

**REPORT OF THE SPECIAL ARBITRATOR ON THE EXPENSE CLAIMS  
IDENTIFIED BY THE AUDITOR GENERAL IN HIS REPORT DATED  
JUNE 4, 2015**

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## **Introduction**

1. On the 14<sup>th</sup> day of May, 2015, the Standing Committee on Internal Economy, Budgets and Administration [“the Internal Economy Committee”] appointed a Special Arbitrator to consider the justification for expense claims made on behalf of a number of Senators put in question by the report of the Auditor General dated June 4, 2015. My mandate is to carry out a series of arbitrations in accordance with the *Special Arbitration Rules* approved by the Internal Economy Committee on the May 26, 2015 “to determine whether the Senator in fact received an overpayment or made an improper use of the Senate resources.”<sup>1</sup> A copy of the *Special Arbitration Rules* is attached as **Appendix A**.

## **The Audit Period**

2. April 1, 2011 to March 31, 2013

## **PART ONE: EXECUTIVE SUMMARY**

3. It will be seen that I have formulated a number of questions which, based on the Senate’s rules, guidelines and policies, I believe Senators ought to have asked themselves before spending public monies. These questions, and my responses, do not break new ground. They are, in my opinion, either explicit or clearly implicit in the *Senate Administrative Rules*, and other Senate policies and guidelines. Implementation of these rules, policies and guidelines call for discretion, judgment and common sense. However, they are perfectly workable in the hands of a Senator who wishes to comply with the obvious purpose of a rule, as well as its literal text.

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<sup>1</sup> *Special Arbitration Rules*, s. 3.1

### **Senators Occupy a Position of Public Trust**

4. First of all, a Senator occupies a position of public trust<sup>2</sup> and Senators are expected under the rules to conduct themselves accordingly. More particularly, as stated in the *Senate Administrative Rules* the administration of the Senate is to be governed by “integrity, accountability, honesty and transparency.”<sup>3</sup> These general principles were affirmed before, during, and after the audit period although, as will be seen, greater precision in their application has been added over the years, especially by the *Senator’s Travel Policy 2012*.

5. In earlier days the Senate Administration did not demand as much documentation in support of the spending of Senate monies, but it is not because the principles of accountability and transparency were weaker than they are now. Rather, the Senate staff was obliged by the *Senate Administrative Rules* to acknowledge that “Senators act on their personal honour and Senators are presumed to have acted honourably in carrying out their administrative functions unless and until the Senate or the Internal Economy Committee determines otherwise.”<sup>4</sup>

6. The Senate expects its staff to serve as helpful watchdogs not bloodhounds.

7. The rules require the expenditure of public funds to be undertaken only in support of “Parliamentary functions”. Many Senators complained in the Special Arbitrations that the concept is vague and uncertain but, in any event, in their view each Senator should be free to define his or her own “Parliamentary functions”. This is viewed as part of a Senator’s independence. There is much to recommend taking a broad view of “Parliamentary functions.” It would be harmful to the public interest to inhibit members of the Senate from exploring and

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<sup>2</sup> See for example the Conflict of Interest Code for Senators adopted May 18, 2005, section 2 (1)

<sup>3</sup> *Senate Administrative Rules*, Division 1:00, Chapter 1:02 [principles], Section 2

<sup>4</sup> *Senate Administrative Rules*, Division 1:00, Chapter 1:02, Section 4

raising issues which they consider to be important to the country. Many Senators fight a lonely battle on an issue which is regarded by the public to be of little significance until it explodes into public prominence, such as Senator Terry Mercer's efforts to publicize the disastrous decline of pollinators such as bees, or Senator Pierre-Hugues Boisvenu's persistent calls for greater recognition of the rights of victims of violent crime.

8. However, given the broad latitude given to a Senator to pursue matters which he or she thinks to be of public importance, the *Senate Administrative Rules* place **countervailing restraints** on a Senator's freedom to spend public monies. It is these *limits* which have, in some cases, been underappreciated.

#### **The Dominant or Primary Purpose of Expenditure of Public Money**

9. Some Senators travel a great deal. It is clear from the *Senate Administrative Rules* that to qualify for reimbursement the *dominant* or *primary* purpose of a trip must be for Senate business. The Special Arbitration heard evidence of occasions when Senators have travelled with very little Senate business scheduled but a considerable amount of personal business. The *Senate Administrative Rules* do not contemplate "apportionment" of the cost between personal and Senate business. If the dominant purpose is Senate work then the entire expenses are paid for out of public money except for any "incremental costs" associated with the personal business. Equally, however, if the primary purpose of the trip is personal, there still is no apportionment. The Senator is required to pay personally the whole of the travel costs subject only to reimbursement for any incremental costs occasioned by the "incidental" Senate business.

### **An Assessment of Reasonableness**

10. The *Senator's Travel Policy 2012* provides for "reimbursement of **reasonable** expenses incurred while travelling"<sup>5</sup> provided "the cost was actually incurred, **reasonable** and authorized...".<sup>6</sup> The requirement that the cost be reasonably incurred ensures that the Senator will assess in good faith (i.e. "integrity, honesty and transparency") the overall reasonableness of an expenditure for which reimbursement is sought from the public purse.

11. Further, the *Senate Administrative Rules* state that "a person shall exercise **due economy** in the selection of travel options."<sup>7</sup> If a Senator can travel on "lowest fare" business class from Ottawa to Vancouver at half the cost of "full" business class, the Senator might consider whether it is "reasonable" (having "due regard to economy"), to spend twice the money to travel on the same seat on the same aircraft to the same destination. Of course, there may be reasons to pay the more expensive fare. What is reasonable depends on the circumstances.

### **The Cost Benefit Question**

12. The *Senators' Travel Policy 2012* provides that "spending public funds on travel is a sensitive matter" and Senators are expected to have "due regard to the need, frequency, **cost** and purpose as it relates to a senator's parliamentary functions."<sup>8</sup> The requirement to balance cost against need, frequency and purpose calls for a cost-benefit analysis. In my view, despite the disagreement of some honorable Senators, there is no other plausible way to read the provision.

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<sup>5</sup> 2012 Travel Policy 2.3.1

<sup>6</sup> SAR 2009 c. 4:03 s. 10

<sup>7</sup> SAR 2009 c. 4:03 s. 19

<sup>8</sup> 2012 Travel Policy 2.1.3

13. For example, some Senators argued that if he or she decides that it is important to go from Ottawa to Vancouver to meet with a journalist and the subject matter of the meeting is Senate business then that is an end of the inquiry. However, the fact Senators are expected to have “due regard to the need, frequency, cost and purpose as it relates to a Senator’s Parliamentary functions”<sup>9</sup> suggests otherwise. If a Senator were paying the costs out of his or her own pocket, certainly he or she would weigh the \$6,000 cost of a business class trip to Vancouver against the expected benefits, and the alternative cost of a telephone call, and if the benefits did not justify the cost, the trip would not be taken. Even allowing for the broad discretion of Senators to regulate their own activity, the public trust reflected in the *Senate Administrative Rules* imposes an obligation to spend public money wisely.

### **Proportionality**

14. Senators are free to pursue issues which they consider to be in the public interest but, at some point, the *cumulative* cost in public money of a particular pursuit may become so disproportionate to the minor amount of public benefit to be achieved that it should cause a Senator to put on the brakes. This is evident for example, in the audit of the expenses of Senator Pamela Wallin, where the Internal Economy Committee determined, looking at her expenses in a *cumulative* way, that “while occasional exceptional occurrences for special events might be acceptable, the volume and pattern of the events listed would not qualify them as Senate business”. In other words, expenditures are not only to be evaluated individually on a case by case basis, but are also to be assessed in relation to particular purposes and activities *in their*

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<sup>9</sup> *Senator’s Travel Policy 2012*, Policy 2.1.3



*totality*. There should be a measure of proportionality between the cost of the means and the value to the public of the end sought to be achieved.

15. Of course, judgments on these issues by Senators incorporate a large measure of discretion. Democracy would be ill-served by curtailing the good faith pursuit of what Parliamentarians consider to be the public interest even if a particular pursuit is regarded in some quarters (even within the Senate) as unimportant. Senators are expected to be independent, and it is that independence that gives the Senate's work the richness and diversity that best serves its "Parliamentary function".

16. My mandate has merely been to take the principles set out in the Senate rules, guidelines and policies and put myself in the shoes of a Senator to determine what, in my view, is the appropriate answer to the questions flagged by the Auditor General. Where I have disagreed with some of the judgment calls of individual Senators, I have explained my opinion in terms of the Senate's own rules, guidelines and policies. I impute no bad motives to any of the Senators. They acted in accordance with what they believed to be their entitlement. Our disagreement, where it exists, is as to the content of that entitlement.

### **Evidence in The Special Arbitration**

17. In the Special Arbitration process I have had the benefit of a good deal of evidence (both oral and documentary) that was not put before the Auditor General. The staff of the Auditor General operated on a tight schedule. Some Senators felt unfairly prejudiced by the short time frame they were given to provide evidence. Others raised due process concerns about lack of notice of what the Auditor General was concerned about until it was too late to provide explanations. *Special Arbitration Rule 3.24* permits me to consider new evidence. On the basis

of that expanded evidentiary record I have on occasion found to be justified some of the expenditures questioned by the Auditor General. This does not necessarily indicate a disagreement with the Auditor General. In many cases, the differing opinions may just be the result of an expanded evidentiary record available in the Special Arbitration.

18. On the other hand, there were instances where a Senator offered what I consider to be credible and specific oral evidence of the purpose, for example, of a trip, and provided a reasonable explanation for the present lack of documentary evidence. In such cases, the ordinary rules of evidence (which may differ from the documented “audit paper trail” preferred by auditors) permit me to accept the truth of the Senator’s explanations and where the evidence was clear and specific enough, I did not hesitate to do so.

### **Conclusion of the Special Arbitration**

19. In the result, my recommendation in the case of individual Senators is as follows:

| <b>NAME</b>                      | <b>AMOUNT REFERRED<br/>TO SPECIAL<br/>ARBITRATION<br/><i>(rounded)</i></b> | <b>AMOUNT<br/>REQUIRED TO BE<br/>REPAID TO THE<br/>SENATE</b> |
|----------------------------------|--|---|
| Hon. Pierre-Hugues Boisvenu      | \$60,168.00  | \$20,467.33   |
| Hon. Jean-Guy Dagenais           | \$3,538.00   | \$2,267.15  |
| Hon. Joseph A. Day               | \$16,985.00  | \$3,050.96  |
| Hon. Colin Kenny                 | \$31,628.00  | \$27,458.77   |
| Hon. Sandra M. Lovelace Nicholas | \$75,227.00  | \$38,023.27   |
| Hon. Terry M. Mercer             | \$29,338.00  | \$10,536.10   |
| Hon. Pana Merchant               | \$4,989.00   | \$820.38  |
| Hon. Lowell Murray               | \$15,324.00  | \$15,324.00   |
| Hon. Dennis Glen Patterson       | \$13,762.00  | \$13,762.00   |
| Hon. Robert W. Peterson          | \$11,493.00  | \$11,492.61   |

|                        |                     |                     |
|------------------------|---------------------|---------------------|
| Hon. Donald Neil Plett | \$1,120.00          | \$404.45            |
| Hon. Nick G. Sibbeston | \$50,102.00         | \$26,924.20         |
| Hon. Terry Stratton    | \$5,467.00          | \$5,466.70          |
| Hon. David Tkachuk     | \$3,470.00          | \$1,900.22          |
| <b>TOTAL:</b>          | <b>\$322,611.00</b> | <b>\$177,898.14</b> |

## **PART TWO: BACKGROUND**

### **The Speaker's Letters**

20. Each of the Senators and former Senators identified in the report of the Auditor General received a letter from the then Speaker of the Senate, the Honourable Leo Housakos, dated June 5, 2015, requesting on behalf of the Internal Economy Committee either repayment of the amount identified by the Auditor General or delivery of a Notice of Arbitration. A copy of the text of the letter is attached hereto as **Appendix B**. A number of Senators voluntarily repaid to the Senate the amounts said to be owing by the Auditor General and therefore did not file Notices of Arbitration.

### **Notices of Arbitration**

21. During the summer of 2015, following extensive correspondence on various procedural matters, the participating Senators filed with the Registrar, Mr. Adam Thompson, a statement of the grounds of objection on which relief from repayment was sought.

In total, 14 Senators and former Senators filed documentation as follows:

| <b>NAME</b>                 | <b>FILED NOTICE OF ARBITRATION</b> | <b>FILED GROUNDS OF OBJECTION</b> |
|-----------------------------|------------------------------------|-----------------------------------|
| Hon. Pierre-Hugues Boisvenu | July 30, 2015                      | None prior to hearing             |
| Hon. Jean-Guy Dagenais      | June 9, 2015                       | July 21, 2015                     |

|                                     |               |                   |
|-------------------------------------|---------------|-------------------|
| Hon. Joseph A. Day                  | June 8, 2015  | June 23, 2015     |
| Hon. Colin Kenny                    | June 29, 2015 | September 1, 2015 |
| Hon. Sandra M. Lovelace<br>Nicholas | June 19, 2015 | August 20, 2015   |
| Hon. Terry M. Mercer                | June 19, 2015 | November 18, 2015 |
| Hon. Pana Merchant                  | July 3, 2015  | July 2, 2015      |
| Hon. Lowell Murray                  | July 27, 2015 | August 27, 2015   |
| Hon. Dennis Glen Patterson          | June 26, 2015 | August 25, 2015   |
| Hon. Robert W. Peterson             | July 29, 2015 | September 2015    |
| Hon. Donald Neil Plett              | June 11, 2015 | August 26, 2015   |
| Hon. Nick G. Sibbeston              | June 19, 2015 | July 22, 2015     |
| Hon. Terry Stratton                 | June 8, 2015  | July 6, 2015      |
| Hon. David Tkachuk                  | June 8, 2015  | July 7, 2015      |

22. Seven Senators and former Senators named in the Auditor General's Report decided not to file a Notice of Arbitration.

### **PART THREE: PROCEEDINGS OF THE SPECIAL ARBITRATION**

23. Following consultation with counsel, the practice and procedure to be used in the Special Arbitration were outlined in a letter dated September 3, 2015. A copy of the letter is attached as **Appendix C**.

