers in announcing government initiatives goes too far and has the potential to diminish public confidence in the integrity of Members and the governing institutions they represent. Indeed, one of the purposes of the Code is to maintain and enhance public confidence and trust in the integrity of Members and the House of Commons. It is also one of the rationales underlying the Act in relation to public office holders, including Ministers, Ministers of State and Parliamentary Secretaries.



## **SCHEDULE I – MEMBERS NAMED IN THE REQUESTS (from page 4)**

*Included below is a list of all the Members against whom a request for an investigation was made. Their titles reflect the positions they held at the time the requests for investigations were received by my Office. Requests were received from the Honourable Wayne Easter, Member of Parliament for Malpeque (59 requests); Mr. Yvon Godin, Member of Parliament for Acadie-Bathurst (1 request); the Honourable Geoff Regan, Member of Parliament for Halifax West (1 request); Mr. Peter Stoffer, Member of Parliament for Sackville-Eastern Shore (2 requests). Because almost all of the requests were made by Mr. Easter, only those cases where a request was made by Mr. Godin, Mr. Regan or Mr. Stoffer are noted by footnote.*

### **Members subject only to the Conflict of Interest Code for Members of the House of Commons**

Mr. Mike Allen, *Member of Parliament for Tobique—Mactaquac*<sup>1</sup>

Mr. James Bezan, *Member of Parliament for Selkirk—Interlake*

Mr. Steve Blaney, *Member of Parliament for Lévis—Bellechasse*

Mr. Ray Boughen, *Member of Parliament for Palliser*

Mr. Gordon Brown, *Member of Parliament for Leeds—Grenville*

Mr. Patrick Brown, *Member of Parliament for Barrie*

Mr. Paul Calandra, *Member of Parliament for Oak Ridges—Markham*

Mr. Blaine Calkins, *Member of Parliament for Wetaskiwin*

Mr. Bob Dechert, *Member of Parliament for Mississauga—Erindale*

Mr. Barry Devolin, *Member of Parliament for Haliburton—Kawartha Lakes—Brock*

Mr. Royal Galipeau, *Member of Parliament for Ottawa—Orléans*

Ms. Cheryl Gallant, *Member of Parliament for Renfrew-Nipissing-Pembroke*

Mr. Richard Harris, *Member of Parliament for Cariboo—Prince George*

Mr. Russ Hiebert, *Member of Parliament for South Surrey—White Rock—Cloverdale*

Ms. Candice Hoepfner, *Member of Parliament for Portage—Lisgar*

Mr. Daryl Kramp, *Member of Parliament for Prince Edward—Hastings*

Mr. Guy Lauzon, *Member of Parliament for Stormont—Dundas—South Glengarry*

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<sup>1</sup> Request for investigation made by Mr. Easter and Mr. Godin



Mr. Ben Lobb, *Member of Parliament for Huron-Bruce*

Mr. James Lunney, *Member of Parliament for Nanaimo—Alberni*

Mr. Colin Mayes, *Member of Parliament for Okanagan—Shuswap*

Mr. Phil McColeman, *Member of Parliament for Brant*

Mr. Larry Miller, *Member of Parliament for Bruce—Grey—Owen Sound*

Mr. Rick Norlock, *Member of Parliament for Northumberland—Quinte West*

Mr. Scott Reid, *Member of Parliament for Lanark—Frontenac—Lennox and Addington and Deputy Leader of the Government in the House of Commons*<sup>2</sup>

Mr. Bev Shipley, *Member of Parliament for Lambton—Kent—Middlesex*

Ms. Joy Smith, *Member of Parliament for Kildonan—St. Paul*

Mr. Bruce Stanton, *Member of Parliament for Simcoe North*

Mr. Brian Storseth, *Member of Parliament for Westlock—St. Paul*

Mr. David Tilson, *Member of Parliament for Dufferin—Caledon*

Mr. Tim Uppal, *Member of Parliament for Edmonton—Sherwood Park*

Mr. Dave Van Kesteren, *Member of Parliament for Chatham—Kent—Essex*

Mr. Mike Wallace, *Member of Parliament for Burlington*

Mr. Chris Warkentin, *Member of Parliament for Peace River*

Mr. Stephen Woodworth, *Member of Parliament for Kitchener Centre*

Mr. Terence Young, *Member of Parliament for Oakville*

**Members subject to both the *Conflict of Interest Code for Members of the House of Commons* and the *Conflict of Interest Act*<sup>3</sup>**