24. Once the paperwork was in order, a pre-hearing teleconference was held on September 16, 2015 with participating Senators and, at their option, legal counsel or other representatives. In the result further procedural directions were given in my letter of October 2, 2015, a copy of which is attached as **Appendix D**. In summary:

- (i) *RCMP Investigations*

The Special Arbitration would be conducted in complete isolation from any RCMP investigations or subsequent criminal proceedings. The Special Arbitrations would not hear evidence from the same Senate staff as had testified in any criminal proceedings. The Special Arbitration hearings would, as required by its Rules, be held in confidence. Nothing would be done in the Special Arbitrations to prejudice any criminal investigation or other proceedings (or prejudice any Senator involved in such investigation or proceedings).

If a criminal investigation is initiated it will address questions of intent. **My mandate does not involve intent.** My sole preoccupation is with the objective facts put forward by the Senators by way of justification for the monies received by them and challenged by the Auditor General.

(ii) *Hearing on Common Issues*

A hearing on the Special Arbitrations with all Senators (and counsel or other representatives) was scheduled for October 28-30, 2015, to receive evidence and submissions on the following issues that were raised in a number of individual Notices to Arbitrate:

- a. How should the term “*Parliamentary functions*” or “*Parliamentary business*” or “public functions” be defined for purposes of the special arbitrations? What is the permissible scope of “other interests” such as activities for the support of children, persons with disabilities, etc. not directly connected to activities pending before the Senate?
- b. What was the commonly understood rule for determining whether a claim should be classified as Parliamentary functions or business?
- c. The *Senate Administrative Rules* require Senators to exercise “good judgment to ensure the prudent use of resources with particular consideration of the cost to taxpayers”. Is this a stand-alone criterion which is available to invalidate a claim made e.g. in connection with expenses incurred on Parliamentary business? Does it operate as a general basket clause to deal only with situations not covered elsewhere

in the Senate's rules, policies and guidelines? Or both?

- d. In the case of a trip in which a Senator was engaged both on Parliamentary business and private or personal business, on what basis should a Senator's reimbursement have been calculated?
- e. What are the errors, if any, in Deloitte's interpretation of the Senate's rules, policies and guidelines in relation to the audits of Senators Duffy, Wallin and Brazeau, and former Senator Harb. (In this respect, the issue is the interpretation, not the outcome of the particular cases under consideration by Deloitte).
- f. Same as issue (e), but in relation to the Auditor General.
- g. How should the arbitration deal with a situation where it is said that justificatory documentation either never did exist or existed but is now destroyed or lost?
- h. How should the special arbitration interpret "primary residence", "secondary residence", "National Capital Residence" and "provincial residence"?
- i. What rules govern the propriety of travel expenses for retired Senators?
- j. The effect on the present special arbitration of the original acceptance by Senate Finance officials of the claims at issue.
- k. The role of Senate Finance and the extent to which it and its staff provided guidance to Senators and their staff with regard to claimed expenses, and the proper effect, if any, of such guidance and administrative interpretation on the special arbitrations.
- l. In each of the periods under review, what were the rules properly applicable to the travel expenses:
  - a. generally;

- b. regarding spousal travel, and
- c. concerning the 64 point policy.

m. were the rules applicable to claims by Senators for reimbursement for expenses paid directly by the Senator the same as claims in respect of expenses charged to Senate credit cards?

(iii) *Witnesses Called by the Special Arbitration*

Commencing October 28, 2015, the following staff members of the Senate Administration testified:

- Ms. Bonnie Marga, Comptroller
- Ms. Naaz Askari, Manager, Financial Services
- Ms. Melissa Lalande, Audit Project Coordinator

In addition, at the suggestion of counsel for Senator Mercer, the Special Arbitration heard evidence of general Senate practice and procedure from the Honourable Senator James Cowan.

The Special Arbitration then received written and oral submissions from all Senators and counsel (or other representatives) who wished to present argument on the common issues.

(iv) *Hearings of Individual Senators*

The hearings of individual Senators commenced on Monday, November 16, 2015 and continued, depending on the availability of Senators or their counsel, until Friday, January 29, 2016. The Senate was not represented by counsel. The procedure was informal and consisted of a Senator explaining his or her case, assisted or not by counsel or other representation, and responding to questions from the Special Arbitrator.

(v) *Onus of Proof*

It was up to each of the participating Senators to establish on a balance of probabilities [Rule 5.2] that the contested amounts he or she received by way of reimbursement were properly justified. In this exercise the Senator “is to be fully advised of the case to meet” [Rule 3.5]. The “case the

Senator has to meet” was the documentations that he or she filed with Senate Finance to apply for and receive monies to which the Auditor General concluded he or she was not entitled. The Senator was then provided “with a reasonable opportunity to present his or her case” [Rule 3.4]. Some Senators called additional witnesses on their behalf. Other did not.

#### **PART FOUR: INTERPRETATION OF THE SENATE ADMINISTRATIVE RULES, POLICIES AND GUIDELINES**

25. The Senate is a self-governing legislative body. Its affairs are managed by the Internal Economy Committee subject to the overall direction of the Senate.<sup>10</sup> On a day to day basis, much of the management is carried out by the Subcommittee on Agenda and Procedure, (herein referred to as the “Steering Committee”) of the Internal Economy Committee.<sup>11</sup>

26. The principles and policies governing the administration of the Senate are collected in the *Senate Administrative Rules*<sup>12</sup> [herein sometimes abbreviated as “SAR” or “the Rules”] which codify “comprehensively the fundamental principles and rules governing the internal administration of the Senate and its allocation and use of resources”. The SAR further provides in chapter 1:02 s.2 that among the principles of public life that apply to the administration of the Senate are “integrity, **accountability**, honesty and transparency”.<sup>13</sup>

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<sup>10</sup> The *Parliament of Canada Act* provides in s. 19.5 (1) that the Standing Committee on Internal Economy Budgets and Administration may make regulations:

(a) governing the use by senators of funds, goods, services and premises made available to them for carrying out of their parliamentary functions;

(b) prescribing the terms and conditions of the management of, and accounting for, by senators, of funds referred to in paragraph (a); and

(c) respecting all such things as are necessary or incidental to the exercise of its powers and the carrying out of its functions.

<sup>11</sup> SAR Div. 2:02 ss. 3-5 and s. 15

<sup>12</sup> The SAR were first adopted on May 6, 2004, and subsequently amended on June 21, 2007, June 16, 2009, June 5, 2012, and May 28, 2013. The most recent amendments post-dated the audit period.

<sup>13</sup> SAR Div. 1:00 c1:02 ss. 2



27. These “principles of public life” are not new. They have been affirmed in every version of the *Senate Administrative Rules* since the first edition was adopted on May 6, 2004. They constitute the rock on which the administration of the Senate is built and if the public trust is to be maintained they must be respected.

### **Public Trust and Accountability**

28. The Rules reflect the constitutional principle that the Senate is free from the supervision or control of any outside entity including the Courts. Along with that independence the Senators accept the responsibility to conduct their affairs with wisdom and common sense. The *Conflict of Interest Code for Senators*<sup>14</sup>, adopted by the Senate dated May 18, 2005, notes explicitly in s. 2 (1) “that service in Parliament is a **Public Trust**.”<sup>15</sup> The Senate rules, guidelines and policies require the Senate to be administered in the interest of the public, not of the individual Senators.

29. Senator James Cowan testified at the Special Arbitration about the concept of **public trust**:

**Senator Cowan:** Yes, I think I have always considered that I hold a position of trust and that I have to be careful that I don't abuse that trust,

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<sup>14</sup> The Code, first adopted on May 18, 2005, was subsequently amended on May 29, 2008; May 1, 2012; April 1, 2014; and June 16, 2014. Section 2(1) has remained unchanged since the initial adoption of the Code. The amendments of June 16, 2014 changed the name of the Code to the *Ethics and Conflict of Interest Code for Senators*.

<sup>15</sup> The words “Trust” or “Public Trust”, in an appropriate context, appear at least 15 times in Senate policy instruments as follows:

- a. 10 times in 5 different policy instruments specific to Senators: (Conflict of Interest Code, Senators’ Travel Policy, Rules of the Senate, Senators’ Handbook, Senators’ Resources Guide)
- b. 5 times in 3 different policy instruments specific to the Senate Administration: (Code of Conduct of the Senate Administration, Values and Ethics Statement for the Senate Administration, Guide to Implementing the Statement of Values and Ethics of the Senate Administration)

For example, the Senators’ Resource Guide (2012-06-22) (Chapter VI, section 2.1) provides in the context of recruiting staff that the Rules reflect a common set of values and ethical conduct in upholding the public trust. Fairness “integrity and transparency should guide senators’ actions in serving the public interest.”

either in my personal behaviour or in my behaviour as a senator or in the use of the resources that I administer, and I don't believe I have. (tr. 29)

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It is broader [than a lawyer's fiduciary duties]. It is sort of **public** trust. It is reputational. It's how people look at the institution and how they look at you as a member of that institution. [tr. 36]

30. Former Senator Lowell Murray agreed with Senator Cowan and observed:

**Mr. Murray:** Yes, in the sense that [Senator Cowan] and others used it. It's not as being a trustee of a fund or something, but, of course, it is a **public trust** and you have to be able, even if you are appointed with some tenure to the age of 75, if you have any kind of an informed conscience at all, you have to be ready at the drop of a hat to defend what you're doing publicly, I think.

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Well, I start with the proposition it is an immense privilege for a senator to serve, to have a legislative role, a policy role, even to some extent a representational role while not having been elected. I think there is an added burden on senators to so conduct themselves that they are being faithful to what is obviously a **public trust**.

31. The "honour principle" was enshrined in the *Senate Administrative Rules*:

4. Senators act on their personal honour and Senators are presumed to have acted honourably in carrying out their administrative functions unless and until the Senate or the Internal Economy Committee determines otherwise.

[SAR 1:02, s. 4]

### **Use of Senate Resources**

32. Prior to 2001, Senators were eligible for an expense allowance of \$10,800. This allowance was a not taxable as it was granted to Senators for the reimbursement of expenses

incurred in the course of their Senate business. This allowance was a fixed amount, granted monthly, and no justification or receipts were required.

33. These allowances were criticised on the grounds that they were a disguised benefit with preferential tax treatment. For some Parliamentarians (depending on the region they represented), the allowance was greater than the expenses while for others, with greater travel distances, the allowance was plainly inadequate.

34. The non-taxable expense allowance of \$10,800 was eliminated as of January 1, 2001 and replaced with a reimbursement scheme based on case by case justification.

35. The *Senate Administration Rules* affirm a series of guidelines. In particular, Senate resources may only be used “for the service of Canada, and, in particular, for (a) the **parliamentary functions** of Senators and (b) the services of the Senate”<sup>16</sup>. Senators individually may not “allocate, authorize the use of, or use a Senate resource except to carry out parliamentary functions.”<sup>17</sup>

36. Accordingly, the definition of parliamentary functions is central to the issue of justification in the Special Arbitration.

## **PART FIVE: THE DEFINITION OF PARLIAMENTARY FUNCTIONS**

37. This term is defined in SAR Div. 1:00 c. 1:03 as follows:

“**parliamentary functions**” means duties and activities related to the position of senator, wherever performed, and **includes public and**

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<sup>16</sup> SAR Div 3:01 s. 1

<sup>17</sup> SAR Div 3:01 s. 6(1)

**official business and partisan matters**, but does not include activities related to

- (a) the election of a member of the House of Commons during an election under the *Canada Elections Act*; or
- (b) the **private business interests** of a Senator or a member of a Senator's family or household.

\*\*\*\*

**“public business”** means all business carried on by a Senator for public purposes, whether or not authorized by the Senate or the Government of Canada, and **includes official business**, representative business, partisan business and related travel, but does not include attending to one's **private concerns**.

\*\*\*\*

**“official business”** means public business that has been authorized by the Senate or a committee of the Senate or requested in writing by a Minister of the Crown.

[**“Partisan matters”** is not a defined term.]

38. As with all provisions of the *Senate Administrative Rules*, these provisions must be “purposively” interpreted, that is to say the purpose of the rule must first be identified and then an interpretation adopted that best furthers that purpose. For example, the *Senators' Travel Policy 2012* states that Senators “are expected to carefully consider the **purpose of the trip** that was taken and ensure that it **meets the intent of this policy.**”

39. The essential requirement is a public purpose linked to “the position of Senator”. If there is no such demonstrable link then the expenses do not qualify for reimbursement even if such expenses do **not** fall within one of the express prohibitions, namely "private business interests" and "personal concerns".<sup>18</sup>

40. The definition in the *Senate Administrative Rules* is more explicit about what is *not* included than what is included. However, as a matter of constitutional law and practice, the primary role of the Senate is to consider with “sober second thought,” and (if it thinks appropriate) to participate in the enactment of legislation. As the Supreme Court emphasized in the *Senate Reference (2014 SCC 32)*, Senators play an important role in representing their Provinces and Territories in Ottawa, and conversely keeping their home Provinces and Territories in touch with events and developments at the federal level. Senators also play a significant role in questioning, criticizing and holding to account the Government. In the traditional language of Sir Walter Bagehot, it falls to the Houses of Parliament to inform “the Nation of defects in the administration” and even of teaching the Nation – “altering it for the better...teaching the Nation what it does not know.”<sup>19</sup> In modern terms, the field of inquiry extends to the activities of other centers of power or responsibility in the community, such as major commercial banks and corporations, and not just the activities of the federal government itself.

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<sup>18</sup> See Testimony of Senator David Tkachuk:

**Mr. Binnie:** My question is when you, as part of the [Internal Economy] Committee, moved to the requirement to identify purpose [in travel claims], it’s implicit that [Parliamentary function] is not a self-defining concept, that there is some **objective criteria** by which to say this purpose is within **parliamentary function** or parliamentary business, that purpose is not within?

**Senator Tkachuk:** Correct. [Tr. P. 4]

<sup>19</sup> Bagehot, *English Constitution*, pp. 152 and 178

41. Retired Senator Terry Stratton provided some useful insight into the intersection of partisan politics and personal interests, and the importance of an opposition Senator's freedom to march to the beat of his or her own drum with or without the support of Senate colleagues.<sup>20</sup>

Now, what the opposition did -- and it didn't matter whether it was Liberals or Conservatives in opposition --[was] to try and bring forward an issue that would you know, this is politics; we are a political house to embarrass the government, you would bring forward issues and conduct studies that would put the government on the front lines as far as an issue that they were not dealing with. ... the government didn't want you studying it, simply put, because it would be an embarrassment, [but] you went ahead and did it anyway because you knew that it was a credible issue and one that needed to be looked at; and your basic intent was twofold: One was you felt it needed to be studied, and two was to embarrass the government, bluntly speaking.

42. While the task of holding the government to account is primarily located in the House of Commons, it also extends to the Senate as a participant in Parliament's broader role as "**The Grand Inquest of the Nation**"<sup>21</sup>. Indeed former Senator Lowell Murray explained at the Special Arbitration that he did not regard his "constituency work" as a Senator from eastern

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<sup>20</sup> See Testimony of the Honourable Terry Stratton:

**Mr. Binnie:** Over the many years you were in the Senate, was there a sort of evolution of the senators taking on these projects, self-defining issues which they considered to be in the public interest?

**Senator Stratton:** Yes, very much so. -- going back to when we first started to [travel] in the fall of 1993, as I said the profile of senators across the country was very low because they did not travel and people didn't know them; so they were encouraged to get out there. You know, get your butts out of your chairs and travel the country on legitimate issues;

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**Mr. Binnie:** Apart from the politics you've just described, has there been an evolution in the scope of the kind of thing senators have felt free to explore of their own initiative because they had a particular interest?

**Senator Stratton:** Yeah, I think so ... when a senator joined the chamber, they usually came from a background of a specialty that they had in their lives, no matter what it was. They tended to gain profile for themselves and for their political party. They would then pick issues respecting their expertise in that particular field.

**Mr. Binnie:** All right. So was there a sense that if you came with some expertise -- military is an example you gave earlier -- that it was really part of your mandate to continue that interest within the Senate?

**Senator Stratton:** Absolutely. That's why you're put there, to a large degree.

<sup>21</sup> To adopt the traditional description employed by the Supreme Court of Canada in *Canada (House of Commons) v. Vaid*, 1 SCR 667, 2005 SCC 30, at para. 20), citing *Stockdale vs. Hansard* 1839 112 ER 1112 at p. 1156. See also Sir Kenneth Wheare, *Legislators* (2<sup>nd</sup> edition) Oxford University Press, London 1968, p. 1.

Ontario as much different from that of a member of the House of Commons from the same area, except that the latter had the additional incentive of having to get re-elected.<sup>22</sup>

43. Senator Serge Joyal set out a view widely shared by other Senators about the scope of “Parliamentary Functions” in a letter to the Auditor General dated December 18, 2013, which states in part as follows:

In this representational role, senators receive numerous requests to get involved in many different issues and initiatives. Aside from participating in public activities organized by the political parties represented in the Senate, senators are involved in varying degrees of parliamentary associations recognized and supported by the Senate and they are also expected by the public to support matters of public interest given their professional credibility, experience and specific expertise in a given field. Restricting their role to legislative work or the study of public policy is far less than what the public is entitled to expect from their senators.

Individual senators decide how they will assume their responsibilities; it is up to them to determine, depending on the circumstances, how they will fulfill their duties as a representative, which in fact is an integral aspect of legislative work and the study of public policy.

...

It is up to individual senators to decide how they will carry out this responsibility, based on their training and work experience, community involvement, and requests from the public or various communities.

44. Senators bring diverse interests and qualifications to the job which, as Senator David Tkachuk explained, is an essential attribute of the Senate:

You get people that are appointed because of their work in the community; you get people that get appointed because of their work in the political parties; you get people because of their outstanding professional attributes, for example, Frank Mahovlich, who was an

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<sup>22</sup> Former Senator Murray’s submission of 27 August 2015 included the following:

My family and I lived in Pakenham (Lanark County) for some 25 of my 32 years in the Senate and I always exercised conscientiously my advocacy for individuals from that area who sought my help with problems under Canada Pension Plan, citizenship and immigration decisions and even problems relating to highways, zoning and agriculture/environment that were primarily in the provincial or even municipal field.

outstanding hockey player and he got appointed to the Senate. He was a great senator. What was he interested in? He was interested in sports and I think that was a legitimate thing for him to pursue. Dr. Keon was a heart surgeon. He spoke about it everywhere; right? I think that was a legitimate thing for him to pursue. [Tr. p. 10]

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We have another senator ... who is a victims' rights advocate. So somehow, because he was a victims' rights advocate before he was appointed to the Senate, it is now seen [by the Auditor General] as a private issue. To me, I don't see the difference. If you were interested in it before, to me, that makes the reason you were probably appointed, while the other one is something you manufactured while you were here. [Tr. pp. 17-18]

45. Many Senators insisted that their diverse and multiple functions require them to “network” to inform themselves broadly in order to better raise scrutinize and publicize matters of public interest. As former Senator Lowell Murray explained:

In daily encounters with acquaintances in the region, in private, informal meetings with responsible people on all sides of the political contest I took the opportunity to express my own views and to solicit theirs ... this activity – the myriad of private conversations, encounters and renewal and deepening of contacts – is as central to “parliamentary business” as any formal meeting, conference, Senate debate or other public speech or event. **Without question, clearer rules guiding travel and “parliamentary business” are necessary but those rules must identify and respect the unique role of Parliament in Canada’s democratic system and respect the degree of autonomy that is necessary for parliamentarians to carry out their responsibilities.** Many of the important things I learned in 32 years in the Senate arose from informal, un-minuted, often unscheduled meetings or conversations.

46. This view of the importance of information “networking” is also widely shared by other Senators and is undoubtedly an important factor to be taken into account in terms of justification for Senate travel.



47. Numerous excellent reports have been produced by Senate Committees including the Social Affairs Committee's reports on Health Care, Mental Health, and Pharmaceuticals; the Special Committee on Illegal Drugs' report on marijuana; the Human Rights Committee's report on cyberbullying; and the Banking Committee's reports on the penny, and on digital currency. The Kirby Report on Health Care was extensively cited and relied upon by the Supreme Court of Canada in *Chaoulli v. Quebec (Attorney General)*.<sup>23</sup>

48. In summary, the Parliamentary functions of a Senator include:

- attending Senate sessions;
- sitting in committees and sub-committees;
- representing the people of the Provinces, regions or territories for which they were appointed;
- partisan politics;
- inquiring into, publicizing or promoting matters of public interest in their "Grand Inquest of the Nation" role;
- belonging to relevant parliamentary associations and interparliamentary groups;
- pursuing other issues of public interest linked to their role as Senators.

### **Potential for Abuse**

49. The Internal Economy Committee has recognized that a system in which Senators pick their own priorities, and pursue them with the frequency, energy and cost they consider appropriate, is a system *potentially* open to abuse, and this is particularly so when Senators are no longer constrained by an annual travel budget. Hence the increasing insistence on **accountability** and **transparency**.<sup>24</sup>

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<sup>23</sup> *Chaoulli v. Quebec (Attorney General)*, [2005] 1 S.C.R. 791, 2005 SCC 35

<sup>24</sup> SAR Div 1:00 c. 1:02 s. 2

50. However, while the Internal Economy Committee has expressed the need for progressively “clearer rules guiding travel and Parliamentary business”, the fact is that the evolving rules did not *create* the requirements of accountability and transparency but merely added specificity to their implementation.

### **Who Decides the Proper Scope of Parliamentary Functions**

51. Some Senators in the Special Arbitration took the view that "Parliamentary Function" is simply descriptive of what Senators do, and what they do is essentially left up to the individual Senator to decide. It was emphasized that personal job descriptions vary widely.

52. The Internal Economy Committee produced an updated *Senators' Travel Policy* as of June 5, 2012, which in part attempted to clarify the principles "governing the use of Senate resources for travel purposes under the 64 point travel system." Appendix A to the 2012 policy sets out **categories** of funded activities and unfunded activities. This is explained in Appendix A to the 2012 Policy itself as follows:

The table below lists examples of travel typically carried out by senators and their alternates, specifying whether or not the trip is eligible for reimbursement under the 64-point travel system. Although the **list is not exhaustive, it can nonetheless serve as a useful guide** to senators and staff in determining whether or not a particular trip meets the intent of the 64-Point Travel System (i.e. to fund travel incurred in the service of the Senate) and therefore reimbursable from Senate resources. The travel activities are **categorized** as being “fully funded”, “funded with restrictions” or “unfunded.”

The anticipated result of a “categories” approach would be less discretion and subjectivity and greater certainty and predictability. A copy of Appendix A is attached hereto as **Appendix E**.

53. The testimony of Senator David Tkachuk, who became Chair of the Internal Economy Committee in 2010, shed light on some of the categories that Appendix A classified as

“unfunded”. It is clear that some of the categories were identified in response to what had been identified as areas of potential abuse.

### *Fundraising Events*

So we said you can't go to fundraising events just as a participant. You can only charge it off if you are a guest speaker. And then that got abused, so then we cut that off. So fundraising events kind of are out, period. [Tr. p. 8]

### *Charities*

It is the same that is happening with charities. It would be a charitable event that some senator was involved in. He would invite five other senators to come and attend. They would come in, they'd pay the hundred bucks or 200 bucks or 300 bucks and charge off their expenses to travel. After a while we said you can't do that either. [Tr. p. 8]

### *Personal Awards and Tributes*

We ended up saying that if you're getting a personal award, you pay for it yourself. This has nothing to do with public business; this has got to do with you. Before that, people used to go when they would get an award and they would speak and they would expense it. So we had to put limits on that. [Tr. p. 10]

54. The *Parliament of Canada Act* assigns broad authority in matters of accountability to the Internal Economy Committee.<sup>25</sup> The *Senate Administrative Rules* provide in Division 2:02, s. 14, that "subject to the rules, directions and control of the Senate, the Committee has the **exclusive**

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<sup>25</sup> S. 19.6 (1) provides:

19.6(1) The Committee has the exclusive authority to determine whether any previous current or proposed use by a senator of any funds, goods, services or premises made available to that senator for the carrying out of parliamentary functions is or was proper, given the discharge of the parliamentary functions of senators, including whether any such use is or was proper having regard to the intent and purpose of the regulations made under subsection 19.5(1).

(2) Any senator may apply to the Committee for an opinion with respect to any use by that senator of any funds, goods, services or premises referred to in subsection (1).

authority to interpret ... whether any previous, current or proposed use of Senate resources is a proper use for the carrying out of **parliamentary functions**."<sup>26</sup>

55. The exercise of this authority by the Internal Economy Committee has on occasion shown a preference for the flexibility of the underlying policies over the “categories” approach, an example of which lies at the heart of one of the Special Arbitrations, as will now be described.

56. Appendix A states in Category 15 that “attendance in **charity** and other volunteer work” will **not** be funded. Yet when a Senator sought guidance from the Internal Economy Committee, he was advised by letter dated January 20, 2014 that in fact travel related to charity or volunteer events **would** be reimbursed **except** if “the event’s purpose is mainly to raise funds”. This seems an odd interpretation because fundraising is a separate “unfunded” category under Category 14 (i.e. “speaking engagements or attendance at **fundraising** events other than those organized by the Senate”). Essentially the interpretation by the Internal Economy Committee of Category 15 turned Category 14 into something of a redundancy, which is generally a result to be avoided.<sup>27</sup>

57. Similarly, Category 20 states that travel for “meetings and activities related to the senator’s business or private interests (e.g. **board of directors’ meetings** of companies or

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<sup>26</sup> Counsel for Senator Kenny argued the importance of "subject to the rules", but in fact the rules are what the Committee interprets them to mean. See SAR c. 2:02 s 14 (1) and (2).

<sup>27</sup> Letter dated January 20, 2014 from the Clerk of the Senate on behalf of the Internal Economy Committee to Senator Joseph Day:

Article 15 indicates that travel for “attendance in charity and other volunteer work” is not funded. This provision has been the subject of several discussions as to the extent to which an event should be considered as chart or not. Although it is not possible to address all possible situations ... events that are clearly charity, fund-raising events or other volunteer work would not be eligible for reimbursement with Senate funds. **Clearly is the key word and would mean that the event’s purpose is mainly to raise funds**, for example when proceeds for the sale of admission tickets (or part thereof) will be given to an organization; when there are activities that are all related to the purpose of raising funds (silent auction, raffles...).

**charitable organizations;** meetings with clients, supplies, and other stakeholders, etc.) is **not** funded.”

58. Charities of course cover an enormous range of activities, from Ducks Unlimited Canada to the Bishop Strachan School Foundation to the Shaw Festival Theatre, all of which are worthy causes or they would not have charitable status. However, many of them would have little if any connection to **Parliamentary functions**. Moreover, when an individual sits on a Board he or she owes a fiduciary duty to the organization and is doing the work of the charity not the work of the Senate. Nevertheless, in the same January 20, 2014 letter the Internal Economy Committee ruled that the real issue was not **if** the Senator was a member of the Board but **why**<sup>28</sup> was he or she appointed to the Board.

59. In other words, the approach sought to be introduced by Appendix A to make greater use of “categories” of unfunded activities such as expenses for “attending director meetings of companies or charitable organizations,” was diluted in favour of a more *ad hoc* approach

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<sup>28</sup> The letter from the Clerk of the Senate dated January 20, 2014 written on behalf of the Internal Economy Committee to Senator Day, goes on to state:

Article 20 indicates that travel for “meetings and activities related to the senator’s business or private interests (e.g. board of directors’ meetings of companies or charitable organizations; meetings with clients, supplies, and other stakeholders, etc.)” is not funded. This is another area of discussion and senators should ask themselves the following questions to help determining if this is related to parliamentary functions or not:

- Is the travel required to achieve an objective that contributes to Senate work:
- If I was not a senator, would I, or my alternate, still be taking this trip?
- If I had to publicly respond to questions about how this trip was related to my parliamentary functions, would I feel comfortable doing so?

The above questions appear in section 2.7.6 of the Policy. In relation to serving on certain public organizations as a Board Member, some other questions are also relevant.

- Is remuneration provided to the Board Member (Senator)?
- Is the organization reimbursing, or offering to reimburse, travel expenses to attend the Board meeting?
- Would the Senator remain a Board Member if he was not a Senator? If so, would remuneration and reimbursement of travel expenses be provided then?

The example you provide for the board of Battlefields Foundation certainly appears to meet the definition of parliamentary functions. You might want to reflect on the above questions and determine if there are elements that should be considered.

whereby a series of questions is given to the Senator to self-interrogate and answer to his or her own satisfaction, subject of course to potential after the fact scrutiny by the Internal Economy Committee.