The Honourable John Baird, P.C., *Minister of Transport, Infrastructure and Communities*

Mr. Colin Carrie, *Parliamentary Secretary to the Minister of Health*

Mr. Dean Del Mastro, *Parliamentary Secretary to the Minister of Canadian Heritage*

Mr. Rick Dykstra, *Parliamentary Secretary to the Minister of Citizenship and Immigration*

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<sup>2</sup> Request for investigation made by Mr. Easter and Mr. Stoffer

<sup>3</sup> Positions held at the time of the request



The Honourable Diane Finley, P.C., *Minister of Human Resources and Skills Development*

The Honourable Jim Flaherty, P.C., *Minister of Finance*

Ms. Shelly Glover, *Parliamentary Secretary for Official Languages*

The Honourable Gary Goodyear, P.C., *Minister of State (Science and Technology) (Federal Economic Development Agency for Southern Ontario)*

Mr. Laurie Hawn, *Parliamentary Secretary to the Minister of National Defence*

Mr. Randy Kamp, *Parliamentary Secretary to the Minister of Fisheries and Oceans*

Mr. Gerald Keddy, *Parliamentary Secretary to the Minister of International Trade*<sup>4</sup>

Mr. Ed Komarnicki, *Parliamentary Secretary to the Minister of Human Resources and Skills Development and to the Minister of Labour*

Mr. Pierre Lemieux, *Parliamentary Secretary to the Minister of Agriculture*

Mr. Ted Menzies, *Parliamentary Secretary to the Minister of Finance*

The Honourable James Moore, P.C., *Minister of Canadian Heritage and Official Languages*

Mr. Rob Moore, *Parliamentary Secretary to the Minister of Justice*

The Honourable Bev Oda, P.C., *Minister of International Cooperation*

Mr. Pierre Poilievre, *Parliamentary Secretary to the Prime Minister and to the Minister of Intergovernmental Affairs*

The Honourable Jim Prentice, P.C., *Minister of the Environment*

The Honourable Lisa Raitt, P.C., *Minister of Natural Resources*

The Honourable Chuck Strahl, P.C., *Minister of Indian Affairs and Northern Development, Federal Interlocutor for Métis and Non-Status Indians and Minister of the Canadian Northern Economic Development Agency*

The Honourable Greg Thompson, P.C., *Minister of Veterans Affairs*

The Honourable Vic Toews, P.C., *President of the Treasury Board*

The Honourable Peter Van Loan, P.C., *Minister of Public Safety*

Ms. Alice Wong, *Parliamentary Secretary for Multiculturalism*

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<sup>4</sup> Request for investigation made by Mr. Regan and Mr. Stoffer



## **SCHEDULE II – QUESTIONS SENT TO MEMBERS (from page 8)**

1. Please explain the circumstances surrounding the announcement(s) depicted in the photograph(s) accompanying the letter forwarded to you from my Office. In your explanation, please also address the following questions:
  - Were you asked to make the announcement(s) and, if so, by whom?
  - Were you appearing on behalf of another individual, such as a Minister?
2. Please explain how you came to use the ceremonial cheque(s) or other props depicted in the photo. In your explanation, please also address the following questions:
  - Did anyone ask or suggest that you use a ceremonial cheque or other prop to make this announcement? If so, who asked or suggested that you do and what was said?
  - Did you, your staff or someone else order or prepare the cheque(s) or other props?
  - Were you given any guidelines as to their design and format? If so, please describe the guidelines and indicate who provided them to you.
  - Were you aware in advance of the event(s) that a cheque or other prop would be used?
3. Please indicate whether your use of ceremonial cheque(s) or other props was part of a broader communications strategy for the announcement of federal funding initiatives. If it was, please describe the main elements of the strategy and identify who developed it.
4. Have you at any time received any guidelines, instructions or other advice from the Conservative Party of Canada or any related body (such as the parliamentary research bureau or caucus) with respect to making public announcements? If so, what was the nature of that guidance and from whom was it received?
5. Were these types of cheques or other props routinely used before the unveiling of Canada's Economic Action Plan? If they were not, do you know why they were used more widely with respect to this initiative?