60. A copy of this exchange of correspondence is attached hereto as **Appendix F**.

61. The evidence is that the Internal Economy Committee generally exercised its authority in matters of Senate expenditures by rulings in individual cases (where decisions are in practice treated as confidential, even within the Senate), and by issuing guidelines, as in the *Senators' Travel Policy* and various *Handbooks on the Uses of Senate Resources*. Some Senators expressed frustration that relevant and more precise information about travel policy is not more widely disseminated.

62. In summary, many of the Senators in the Special Arbitration complained that despite the help and guidance of Senate Finance staff, and the unequivocal requirement of “integrity, accountability, honesty and transparency,” the expense “rules” are still on occasion difficult to apply. Notwithstanding the efforts of the Internal Economy Committee in recent years, they say, there is no satisfactory mechanism to bring about the level of precision or clarity in the rules and their operation that the Auditor General seems rightly or wrongly to have expected.

63. In my view, however, the problem for many of the Senators singled out by the Auditor General was not so much the clarity of the rules as it was a casual attitude towards the limits of their entitlement.

## **PART SIX: GENERAL PRINCIPLES OF TRAVEL ENTITLEMENT**

64. The *Senator's Travel Policy 2012* was adopted by the Internal Economy Committee effective 5 June 2012, in the middle of the audit period. It was argued on behalf of some Senators that the 2012 policy represented a significant change from the travel policies that applied in the earlier months of the audit period. In part this is true. More restrictive limits were placed on spousal travel and staff travel for example. Further, as Senator Donald Plett explained, “before the changes were made ... if it was Parliamentary business, I would fly from anywhere in the country to anywhere in the country. ... I really think that was tightened up to saying, No, you have to fly from your region, because they thought it was being abused too much and people were making maybe personal trips.” [Tr. p. 14]

65. However, in broad terms, according to the evidence, the objective of the Internal Economy Committee in 2012 was to flesh out the long standing principles of accountability and transparency, provide greater precision in their practical day to day application, while addressing (as stated earlier) some areas of potential abuse. It was a series of refinements not departures.

66. The 2012 policy affirmed that “travel is a necessary component of senators’ parliamentary functions. Parliamentary functions are typically carried out in Ottawa and senators must travel to and from their primary residences in order to attend Senate sittings and committee meetings. Parliamentary functions are also carried out in senators’ regions and, from time-to-time, senators may be required to travel to other locations, both within Canada and internationally, in the service of the Senate.”<sup>29</sup>

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<sup>29</sup> Policy 2.1.1

67. Accordingly, individual Senators are entitled to have paid or reimbursed a cost that is "actually incurred, **reasonable** and authorized and is either an allowance or is supported by a receipt or other documentation."<sup>30</sup>

68. The **authorization** is essentially self-authorization. If an individual Senator decides to travel from Ottawa to Winnipeg or St John's on Parliamentary business (other than as part of Committee work) his or her office simply makes the necessary arrangements. No prior authorization by anyone else in the Senate is required for domestic travel (although on occasion prior authorization is requested and obtained). For travel expenses the Senator either utilizes a Senate credit card and, after the fact, provides supporting documentation, or pays out-of-pocket and claims reimbursement supported by the appropriate documentation.

69. Senators are required to state on their travel claims the purpose of the trip. Prior to 2012, many Senators simply put "Parliamentary business" or "Senate business" but, as Senator David Tkachuk pointed out, Senators had in previous years still been expected to "keep information for the purposes of an audit, in case there's an audit, because **we had already started an audit process in 2009** and had actually done an audit of expenses by senators." [Tr. p. 4]

#### **A Senator Bears Only the "Incremental" Cost of Personal Activities**

70. The *Senate Administration Rules* provide that Senators can travel for a mixture of purposes that include Parliamentary functions and personal or other business. In the case of a trip undertaken predominately for Parliamentary business with some incidental personal purpose added on, only the resulting "direct cost to the Senate" for the "personal purpose" must be paid

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<sup>30</sup> SAR c 4:03 --travel entitlements -- s. 10



by the Senator.<sup>31</sup> In other words, for example, taking a four day trip to Vancouver where three days are spent on Parliamentary business and one day on personal business, the cost of the flight is not apportioned three quarters to the Senate and one quarter to the Senator. The Senator is reimbursed for the full cost of travel except the INCREMENTAL portion of the cost directly attributable to the private purpose. In this example, there would be no incremental cost associated with the flight itself but there might be some incremental cost associated with the personal business, such as an extra hotel night. Article 2.18.1.3 of the 2012 *Senators' Travel Policy* requires that "when Senate-related travel is combined with private business or personal travel, supporting documentation should clearly differentiate between the two in order to establish the amounts that are reimbursable." This policy was not new in 2012.

71. Article 2.18.1.3 (b) of the 2012 Policy points out, with considerable prescience, that while submission of more extensive "purpose" documentation remained "optional", files that are "well documented ... provide a higher level of transparency and minimize the potential that senators will face undue scrutiny during audits and reviews."

72. **There is no allegation that any of the expenses in issue were not actually paid.** Every claim in the Special Arbitration was accompanied by travel documentation including hotel accounts, tickets, boarding passes and chits, checked and double checked by the Senate Administration.<sup>32</sup>

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<sup>31</sup> SAR c 3:01 s 6(3)

<sup>32</sup> The standard Senate Travel Expense Claim used in the audit period requires a Senator to certify that "the foregoing expenditures have been incurred by me as Parliamentary functions as defined in the Senate Administrative Rules". From time to time Senators receive information or meet informants where there is a "need for confidentiality", as recognized in the 2012 Policy Article 2.18.2.1. While this was emphasized

73. At issue in the Special Arbitrations, therefore, is the JUSTIFICATION for the challenged reimbursements incurred in the audit period in the alleged discharge of "Parliamentary functions", and the reasonableness and appropriateness of the expenditures thus incurred.

#### **PART SEVEN: THE AUDITOR GENERAL'S REPORTS**

74. In June 2012, the Auditor General reported the results of a performance audit of the Senate Administration. In his most recent 2015 Report, he observes that in his earlier 2012 report:

“We concluded that, while the Senate Administration reviewed and authorized transactions, improvements were needed so that documentation would be sufficient to demonstrate that the transactions were for parliamentary business. **In that audit, we did not examine individual expenses incurred and claimed by Senators.**” (p. 4)

75. On 4 June 2013, following questions about the living expenses incurred by Senators Patrick Brazeau, Michael Duffy and Mac Harb, and about travel and living expenses claimed by Senator Pamela Wallin, the Leader of the Government in the Senate presented a motion in the Senate, requesting that the Auditor General of Canada conduct a comprehensive audit of Senate expenses, including Senators' expenses.

76. On 6 June 2013, the Senate adopted that motion.

77. The Auditor General accepted the Senate's request on 7 June 2013.

### **Fresh Evidence of Justification**

78. In many instances the Auditor General concluded that if a Senator did not produce supporting documentation requested by his staff the expenditures had not been adequately justified.<sup>33</sup> In Senator Sibbeston's case for example:

**Mr. Binnie:** ....Here you recall the purpose of the trip. You identified that, the Auditor General knew that's what you did, and you think the problem was he said, well, you say you visited with the chief but I don't know that you visited with the chief.

**Senator Sibbeston:** Exactly that. He wanted to see hard evidence that I

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**Mr. Binnie:** That you did what you said you did.

**Senator Sibbeston:** Yeah, I did.

[Tr. p. 19]

79. Some Senators complained that it was impossible to produce documentation to the Auditor General sometimes years after the expenditures were made. Their complaint is that they had produced documentation sufficient to satisfy Senate Administration under the then existing rules and had discarded the rest (or never collected it in the first place). Former Senators who had closed their Senate offices and disposed of the contents felt particularly disadvantaged by the Auditor General's approach.

80. Some Senators complained that the Auditor General's office was not forthcoming with its concerns until late in the process, and that when further documentation was required it was difficult to obtain on short notice, and when eventually submitted by the Senator or his office it

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<sup>33</sup> Under the 2012 Senators' Travel Policy a Senator could submit "on an exceptional basis" a written declaration that the expense had indeed been incurred.

was said by the Auditor General's staff to be too late to be considered. In the case of Senator Sibbeston, for example:

One of the things that you come up against is these things get examined based on what was required to be submitted at the time that you did it and then they say that's not sufficient information. In the case of the hospitality claims, we didn't get those until the end process. We only got the list of what hospitality claims were being denied after the Auditor General's report was released. So we didn't even have the opportunity to respond to those.

Again, as I say, this has been a fairly frustrating experience.  
[Tr. p. 43]

### **THE AUDITOR GENERAL'S OFFICE WAS NOT AT LIBERTY TO MAKE DOCUMENTS AVAILABLE TO THE SPECIAL ARBITRATIONS**

81. At the outset of the Special Arbitration, I approached the Office of the Auditor General to determine what documentation was in his files with respect to the claims of various Senators identified in his report. However, I was advised by the Auditor General's staff that although his office could (and did) provide a detailed reconciliation of his calculations with the original Expense Claims Forms, his office was bound by an understanding of confidentiality with the Senators and could not comply with my request. It was left up to the Senators to provide the Special Arbitration with whatever documentation was available to them to justify the expenditures called into question by the letters from the Internal Economy Committee dated June 5, 2015.

### **Approval of Reimbursement Claims by Senate Finance**

82. A number of Senators in the Special Arbitrations argued that approval of their expenses by the Senate Administration should be conclusive of their justification. However Senate Administrative staff is generally not in a position to question a Senator's interpretation of his or

her view of “Parliamentary functions” or “Senate business”. Apart from anything else, the information received by the Senate Administration about the purpose of the Senator’s travel for most of the audit period, lacked transparency.<sup>34</sup> The role of the Senate staff was to verify that the accounts were documented and accurate and, where a serious concern was raised about the purpose of the travel, to submit the issue up the hierarchy to the Internal Economy Committee.

83. The Senate staff did from time to time, especially after the *2012 Travel Policy* came into effect, consult with websites of Senators and other sources of information to confirm that the stated purpose of travel was credibly linked to the Senator’s declared Parliamentary interests and activities.

84. It cannot be correct, as some of the Senators argued that the Senate should now be “estopped” from putting in issue expense accounts previously approved by Senate staff. If this position were correct there would have been no request by the Internal Economy Committee, which is the ultimate arbiter of the Senate rules, to call for a review by the Auditor General. By definition, the Auditor General reviewed only claims by Senators that had previously been approved by the Senate Finance Administration.

85. Similarly, the establishment by the Internal Economy Committee of this Special Arbitration procedure re-opens not only the approvals of the Senate Administration but also,

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<sup>34</sup> Ms. Naaz Askari" From April 2011 to June 30 2012 our travel guidelines did not specify to what level of detail the purpose would be required on claims. Often we would see Parliamentary business or Senate work or something along those lines. It was brief. Our instructions and our process was not to question it further. " (tr. p.7) [effective July 1 2013 "a specific purpose became mandatory on expense claims"]. However, this requirement post-dated the audit period.

potentially, provides a further review of the adverse findings against certain Senators by the Auditor General, albeit based on an expanded documentary record.

## **PART EIGHT: THE ACCOUNTABILITY PRINCIPLE**

86. The *Senate Administrative Rules* affirm that a fundamental principle of public life, as mentioned, is accountability.<sup>35</sup> A Senator who cannot provide clear and convincing evidence of justification, whether written or oral, does not meet the onus of proof and fails the accountability test.

87. While the procedures to ensure accountability have been amended from time to time, particularly in 2012, the general obligation of accountability has been front and centre in the *Senate Administration Rules* from the outset. Moreover, when adopting the Deloitte audit of Senator Pamela Wallin's travel expenses dated August 2013, the Internal Economy Committee treated the “changes” introduced during the audit period by the *Senators' Travel Policy 2012* as, in that case, matters of detail and implementation rather than fundamental principle. It observed:

In conclusion, this Committee is in agreement with the assessments that Deloitte has made in its Report. We wish to acknowledge that Deloitte's application of the Senate's policy framework and principles, with consideration to general practices where available has been fair with regard to the claims in question.<sup>36</sup>

88. The argument of some Senators that the review by the Auditor General was unfair (or, as one counsel put it, “retroactive”) was a matter for the Internal Economy Committee to decide.

The decision to call in the Auditor General was endorsed by the full Senate on June 6, 2013.

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<sup>35</sup> SAR (2009) Division 1:00, Chapter 1:02, s. 2

2. The following principles of public life apply in the administration of the Senate: integrity, accountability, honesty and transparency. [2004-05-06]

<sup>36</sup> Memorandum from the Clerk of the Senate to all Senators dated February 24, 2014.

## **PART NINE: LIMITATIONS ON TRAVEL ENTITLEMENT**

89. Some of the Notices to Arbitrate concern the application of some of the objective restrictions on Senator's travel.

90. The *Senators Travel Policy* 2012 established some limits as follows:

### **(a) The 64-Point Travel System**

91. A Senator travelling to and from Ottawa to his home in the Northwest Territories, for example, incurs much higher costs than a Senator who lives in Montreal.

92. The 64-point travel system ensures that all Senators have access to the same travel resources regardless of which region in Canada they represent or in which province or territory they live.<sup>37</sup> Travel points are allocated at the beginning of each fiscal year and each Senator is allowed 64 travel points for that year. A trip to Vancouver for a BC Senator results in the same deduction of points as a trip home to Toronto for an Ontario Senator even though the cost of the flight to BC is much higher. Points, or partial points, are deducted whenever a travel expense claim is submitted. When two or more individuals travel together (e.g. a Senator and his or her designated traveller) points are deducted for each traveller for whom expenses are claimed.<sup>38</sup>

### **(b) Designated Traveller**

93. Each Senator may "designate" one traveller for special travel privileges each year, usually the spouse. While a spouse does not have "parliamentary functions" as such, it is clear from a purposive interpretation of the rules governing spousal travel that its purpose is to enable what

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<sup>37</sup> Of course an error in claiming travel expenses for a northern Senator may have much greater financial consequences. Reimbursement for a wrongly claimed flight from Toronto to Ottawa will hit a Senator's pocketbook more lightly than a return flight to Whitehorse.

<sup>38</sup> *Senator's Travel Policy*, 2012 s. 2.5.1 and 2.5.2

the Senate Administration refers to as “family reunification”.<sup>39</sup> Senators are frequently away from home either in Ottawa or elsewhere on Senate business. On May 28, 2013, *after* the audit period, the *Senators Travel Policy* was further amended effective July 1, 2013 to provide that the designated traveller is expected to travel with the Senator or for the purpose of joining the Senator. The evidence is that this underlying purpose was not new in 2013 and, as stated earlier, the rules have to be interpreted in light of their purpose. The purpose of spousal travel was never simply a non-taxable benefit or a basket of free airplane rides.

**(c) Staff Travel**

94. A member of a Senator’s staff is limited to travel between the Senator’s province or territory and the NCR and/or within the Senator’s province or territory, up to a maximum of eight (8) points per fiscal year, per Senator. Additional staff travel with the Senator; up to a maximum of two (2) points per fiscal year, per Senator, is also permitted.

**(d) International Travel**

95. International travel by individual Senators (as distinguished from their travel as part of a Senate committee) to destinations other than Washington or New York will not be reimbursed except if undertaken with the **advance** approval of the Internal Economy Committee.<sup>40</sup>

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<sup>39</sup> See now STP Policy 2.6.4

Designated travelers: travel shall be limited to:

- travel between the senator’s province or territory and the NCR;
- travel with the senator within the senator’s province or territory;
- travel elsewhere in Canada, up to a maximum of six (6) travel points per fiscal year.

Dependent children: travel shall be limited to:

- travel between the senator’s province or territory and the NCR.

<sup>40</sup> Effective June 5, 2012, such international travel was limited to a single trip per year, and required approval of IEC at least 30 days prior to departure. Effective July 1, 2013, international trips were no longer eligible for reimbursement.



**PART TEN: THE SENATE RULES, GUIDELINES AND POLICIES GIVE RISE TO A NUMBER OF QUESTIONS SENATORS ARE EXPECTED TO ASK THEMSELVES BEFORE EMBARKING ON TRAVEL AT PUBLIC EXPENSE**

96. The *Senate Administrative Rules* and related policies essentially put the onus on the Senators themselves to justify travel for a “**Parliamentary Function**”. They are given much discretion but in exercising that discretion there are questions the *Senate Administrative Rules* require Senators to ask themselves, and in many cases the Senators undoubtedly did so. My mandate is to look at the details of the expenses challenged by the Auditor General and to offer an opinion as to whether any or all of them pass muster in terms of:

- (a) the primary or dominant purpose of a trip;
- (b) the reasonableness of an expenditure;
- (c) its cost-benefit; and
- (d) proportionality between a Senator’s objective and the overall *cumulative* cost spent or proposed to be spent on achieving that objective.

My assessment is based on the Senate rules, guidelines and policies in effect at the time the public money was spent.

**A. The Dominant Purpose Question: The Rules require that Parliamentary Function Be The Primary Or Dominant Purpose Of The Travel**

97. The *Senators’ Travel Policy 2012* obliges Senators to assess travel plans in light of the following self-interrogation (which can hardly be said to break new ground in the middle of the audit period)<sup>41</sup>:

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<sup>41</sup> The question are designed to assist Senators to focus on the requisite link to parliamentary function. As Senator David Tkachuk explained:  
I have always believed that if I was going to travel somewhere, I would be travelling on parliamentary business, i.e., I was invited to make a speech on a public forum or on public policy or a political speech at a

- “Is the travel required to achieve an objective that contributes to Senate work?”
- If I was not a senator would I, or my alternate, still be taking this trip? If the answer is yes, then that is a good indication that the travel is unrelated to parliamentary functions and vice versa.
- If I had to publically respond to questions about how this trip was related to my parliamentary functions, would I feel comfortable doing so?”

**Any personal business must be “minor, customary and reasonable.”**

98. The *Senate Administrative Rules* provide that a Senator may use a Senate resource "for **personal** purposes where such use is **minor**, customary and reasonable."<sup>42</sup> The sidebar to the section in the *Senate Administrative Rules* is "**incidental** personal use". Sidebars are often a useful guide to interpretation. The word "incidental" makes it clear that the *Senate Administrative Rules* contemplate a "dominant" purpose and an "incidental" purpose in the use of Senate resources. Only where the personal purpose is "incidental" to a dominant Senate purpose does the "incremental expenses" rule apply.

99. On the other hand, if a trip is taken primarily for personal reasons, but some minor piece of Parliamentary business is added on, there is equally no apportionment. The incremental expenses attributable to the minor and incidental piece of Senate business would, if incurred as a direct result of the Senate business, be reimbursable. The principal cost of the trip would not be reimbursable because the dominant purpose was personal.

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political event, but it wasn't to - - it wasn't to visit my relatives. It wasn't personal. It wasn't to go on a holiday. It wasn't any of those things. It was to conduct parliamentary business. [Tr. p. 4]

<sup>42</sup> SAR c. 3:01” Allocation and Use of Senate Resources”, s 7(1)

100. For example, if an Ontario Senator with an interest in national security goes to Lake Louise for a week's ski holiday and incidentally asks to see the supervisor of airport security at Calgary Airport on her way back to Ottawa just to see how "things are going", the dominant purpose of the trip is personal. Reimbursement would be limited to incremental expenses, if any, associated with the visit to airport security. On the other hand, if the same Senator goes to Calgary for a security conference and stays over the week-end to go to Lake Louise to ski, the dominant purpose is her Parliamentary function at the conference, and all expenses of the Ottawa/Calgary/Ottawa trip are reimbursable except for those expenses directly caused by the week-end side trip. As Ms. Naaz Askari testified, "If the **primary** reason for them to travel was for their Parliamentary function, then the transportation to and from, we would typically reimburse in full." (Tr. p. 9). On the other hand, if the dominant purpose was personal there would be no reimbursement, as Senator David Tkachuk explained:

-- if you were there for three days and didn't charge the Senate any extra money and it didn't cost any money, we didn't care. But three weeks, that looks like you kind of planned your trip around this, so therefore no [reimbursement]. [Tr. p. 6]

101. The "dominant purpose" test was standard Senate policy, as stated by Nicole Proulx, the senior official in Senate Finance:

If a determination was made that the main purpose was not related to parliamentary functions; **no expenses would be paid.**<sup>43</sup>

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<sup>43</sup> See letter to Senator Tkachuk from Nicole Proulx, then Chief of Corporate Services Officer and Clerk of the Standing Committee on Internal Economy, Budgets and Administration, dated March 30, 2015:

**Main purpose of travel** (assessment as to whether the main purpose of travel is related to parliamentary functions – this would be flagged in situations of longer periods of stopovers; and additional information

102. In the 2014 edition of the *Senators' Travel Policy* the same principle was affirmed after the audit period:

When Senate-related travel is combined with private business or personal travel, any additional expenses incurred as a result of the private business or personal travel must not be claimed (e.g. meal per diems on personal days, taxis, incremental costs of flights and additional nights of accommodation). **At all times, the main purpose of travel must be related to senators' parliamentary functions.**

As will be seen, by far the greatest source of claims challenged by the Auditor General and disallowed in the Special Arbitrations is the failure by some Senators to respect the difference between personal travel and travel on Senate business.

#### **B. The "Reasonableness" Question**

103. These policies require Senators to consider both the overall reasonableness of a proposed trip as well as "due economy" in the choice of travel options, e.g. to take a recent example, purchasing a full fare business class ticket from Ottawa to Vancouver for \$6,315.00 when a "lowest" business class fare on the same Air Canada flight was only \$2,906.00.

#### **C. The Cost Benefit Analysis**

104. The *Senators' Travel Policy 2012* provides that "spending public funds on travel is a sensitive matter" and Senators are expected to have "due regard to the need, frequency, **cost** and purpose as it relates to a senator's parliamentary functions."<sup>44</sup>

105. Balancing cost against need, frequency and purpose clearly requires a cost-benefit analysis.

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would be sought. If a determination was made that the main purpose was not related to parliamentary functions; no expenses would be paid.

<sup>44</sup> 2012 Travel Policy 2.1.3

106. As Senator David Tkachuk wrote in his submission to the Special Arbitration dated August 24, 2015:

“The OAG [Office of the Auditor General] and I agree on ... the need for Senators to use:

“Due regard – Good judgment to ensure the prudent use of resources, with particular consideration of the cost to taxpayers.” [p. 7]

107. An assessment that the benefits outweigh the cost is a fundamental control that, in most cases, is exercised by the Senator. As Senator Donald Plett testified:

**Senator Plett:** ... I have always believed sitting across from somebody face to face is much more productive and has many more benefits than doing something by telephone.

**Mr. Binnie:** But you still weigh it against the cost.

**Senator Plett:** You have to weigh it against the cost, certainly, but I think you have to do that on a case-by-case basis. [Tr. p. 9]

108. With respect to the audit period, however, the self-assessment has been subjected by the Senate itself to the scrutiny of the Auditor General and, if a Senator has filed a Notice to Arbitrate, the cost-benefit justification is part of the Special Arbitration.

109. The effect of a cost-benefit analysis is that it is not enough for an expenditure to be *related* to a “Senator’s Parliamentary functions”. Due regard must also be had to weighing the cost in relation to the need, frequency and purpose and overall reasonableness.<sup>45</sup> One trip to Vancouver to be briefed by a journalist on an issue relevant to parliamentary functions might be justified; monthly trips to be briefed by the same journalist on the same topic might not be.

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<sup>45</sup> Senator Donald Plett testified:

**Senator Plett:** ... I have always believed sitting across from somebody face to face is much more productive and has many more benefits than doing something by telephone.

**Mr. Binnie:** But you still weigh it against the cost.

**Senator Plett:** You have to weigh it against the cost, certainly, but I think you have to do that on a case-by-case basis. [Tr. P. 9]

110. Some counsel questioned the source of the Auditor General's proposition that Senators should exercise "**good judgment to ensure the prudent use of resources with particular consideration of the cost to taxpayers.**" Some Senators complained in the Special Arbitration that the Auditor General was conducting a "value for money" audit which they considered to be completely inappropriate, given the nature of the Senate and its work.

111. In my view, the Auditor General in this proposition is doing no more than paraphrasing the cost benefit provision of the *2012 Travel Policy*. He is also invoking the more general principle of accountability, and expressing in audit terms an important aspect of the "public trust." It is true that these principles must be applied in the context of Senate work and having due regard to Senators' independence. Senate money is not spent on tangible things like battleships or airports. What "value" can be placed on meetings with residential school survivors? or vulnerable people targeted by discrimination or hate speech? or community activists engaged in the promotion of minority French language rights?

112. There is no doubt that "value for money" is a difficult concept to apply to a legislative body at the heart of our constitutional arrangements, but as Senator Donald Plett put it "...So I think we are much more cognizant of the **public trust** aspect, so I suppose if there is anything good out of a \$25-million audit is the fact that we are all maybe a little more reminded that we need to make very sure that we cross all our T's and dot all our I's and ask ourselves very, very clearly, "**Is this the best use of taxpayer dollars?**"

#### **D. Proportionality Question**

113. It is right that a very broad discretion is left to members of the Senate to pursue the public interest as they conceive it. This results in the expenditure of significant amounts of public

money. It is therefore to be expected that a Senator, acting responsibly, would ask himself or herself whether his or her expenditure of public monies is seriously out of proportion to the public interest sought to be achieved.

114. A particular Senator may take an interest in the rosebush hybridizing program undertaken with great success by Agriculture Canada at the Experimental Farm in Ottawa and at Morden, Manitoba. However, it might be questioned whether this particular sliver of the public interest justifies a series of coast to coast business class inspection tours.

115. The principle of proportionality seems to have been applied by the Internal Economy Committee to Deloitte's audit of Senator Pamela Wallin. In that case, as mentioned earlier, a number of "networking events" were put in issue, and the "networking" element of "parliamentary functions" was referred by Deloitte to the Steering Committee of the Internal Economy Committee for comment. Deloitte reported that "The Steering Committee determined that, while occasional exceptional occurrences for special events might be acceptable, the volume and pattern of the events listed would not qualify them as Senate business". (p. 4)

116. In other words, while the Senator's networking activities were accepted as a legitimate part of her Senate role, as she conceived it to be, taken *cumulatively* the volume and frequency of networking travel was considered by the Internal Economy Committee to be *disproportionate* to her Parliamentary functions.

## **PART ELEVEN: SUMMARY OF THE ACCOUNTABILITY PRINCIPLES**

117. The Senate has rightly adopted a broad view of "Parliamentary functions". The Senate takes the view that legislators should not be hindered in the topics they pursue. Reliance is

placed on each Senator's honest view of what he or she considers to be in a public interest linked to his or her Parliamentary functions.

118. Abolition of the \$10,800 travel budget limit as of January 1, 2001 has in effect greatly increased each Senator's *potential* access to travel money.

119. The introduction of a "category" approach in Appendix A was a helpful attempt to provide greater clarity and predictability but, as mentioned, subsequent interpretation of the categories may have served to weaken rather than strengthen this reform.

120. Once a Senator has decided that travel is linked to his or her "Parliamentary function", there remain a series of questions to be resolved by the Senators under the general guidance of the Internal Economy Committee:

- (a) Is the primary or dominant purpose of the trip linked to the Senator's Parliamentary functions?
- (b) Are the expenses reasonable in all the circumstances?
- (c) Can it be said, when due regard is had to "the need, frequency cost and purpose" of the Senator's expenditures, that the public benefit justifies the cost?
- (d) Is the Senator's expenditure of public monies on an issue or activity viewed in its totality, rather than in terms of individual items, markedly out of proportion to the public interest sought to be achieved?



## **Conclusion**

121. Taken together, these policies, rules and guidelines circumscribe in a general way a Senator's discretion in the expenditure of public funds, while leaving the individual Senator a good deal of independence in defining and pursuing his or her Senate career.

122. I will now turn to the application of these accountability principles in the context of the Special Arbitrations initiated by the Senators themselves.

# APPENDIX A

## DISPUTE RESOLUTION PROCESS

### RESOLUTION OF THE STANDING COMMITTEE ON INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

#### 1. Report from Senate Administration

1.1 The Senate Administration shall report to the steering committee on:

- i. any use by a Senator of Senate resources that does not appear to be related to the Senator's parliamentary functions or that contravenes an Act, administrative rule, policy, guideline or directive in force; and
- ii. any question relating to an amount of money paid to a Senator to which that Senator is not entitled and for which the Senate would be entitled to demand a reimbursement.

#### 2. Preliminary review

2.1 Once it has been apprised of a matter by the application of paragraph 1.1, the steering committee conducts a preliminary review. The steering committee may also conduct a preliminary review of questions mentioned in paragraph 1.1 on its own initiative.

2.2 Any preliminary review must be conducted in a confidential manner, and anyone participating in this process is required to respect its confidential nature and to cooperate with the steering committee.

2.3 The steering committee shall send the Senator who is the subject of a preliminary review written notice and inform him or her of the grounds and any other information relevant to its decision to undertake a preliminary review.

2.4 The Senator who is the subject of a preliminary review shall have 10 days, after receiving notice pursuant to paragraph 2.3, to present observations. The steering committee may extend the deadline when circumstances warrant.

2.5 During the preliminary review and, as the case may be, the dispute resolution process described in section 3, the Senator shall have access to the relevant documentation.

2.6 Following its preliminary review, the steering committee may conclude that

- i. there are insufficient reasonable grounds to conclude that the Senator received an overpayment or made an improper use of Senate resources; or
- ii. there are reasonable grounds to conclude that the Senator received an overpayment or made an improper use of Senate resources. In this case, the steering committee shall require the senator to reimburse the overpayment or the value of the improper use of resources.

2.7 The steering committee may also render a decision on the Senator's future access to Senate resources.

2.8 The steering committee shall send the Senator a copy of its decision.

2.9 If the steering committee requires the Senator to reimburse an amount of money, the Senator has 15 days to:

- i. reimburse the amount established under paragraph 2.6; or
- ii. provide the Chair of the Committee with written notice that he or she wishes to make use of the dispute resolution process described in section 3 ("Notice of Arbitration").

2.10 A Notice of Arbitration suspends the implementation of a steering committee decision made pursuant to this section.

#### 3. Dispute resolution process

3.1 The Steering Committee shall name a Special Arbitrator to determine whether the senator in fact received an overpayment or made an improper use of Senate resources. The Special Arbitrator shall be impartial and shall be chosen for his or her knowledge and experience.

**3.2** For purposes of the Special Arbitrations, the parties shall be the Steering Committee and the Senator from whom reimbursement is claimed.

**3.3** The Senate will designate an official to act as Registrar for the receipt and distribution of documents submitted by the parties.

**3.4** The Special Arbitrator shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case.

**3.5** The Special Arbitrator has the full discretion to devise a procedure which, while respecting all aspects of due process, is proportionate to the amount in issue and the seriousness of the allegation against the Senator. The Special Arbitrator shall ensure that the Senator is fully advised of the case to meet including the provision of copies of relevant documents in the possession of the Senate, and to permit the Senator to submit written and oral evidence and to present submissions in writing or in person and to attend any oral hearing of the dispute, alone or with accompaniment.

**3.6** The Senator shall be entitled to an oral hearing if requested. Any such oral hearing will be recorded and transcribed by a qualified stenographer. A copy of the transcript will be provided to the Senator and to the Steering Committee and shall form part of the confidential record of the arbitration as described in article 3.15.

**3.7** The Special Arbitrator shall conduct the arbitration in a confidential manner and proceed as quickly as circumstances permit. Anyone participating in the arbitration process is required to respect its confidential nature and to cooperate with the Special Arbitrator.

**3.8** The parties shall do everything necessary for the fair, efficient and expeditious conduct of the arbitration.

**3.9** Within 30 days of delivery of the Notice of Arbitration, the Senator shall send to the Special Arbitrator and the Steering Committee and file with the Registry a statement of the grounds of dispute.

**3.10** At the time of delivery of the grounds of dispute, or so soon thereafter as is practical, the Senator will identify any relevant documents in the possession or control of the Senate that he or she wishes to have produced for the purpose of the arbitration, file any additional documents on which the Senator wishes to rely, and submit a short written statement of submissions. At this time, the Senator will indicate whether he or she wishes an oral hearing before the Special Arbitrator for the purpose either of hearing witnesses or making oral submissions either personally or through a representative.

**3.11** Upon receipt of the Senator's submission, the Special Arbitrator may request from the Senate such documents or other information that the Special Arbitrator considers appropriate.

**3.12** The Special Arbitrator has the discretion to extend any time limit and to permit a party to amend, supplement or correct the grounds relied upon at any stage of the proceeding.

**3.13** The scope, nature and time of the production of documents will be in the discretion of the Special Arbitrator.

**3.14** The number of witnesses and duration of the proceedings will be determined by the Special Arbitrator within the limits permitted by due process.

**3.15** All documents and witness statements together with any transcript of an oral hearing will be part of the confidential record of the special arbitration proceeding.

**3.16** Witness statements shall be in a written form that is either sworn to or affirmed by the witness. If there is to be an oral hearing, the written statements shall be delivered at least 14 days in advance. If there is to be no oral hearing, the Special Arbitrator is to fix a date by which the witness statements must be delivered and cross-examinations (if requested) are to take place.

**3.17** The Special Arbitrator, after consultation with the parties, shall fix the date, time and place of any hearing and shall give the parties reasonable notice thereof.

**3.18** During the arbitration process, the Special Arbitrator may request the assistance of individuals in the employ of the Senate, and request the attendance of such other individuals as may have relevant testimony, and call for the production of documents, and the Committee shall enforce such rulings pursuant to a request from the Steering Committee.

**3.19** An advisor accompanying the Senator may, in addition to providing advice to the Senator in confidence, present written or oral submissions on behalf of the Senator in accordance with the procedure described above.

**3.20** The Special Arbitrator may decide to hear experts put forward by either the Steering Committee or the Senator in the presence of the parties.

**3.21** The Special Arbitrator, after having consulted the parties, may appoint one or more experts to assist in the determination of a dispute, define their terms of reference and receive their reports. A party shall be given the opportunity to question at a hearing any such expert appointed by the Special Arbitrator.

**3.22** The Special Arbitrator may decide the case solely on the documents submitted by the parties unless any of the parties requests a hearing.

**3.23** The Special Arbitrator shall be in full charge of the hearings at which the parties are entitled to be present. Persons not involved in the proceedings shall not be admitted.

**3.24** The Special Arbitrator is not bound by the rules of evidence applicable to Court proceedings but may determine the admissibility, relevance, materiality and weight of any evidence.

**3.25** All statements, documents or other information supplied to the Special Arbitrator by one party shall be communicated to the other party.

**3.26** The Senator may at any time during the arbitration process reimburse the amount demanded by the Steering Committee. In that case, the Special Arbitrator shall immediately terminate the arbitration process.

**3.27** The Special Arbitrator shall provide the Committee and the Senator a confidential copy of the decision setting out the disposition and grounds for the result and including any supporting documentation that the Special Arbitrator deems appropriate. The Special Arbitrator may also include recommendations arising from the proceedings.

**3.28** The Special Arbitrator may issue decisions as cases are heard and determined, or reserve a decision until all or some of the other disputes have been determined, and thereafter deliver a series of decisions as a group, in the Special Arbitrator's sole discretion.

**3.29** In accordance with the confidentiality of the special arbitration proceedings, the Special Arbitrator will not release any report or decision or decisions to persons other than the Committee and the Senator.

#### **4. Referral to Committee**

##### **4.1** When:

- i. the steering committee has rendered a decision pursuant to paragraph 2.6 and the Senator has not reimbursed the amounts due nor exercised the option to use the dispute resolution process in the delays set forth in paragraph 2.9; or
- ii. following the dispute resolution process, the decision of the Special Arbitrator contains conclusions unfavourable to the Senator in question,

the Steering Committee shall submit a written report to the Committee and may recommend to the Committee to require the reimbursement of the amount determined and any other corrective measure within its authority.

#### **5. General clauses**

**5.1** All the arbitration sessions and meetings of the steering committee or Committee relative to the activities conducted under sections 2, 3 and 4 shall be held in camera.

**5.2** Any decision to the effect that a Senator has received an overpayment or made an improper use of Senate resources shall be made on the balance of probabilities.

**5.3** In the event that the Senator must reimburse an amount of money, the conditions of that reimbursement may include interest at the prime rate plus one per cent.

**5.4** The Committee may send to the competent authorities a file for review when it is of the opinion that a Senator may have contravened a federal, provincial or territorial Act.

# APPENDIX B

SENATE  
STANDING COMMITTEE ON  
INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION



SÉNAT  
COMITÉ PERMANENT DE LA  
REGIE INTERNE, DES BUDGETS ET DE L'ADMINISTRATION

Ottawa, June 5, 2015

The Honourable  
The Senate of Canada

Ottawa, Ontario  
K1A 0A4

Re: *Report of the Auditor General of Canada to the  
Senate of Canada on Senators' Expenses*

Dear Senator

The Steering Committee of the Standing Committee on Internal Economy, Budgets and Administration has received and reviewed the *Report of the Auditor General of Canada to the Senate of Canada on Senators' Expenses*.

In the *Report*, the Auditor General found that you have incurred \$            in expenses which, in his opinion, could not be related to your parliamentary business or were contrary to applicable Senate rules, policies or guidelines. Of this amount, you would have already reimbursed the sum of \$            resulting in an unpaid amount of \$

At this point, the Steering Committee is inquiring as to whether you have decided to reimburse this amount or if you wish to proceed in accordance with the *Dispute Resolution Process* adopted by the Committee on May 26, 2015.

Please inform the Steering Committee of your decision within 10 days of the receipt of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Leo Housakos', written over a white background.

Leo Housakos  
Chair

# APPENDIX C



## OFFICE OF THE SPECIAL ARBITRATOR

September 3, 2015

Mr. Peter K. Doody and  
Mr. Guy J. Pratte  
Borden Ladner Gervais, LLP  
World Exchange Plaza  
100 Queen St. Suite 1300  
Ottawa, ON K1P 1J9

Registry, Special Arbitration Process  
Room 1033, Chambers Building  
Senate of Canada  
Ottawa, ON K1A 0A4  
Tel: 613-990-6160  
Email: [ian.binnie@arbitrationplace.com](mailto:ian.binnie@arbitrationplace.com)

Dear Sirs,

Thank you for your letters of September 1, 2015.

Of course it is quite possible to adjourn the hearing scheduled for mid-September until a later date if the participating Senators and counsel do not feel able to proceed in September for the various reasons set out in your letter and those of others to the same effect. However, I do not wish to adjourn on an indefinite basis. I am suggesting we reschedule three days (as a precaution), namely October 28 to 30, 2015.

As a general observation, my suggestion of a "common issues" hearing was designed to expedite matters and achieve a certain measure of efficiency. The "Special Arbitrator" process is going to be conducted as a series of arbitrations, not a trial under the rules of a Superior Court. If a common issues hearing becomes too cumbersome, I am quite prepared to abandon the idea and proceed directly to case by case hearings. Anything that could be said at the common issues hearing could equally be said by a Senator or counsel in the specific case hearings.

With regard to my letter of August 6, 2015, I would have been glad to convene a "joint case management conference" on September 16<sup>th</sup>, but as I received little positive reaction I decided the date might be better utilized by moving ahead to matters of substance.

My letter of August 6 specifically raised the possibility of a hearing on "common issues". There being no objection, or indeed comment from counsel one way or the other, my letter of August 26 supplemented what I had said on August 6 as to the procedure I propose to follow and listed suggested "common issues" and invited comment. I also requested any suggestions regarding issues in addition to those mentioned in my letter. There are no such suggestions in your letter of September 1st. None have been suggested by other counsel.

I intend to proceed in a way that accommodates to the extent possible the views and timetable of participating Senators and counsel but in the absence of any expression of the views of participants (until the coordinated response received on September 1st), I intend to push on with a resolution of the individual claims. If a "common issues"

September 3, 2015

**Page 2**

hearing will expedite that process in a way that is fair to everybody, then I am glad to pursue it. However, a number of "fairness issues" have been raised which may more easily be solved in a hearing specific to a particular Senator. Whether your various concerns about a common issues hearing can be resolved to your satisfaction remains to be seen. We are now three months after the initiation of the arbitration process. Rule 3.7 requires me to proceed with the arbitrations "as quickly as circumstances permit."

It is true, of course, that the retired Senators will have to sign an arbitration agreement if they wish to participate in the process announced by the Senate on May 26, 2015. The manner in which I am to proceed is governed by the rules adopted by the Senate Committee on Internal Economy, Budgets and Administration. The process I propose is further elaborated in my letters to Senators and counsel of August 6 and August 26. This letter provides further clarification. Your letter of September 1 points out that Senators "will need to understand the procedure to which they are being asked to agree." The Senators have lots of information. Moreover, with respect, the Senators are not being "asked to agree" to arbitration. It is an option that has been made available by the Senate. My impression is that the Senate is quite neutral as to which of several options the Senators (both current and retired) elect.

Your letter purports to summarize my letter of August 26th. There seem to be a lot of assumptions being made in your letter that I do not find in my earlier correspondence.

Point 1 speaks of common issues. My letter of August 26 spoke only of common issues (apart from timing in relation to the RCMP) that "relate to the proper implementation of the Senate policies, rules and guidelines applicable to the reimbursement of expenses". The Senators are aware of the Senate's "policies, rules and guidelines".

In point 2 you refer to documents "relevant to the common issues" that may or may not be produced. I am not aware of any documents relevant to the common issues other than the Senate written policies, rules and guidelines. These are, or ought to be, in your possession. Rule 3.10 contemplates a request from a Senator for documents. I am not aware of any request to the Registrar for documents relevant to the common issues.

The reference in my letter of August 26 to production of Senate documents that may or may not be available by September 15 related to documentation relevant to the individual cases of Senators none of which (as was equally made clear in my letter) will be discussed at the proposed "common issues" hearing. If the Senators or counsel wish to have generic Senate documentation produced the Registrar will be happy to oblige.

In point 3 you refer to my meetings with the office of the Auditor General (OAG) and the RCMP. As is clear from my letter of August 26th, those meetings related entirely to procedural matters concerning the progress of the arbitrations, not the individual cases of Senators. My letter of August 26 set out the results of both discussions. There was no reference at either meeting to the case of any individual Senator. I would have thought it obvious that the RCMP would not discuss the cases of individual Senators with an outsider like me.

September 3, 2015

**Page 3**

Further, my letter of August 26 stressed the importance placed by the OAG at our meeting on the inviolability of confidentiality agreements the OAG had made with individual Senators. I don't know why you would think that the OAG would breach its confidentiality obligations to make disclosure to me or anyone else.

As the discussions with the RCMP and OAG had nothing to do with individual Senators or the merits of their respective cases, there is no reason for Senators or counsel "to challenge that information by cross examination or calling evidence." I have however asked the Auditor General's office to provide the Senate Financial Administration people with precise identification of the forms filed by Senators when they initially claimed reimbursement of amounts now said by the OAG to be owing (as some Senators have expressed uncertainty on that point) to help Senate staff ensure that all relevant documents in the possession or control of the Senate are produced to the individual Senators concerned. In other words, some Senators want a break-down of the amounts already made public in the OAG Report, and if that is a problem we are trying to get that information for them from the OAG itself.

In point 4 you object that I intend to proceed in the absence of counsel who are unable to be present. I expect that, given the number of Senators and counsel involved, whatever date is picked will be inconvenient, or perhaps impossible, for some participants. I proposed the date of September 16 in my letter of August 6th. My understanding is that, to date, only three of the individuals who have indicated an intention to participate in the arbitration process cannot be present in mid-September. Your letter of September 1 is the first indication I have had that Mr. Pratte is also unable to attend. If participants are of the view that the "common issues" hearing cannot proceed unless all Senators and counsel who are interested in participating are available on a particular date, it may be necessary to abandon the "common issues" approach. However, I do not see why this is necessary. Anyone unable to attend the "common issues" discussion will have every opportunity to make written submissions on common issues before or afterwards as well as oral submissions at the hearing of the individual cases. It seems clear from the September 1st letters that, as one would expect, there is good communication about these matters among counsel and the participating Senators. I can't imagine anyone being left in the dark.

Your letter then carries on at the top of page 3 with the complaint that I have NOT decided a number of issues, none of which have previously been raised by you or anybody else. For example you say "you have not indicated whether you expect or will permit the Senators or former Senators to call any evidence on common issues". But of course, none of the participants has yet mentioned a desire to call any such evidence.

As to who will ask questions "in chief" of the Senate witness(es), my letter of August 6 indicated that the Steering Committee "is not expected to be an active participant in the arbitrations." The Steering Committee has certainly not indicated any intention of appearing by counsel. The rules contemplate the possibility of the Special Arbitrator hiring experts (rule 3.21) but not for retaining outside counsel. You conclude that the Dispute Resolution Process does not contemplate my asking questions, but I don't know

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**Page 4**

why anyone would draw that conclusion. I expect to ask whatever questions I feel I need to ask to get to a fair disposition. The Senate Financial Administration witness will be Madame Bonnie Marga, the Designated Chief Financial Officer, supported as necessary by members of her Senate staff. The composition of the members of her "staff" who will be present will obviously depend on the particular issues that are ultimately going to be dealt with.

At page 3 you note that rule 3.7 says the arbitrations will be conducted in a confidential manner. And so they will be. This does not mean that the whole process is cloaked in secrecy. The public has every right to know what, if anything, is going on. The confidentiality extends to what is said in the process, not to what is happening, if anything, in the scheduling or nature of the process itself. What is said or transpires at any of the sessions – in other words the content (including a common issues hearing if there is one) will be confidential, as emphasized in my earlier correspondence.

As to the report in the Hill Times, the reporter when he called had seemingly been given access to a copy of my letter of August 26<sup>th</sup>, or at least some of the information therein. I don't know how he got access. Not through me.

You next make the assumption that “your decisions will be known to the judge or jury determining guilt or innocence.” Quite apart from being a questionable assertion about the criminal process (and of course there may be no charges laid in respect of any of the thirty Senators in any event) Rule 3.28 gives the Special Arbitrator the discretion to determine when decisions are released. The discretion will not be exercised to the prejudice of a fair criminal trial.

As to your check list of points 1 to 5, I believe they have all been dealt with above. As to the issue of Senators calling witnesses at the “common issues” hearing, I repeat that, assuming the evidence relates to an issue that is relevant at that stage of the process, such evidence would be received.

As to your suggested path forward:

(1) I would be glad to receive such a notice of potential "common issues". I asked for it on August 26th.

(2) I would then be glad to prepare a list of the common issues that I conclude can usefully be dealt with in such a "common issues" hearing.

(3) I have indicated the scope of what I regard as the Senate documents relevant to the common issues hearing. They are the Senate “policies, rules and guidelines”. If a Senator wishes other Senate documents to be produced, please notify the Registrar. At the same time, I look forward to receipt of any documents from Senators not already filed.

September 3, 2015

**Page 5**

(4) The Senate witness will be Madame Bonnie Marga, and likely some members of her staff, as mentioned above.

(5) As to dates, I would be content to adjourn the common issues hearing now scheduled for September 15th and 16th to October 28-30. I have indicated what I expect the scope to be of the Senate documentary production relevant to the "common issues" (as opposed to specific cases) and the identity of the Senate witness(es). The other matters relevant to scheduling are in the hands of the Senators and their counsel.

(6) There will be no "steering committee counsel." I will ask Madame Marga to go through the relevant policies, rules and guidelines. She will then be available to answer questions from the Senators or, where a Senator is represented by counsel, by his or her counsel.

(7) I would be glad to hear other witnesses offered on behalf of the Senators if they are identified in advance (as contemplated in your point 4) assuming the proposed evidence is relevant to the "common issues". I do not wish to get into specific issues of concern to particular Senators in the "common issues" hearing. That evidence will be heard when it comes time to deal with individual disputes.

(8) I agree sufficient time should be set aside to complete the common issues at one sitting. I expect the three days – October 28 to 30 – would be sufficient if repetition is avoided. I assume counsel will coordinate their submissions. I have not heard from any Senator or counsel how much time he or she considers necessary to provide his or her own input on the common issues. I would appreciate such information when it is available.

(9) I have already indicated the nature of my discussions with the RCMP and the office of the Auditor General. There is no other information relevant to the special arbitrations. If other relevant information comes to hand I will disclose it.

To avoid any misunderstanding about the procedure going forward, I suggest we use September 15 or 16 for a conference call to sort out the above or other procedural issues. Perhaps the Senators who have signed on to the arbitration process, or who expect to sign on prior to September 15th, and their counsel if any, would indicate availability as between those two days. As the subject matter will be purely procedural I assume that any participant not able to participate will co-ordinate with those who can participate.

If we can come up with a workable plan for a common issues hearing I will send out a letter confirming the details of the way forward to October 28 to 30.

If the "common issues" process becomes excessively complicated or protracted, it will be abandoned and we will set in motion the scheduling of individual cases where the issue of availability of counsel would be easier to accommodate.

September 3, 2015

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I trust this deals with the matters raised in your letter of September 1st.

Yours very truly,

The Honourable Ian Binnie, C.C., Q.C.

c.c. The Honourable Pierre-Hugues Boisvenu, Senator  
The Honourable Jean-Guy Dagenais, Senator  
The Honourable Joseph Day, Senator (c/o Mr. Evan Corey)  
The Honourable Rose-Marie Losier-Cool (c/o Mr. George L. Cooper)  
The Honourable Sandra Lovelace Nicholas, Senator (c/o Mr. Thomas J. Burke,  
Q.C.)  
The Honourable Elaine McCoy, Senator (c/o Mr. David Phillip Jones, Q.C.)  
The Honourable Pana Merchant, Senator (c/o Mr. E.F. Anthony Merchant, Q.C.)  
The Honourable Lowell Murray, P.C.  
The Honourable Dennis Patterson, Senator  
The Honourable Robert Peterson  
The Honourable Donald Plett, Senator  
The Honourable William Rompkey, P.C. (c/o Mr. Norman Douglas Boxall)  
The Honourable Nick Sibbeston, Senator  
The Honourable Gerry St. Germain, P.C. (c/o Mr. Douglas R. Eyford)  
The Honourable Terry Stratton  
The Honourable David Tkachuk, Senator

# APPENDIX D

## OFFICE OF THE SPECIAL ARBITRATOR

October 2, 2015

Senators  
Counsel

Registry, Special Arbitration Process  
Room 1033, Chambers Building  
Senate of Canada  
Ottawa, ON K1A 0A4  
Tel: 613-990-6160  
Email: [ian.binnie@arbitrationplace.com](mailto:ian.binnie@arbitrationplace.com)

Dear Senators and Counsel:

Further to our teleconference on September 16, 2015, and having given consideration to the various points raised, there will be a “common issues” hearing for those interested in participating (participation is not at all obligatory) on October 28-30, 2015.

1. The location is not yet fixed but will likely be Room 2 in the Victoria Building, 140 Wellington Street, Ottawa, Ontario, K1A 0A4, opposite the West Block. We will start at 9:30 a.m. on Wednesday, October 28, 2015. Sittings will be (roughly) 9:30 a.m. to 12:45 p.m. and 2:00 p.m. to 5:00 p.m., with suitable 10 minute breaks.

### **2. Common Issues**

The Common Issues will be:

- a. How should the term “*Parliamentary functions*” or “*Parliamentary business*” or “public functions” be defined for purposes of the special arbitrations? What is the permissible scope of “other interests” such as activities for the support of children, persons with disabilities, etc. not directly connected to activities pending before the Senate?
- b. What was the commonly understood rule for determining whether a claim should be classified as Parliamentary functions or business?
- c. The Senate Administrative Rules require Senators to exercise “good judgment to ensure the prudent use of resources with particular consideration of the cost to taxpayers”. Is this a stand-alone criterion which is available to invalidate a claim made e.g. in connection with expenses incurred on Parliamentary business? Does it operate as a general basket clause to deal only with situations not covered elsewhere in the Senate’s rules, policies and guidelines? Or both?
- d. In the case of a trip in which a Senator was engaged both on Parliamentary business and *private or personal business*, on what basis should a Senator’s reimbursement have been calculated?
- e. What are the errors, if any, in Deloitte’s interpretation of the Senate’s rules, policies and guidelines in relation to the audits of Senators Duffy, Wallin and



Brazeau, and former Senator Harb. (In this respect, the issue is the interpretation, not the outcome of the particular cases under consideration by Deloitte).

- f. Same as issue (e), but in relation to the Auditor General's Report.
- g. How should the arbitration deal with a situation where it is said that justificatory documentation either never did exist or existed but is now destroyed or lost?
- h. How should the special arbitration interpret "primary residence", "secondary residence", "National Capital Residence" and "provincial residence"?
- i. What rules govern the propriety of travel expenses for retired Senators?
- j. The effect on the present special arbitration of the original acceptance by Senate officials of the claims at issue.
- k. The role of Senate Finance Directorate and the extent to which it and its staff provided guidance to Senators and their staff with regard to claimed expenses, and the proper effect, if any, of such guidance and administrative interpretation on the special arbitrations.
- l. In each of the periods under review, what were the rules properly applicable to the travel expenses
  - a. generally;
  - b. regarding spousal travel, and
  - c. concerning the 12 point policy.
- m. were the rules applicable to claims by Senators for reimbursement for expenses paid directly by the Senator the same as claims in respect of expenses charged to Senate credit cards?

If Senators or counsel wish to propose other "common issues", or reframe those set out above, please advise the Registrar by Monday, October 26, 2015.

### **The Witnesses from the Senate Financial Administration**

The Senate witnesses to be called by the Special Arbitrator on October 28<sup>th</sup> will be Mme Bonnie Marga, Comptroller and Designated Chief Financial Officer and Mme Naaz Askari, Manager, Financial Services. A brief biographical sketch of each is attached as Appendix "A". More detailed curricula vitae will be provided to you prior to, and be filed at, our hearing on October 28. They may be joined from time to time by other members of the administration to assist in their testimony.

The witnesses are being called by me in my capacity as Special Arbitrator.

It was proposed by Mr. Doody during our teleconference that the Financial Administration evidence consist of (or at least include) the transcripts from the Duffy trial of testimony by Mme Nicole Poulx, Mr. Mark Audcent and Mme Maggie Bourgeau. However it is imperative that the civil proceedings and the criminal proceedings be kept clear and separate. I am going to have to make determinations in the case of individual Senators in respect of the Senate's Policies, Rules and Guidelines. It would create potential mischief for me to do so on the basis of the very same evidence being considered by Mr. Justice

Vaillancourt in the Duffy trial. In addition, Mme Nicole Proulx and possibly Mme Bourgeau are, as you know, likely to be recalled when the Duffy trial resumes and it is not at all clear whether either of them will be free of that obligation by October 28<sup>th</sup>. Accordingly, for that reason as well, their evidence cannot be used in the special arbitrations.

It was also suggested during the teleconference that evidence might be obtained from the present Clerk of the Senate, Charles Robert, and the former Clerk, Gary O'Brien as well as Mme Jill Anne Joseph, the former Director of the Senate Internal Audit (who is no longer employed by the Senate). In the teleconference on September 16<sup>th</sup>, there was no suggestion of what relevant evidence could usefully be provided by either the present Clerk or the former Clerk. I have made inquiries and it appears that the present Clerk would not have anything of relevance to add, as his responsibilities do not include Financial Administration. Testimony from the former Clerk poses similar problems as outlined above, as he is under subpoena to appear before the Duffy trial.

The possibility was left open that Senators and counsel may wish to suggest other witnesses. If so please advise the Registrar together with a description of the proposed testimony. We would need an indication from counsel about the nature of the proposed questioning before asking any additional individuals to attend.

#### **Documents at the October 28-30 Hearing**

I understand that a set of the Senate's relevant written "Policies, Rules, and Guidelines" have now been made available to those who wish to receive it.

If anybody does not yet have a copy of this material, and wishes to obtain either a hard copy or an electronic version, please advise the Registrar, Adam Thompson. A copy of the index to the materials is attached hereto as Appendix "B".

#### **The Procedure on October 28-30, 2015**

The procedure on October 28<sup>th</sup> is that I will begin by asking the Senate witnesses to explain generally how the Senate's Policies, Rules and Guidelines relate to each of the common issues. The witnesses will identify the applicable Policies, Rules and Guidelines and explain generally the practice that was followed in accepting or rejecting a Senator's claim for reimbursement.

At that point, Senators and Counsel will have an opportunity to ask questions. If the Senators and the various counsel can agree on an order in which each should proceed, that would be quite acceptable to me. If there is no agreement, I will call on counsel and Senators in an order that seems appropriate.

The three days set aside for evidence and/or submissions should be sufficient. I do not foresee circumstances short of some highly unexpected event that would cause those three days to be either adjourned or extended.



Senators / Counsel

October 2, 2015

**Page 4**

When the evidence is completed Senators and counsel will be asked how much time each expects to take in making submissions. I will then divide up the time remaining among Senators and Counsel on an equitable basis. Any Senator or Counsel who runs out of time, can always make supplementary written submissions after October 30<sup>th</sup>. Indeed, I would be glad to receive written submissions on the common issues at any time before or after the October 28-30 hearing.

It will be important that the evidence and submissions on common issues remain directed to *common* issues and not stray into specific *issues* which concern individual Senators. If some of the Senators or Counsel cannot attend during part of the three days, please advise and we will try to shift around the schedule to accommodate their needs and facilitate their participation.

It would be appreciated if each of the Senators and Counsel who propose to participate in the October 28-30 hearing would indicate by Monday, October 26<sup>th</sup> the issues on which they wish to lead evidence and/or make submissions.

### **Individual Claims**

I appreciate that some Senators wish to get on with a determination of their particular situations at any early date. The Honourable Senator Donald Plett said as much during our teleconference. My intention is to start hearing individual claims the week of November 8, 2015 and to continue as expeditiously as possible thereafter until all the claims are dealt with.

If Senators and counsel would indicate when they would like their specific claims to be heard, and how long they anticipate it will take for an oral hearing, I would appreciate that information as soon as it is available.

I understand that progress is being made in documenting the bilateral issues between the Senate and individual Senators. While it is not necessary for this process to be complete before October 28<sup>th</sup>, (as only “common issues” will be discussed at that session), it would be appreciated if you would flag whenever convenient any instances where you feel the Senate documentation provided is inadequate. In particular, if you are seeking specific documents in relation to the claim against a particular Senator and have not yet received a copy, please let the Registrar know what it is you want and why you want it and we will do what we can to satisfy your request, expeditiously and will try to accommodate your availability and convenience.

In the case of claims against individual Senators, the “Record” is expected to consist of the Senate documentation of the amount identified in the letter from the Speaker to the Senator to be paid or arbitrated, a copy of the Senate’s Policies, Rules and Guidelines and any other documents put in evidence at the October 28-30, 2015 hearing as well as any other relevant case specific documentation provided either by the Senate or the Senator.

Senators / Counsel

October 2, 2015

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If you have any questions, please advise.

Yours very truly,



Hon. Ian Binnie, C.C., Q.C.

IB:pc/jb

c.c. Adam Thompson, Registrar  
Michel Patrice, Law Clerk and Parliamentary Counsel, Senate of Canada  
The Honourable Pierre-Hugues Boisvenu, Senator (c/o Mr. Marc Vaillancourt)  
The Honourable Jean-Guy Dagenais, Senator  
The Honourable Joseph Day, Senator (c/o Mr. Evan Corey)  
The Honourable Colin Kenny, Senator (c/o Mr. Peter K. Doody)  
The Honourable Sandra Lovelace Nicholas, Senator (c/o Mr. Thomas J. Burke,  
Q.C.)  
The Honourable Terry Mercer, Senator (c/o Mr. Guy J. Pratte)  
The Honourable Pana Merchant, Senator (c/o Mr. E.F. Anthony Merchant, Q.C.)  
The Honourable Lowell Murray, P.C.  
The Honourable Dennis Patterson, Senator  
The Honourable Robert Peterson  
The Honourable Donald Plett, Senator  
The Honourable Nick Sibbeston, Senator  
The Honourable Terry Stratton  
The Honourable David Tkachuk, Senator

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# APPENDIX E

**Example of travel purposes**

The table below lists examples of travel typically carried out by senators and their alternates, specifying whether or not the trip is eligible for reimbursement under the 64-point travel system. Although the list is not exhaustive, it can nonetheless serve as a useful guide to senators and staff in determining whether or not a particular trip meets the intent of the 64-Point Travel System (i.e. to fund travel incurred in the service of the Senate) and therefore reimbursable from Senate resources.

The travel activities are categorized as being “fully funded”, “funded with restrictions” or “unfunded”. These terms are defined as follows:

**Fully Funded**

Trips that are “fully funded” are those that may always be claimed against the 64-point system as long as points remain available for that fiscal year and all requirements of this policy are met.

**Funded with Restrictions**

Trips that are “funded with restrictions” are those that may be claimed against the 64-point system but which have certain restrictions placed upon them such as a limited number of points or trips per year or the need for prior approval by the Steering Committee. The restrictions are explained in the relevant sections of the policy.

**Unfunded**

“Unfunded” trips are those which may not be claimed against the 64-point system under any circumstances. Although there may be instances where the activities undertaken during these trips constitute “public business” for the purpose of the Senators’ Attendance Policy, they are not considered to be parliamentary functions for the purposes of the 64-point Travel System and therefore not eligible for reimbursement.

|                 | <b>Purpose of Travel</b>  | <b>Fully Funded</b> | <b>Funded with restrictions</b> | <b>Unfunded</b> |
|-----------------|---|---------------------|---------------------------------|-----------------|
| <b>SENATORS</b> |   |                     |                                 |                 |
| 1               | Between the senators’ province or territory and the NCR to attend Senate sittings, committee meetings, and/or to carry out other parliamentary functions. | √                   |                                 |                 |
| 2               | Participation in party activities that are related to the work of the Senator or the Senate and its proceedings.  | √                   |                                 |                 |
| 3               | Participation in party activities that are purely partisan matters such as election activities.   |                     |                                 | √               |

|    | <b>Purpose of Travel</b>   | <b>Fully Funded</b> | <b>Funded with restrictions</b> | <b>Unfunded</b> |
|----|--|---------------------|---------------------------------|-----------------|
| 4  | To receive an honorary degree, award, medal or other similar honour in recognition of Senate work and parliamentary accomplishments.*  | √                   |                                 |                 |
| 5  | To receive an honorary degree, award, medal or other similar honour in recognition of life-time achievements not directly related to Senate work.  |                     |                                 | √               |
| 6  | “Life events” of friends and family members: weddings, anniversary celebrations, hospital visits, birthdays, graduations, etc.   |                     |                                 | √               |
| 7  | Funerals of dignitaries, senior government officials, parliamentary colleagues, and other VIPs.  | √                   |                                 |                 |
| 8  | Funerals of friends and family members (other than those included above)   |                     |                                 | √               |
| 9  | Community events such as festivals, BBQs, parades.   | √                   |                                 |                 |
| 10 | Speaking engagements on topics related to Senate work or of public interest whether attending as an invitee or upon own initiative and receiving no additional remuneration from a source outside of the Senate.             | √                   |                                 |                 |
| 11 | Speaking engagements on topics of personal interest to the senator whether attending as an invitee or upon own initiative.   |                     |                                 | √               |
| 12 | Speaking engagements on any topic for which the senator is receiving additional remuneration from a source outside of the Senate.  |                     |                                 | √               |
| 13 | Participation in Parliamentary Friendship Group activities   | √                   |                                 |                 |
| 14 | Speaking engagements or attendance at fundraising events other than those organized by the Senate.)  |                     |                                 | √               |
| 15 | Attendance in charity and other volunteer work.  |                     |                                 | √               |
| 16 | Attendance at book launches, art exhibits, theatre performances, concerts, etc in support of artists, writers, and performers.   |                     |                                 | √               |
| 17 | Attendance at training sessions, seminars, or conferences related to the senator’s professional qualifications and/or personal interest but not related to Senate work.  |                     |                                 | √               |
| 18 | Reuniting with dependent children and/or designated traveller at a location other than the senators’ primary residence or in the NCR (summer cottage, 3 <sup>rd</sup> residence, vacation accommodation, child’s university) |                     |                                 | √               |
| 19 | Travel for personal reasons such as vacations, sight-seeing excursions, sporting events, etc.  |                     |                                 | √               |
| 20 | Meetings and activities related to the senator’s business or private interests (e.g. board of directors’ meetings of companies or charitable organizations; meetings with clients, suppliers, and other stakeholders; etc.)  |                     |                                 | √               |

| <b>Designated travellers</b> |  |   |            |   |
|------------------------------|--|---|------------|---|
| 21                           | Between the senator's province or territory and the NCR.   | √ |            |   |
| 22                           | Accompanying the senator on official Senate business (committee travel, parliamentary association travel, meetings, etc) outside of the NCR or the senator's province or territory.<br><br>Travelling outside the senator's province or territory without the senator, other than trips to the NCR |   | √ (Note 1) |   |
| 23                           | Travelling within the senator's province or territory with the senator.  | √ |            |   |
| 24                           | Travelling within the senator's province or territory without the senator.   |   |            | √ |
| <b>Dependent children</b>    |  |   |            |   |
| 25                           | Travelling between the senator's province or territory and the NCR, when the Senator is present.   | √ |            |   |
| 26                           | Accompanying the senator on official Senate business (committee travel, parliamentary association travel, meetings, etc) outside of the NCR or the senator's province or territory.  |   |            | √ |
| 27                           | Travelling within the senator's province or territory, with or without the senator.  |   |            | √ |
| 28                           | Travelling outside the senator's province or territory, with or without the senator  |   |            | √ |
| <b>Staff members</b>         |  |   |            |   |
| 29                           | Accompanying the senator or travelling alone on official Senate business between the Senator's province or territory and the NCR or within the Senator's province or territory.  |   | √ (Note 2) |   |
| 30                           | Travelling, other than between the NCR and the Senator's province or territory, with the senator.  |   | √ (Note 3) |   |
| 31                           | Travelling, other than between the NCR and the Senator's province or territory, without the senator  |   |            | √ |
| 32                           | Travel by staff working in the Speaker's office, the Leader of the Government or the Leader of the Opposition's office within Canada on parliamentary functions  | √ |            |   |

*Note 1: limited to six (6) points per fiscal year*

*Note 2: limited to eight (8) points per year fiscal, per Senator*

*Note 3: limited to two (2) points per fiscal year, per Senator (Points shall not be used for travel related to committees, other than to provide support to the Chair or Deputy Chair of a travelling committee).*

\* Convention or entrance fees to galas will not be funded.



# APPENDIX F



*The Honourable Joseph A. Day  
Saint John - Kennebecasis  
New Brunswick*

*L'honorable Joseph A. Day  
Saint John - Kennebecasis  
Nouveau-Brunswick*

December 16, 2013

(PERSONAL & CONFIDENTIAL)

The Honourable Noel A. Kinsella  
Chair, Internal Economy and Budgets and Administration  
Room 280-F, Centre Block  
Ottawa, ON K1A 0A4

Dear Senator Kinsella:

RE: Eleventh Report – Appendix A – “Travel Policy”

In reviewing the Senator's Travel Policy dated May 10, 2012 -Coming into force on June 2, 2013; a number of questions arise in regard to Appendix A- *Examples of Travel Purposes*. I have attached a copy of the examples in question for your convenience.

1. My first question relates to the *Examples of travel purposes* number .15. “Attendance in charity and other volunteer work.” Could you please provide me with a more extensive explanation of this example? Occasionally I am asked to attend military/veteran functions as a Senator. Certain events may raise money to help veterans and their families; therefore; does this mean that as a Senator I could not claim for travel to such an event? If there is a fee to attend, I pay the fee personally.
2. My second question under Examples of Purposes of Travel relates to number .20. “Meetings and activities related to the Senator's business or private interests (e.g. Board of Director's meetings of companies or charitable organizations; meetings with clients suppliers and or other



.2.

*stakeholders, etc.*") As a Senator, I have been asked to serve on certain public organizations as a Board Member. I receive no remuneration for my services and serve only on organizations that directly relate to my work as a Senator. As an example, I sit on the board of the Battlefields Foundation. I have been asked to join as a result of my work on National Security and Defence and Veteran's Affairs. I believe that my involvement compliments my Senate work. I would like to ensure that I am in compliance should I claim for travel to a meeting of a not-for-profit organization which operates in the public interest and for which I receive no remuneration.

I look forward to hearing back from you in this regard.

Yours truly,



Joseph A. Day  
Senator

Encl.

CC: Senator George Furey



January 20, 2014

The Honourable Joseph A. Day, Senator  
Senate of Canada  
Room 801, Victoria Building  
Ottawa, ON K1A 0A4

Subject: Eleventh Report – Appendix A – “Travel Policy”

Dear Senator Day,

Your letter to the Chair of the Standing Committee on Internal Economy, Budgets and Administration in which you presented a number of questions on the application of the Senators’ Travel Policy was referred to me for response.

Question 1: article 15 of Appendix A of the Senators’ Travel Policy

Article 15 indicates that travel for “attendance in charity and other volunteer work” is not funded. This provision has been the subject of several discussions as to the extent to which an event should be considered as charity or not. Although it is not possible to address all possible situations, some elements from the Miscellaneous Expenditures Account Guidelines (4.3) can be helpful, they are:

4.3 Charity or Other Fund-Raising Events and Donations

- Expenditures that are clearly contributions to charity or other fund-raising events are not eligible, such as:
  - Purchases of admission tickets, raffle tickets, goods or services for sale for the primary purpose of raising funds for a charity.
  - Donations to any person, cause or organization.
  - Purchases of goods or services for the purpose of donating them to any person, cause, or organization.

Following this principle, travel to attend events that are clearly charity, fund-raising events or other volunteer work would not be eligible for reimbursement with Senate funds. Clearly is the key word and would mean that the event’s purpose is mainly to raise funds, for example when proceeds for the sale of admission tickets (or part thereof) will be given to an organization; when there are activities that are all related to the purpose of raising funds (silent auction, raffles...).

Alternately, events where there is an opportunity to make small personal donations would not be considered as clearly related to fund-raising, thus, would be eligible for reimbursement of travel expenses.

Question 2: article 20 of Appendix A of the Senators' Travel Policy

Article 20 indicates that travel for "meetings and activities related to the senator's business or private interests (e.g. board of directors' meetings of companies or charitable organizations; meetings with clients, suppliers, and other stakeholders, etc.)" is not funded. This is another area of discussion and senators should ask themselves the following questions to help determining if this is related to parliamentary functions or not:

- Is the travel required to achieve an objective that contributes to Senate work?
- If I was not a senator, would I, or my alternate, still be taking this trip?
- If I had to publicly respond to questions about how this trip was related to my parliamentary functions, would I feel comfortable doing so?

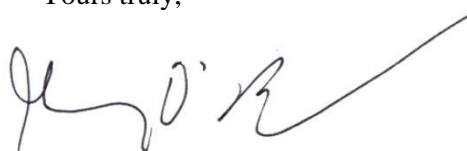
The above questions appear in section 2.7.6 of the Policy. In relation to serving on certain public organizations as a Board Member, some other questions are also relevant.

- Is remuneration provided to the Board Member (Senator)?
- Is the organization reimbursing, or offering to reimburse, travel expenses to attend the Board meeting?
- Would the Senator remain a Board Member if he was not a Senator? If so, would remuneration and reimbursement of travel expenses be provided then?

The example you provide for the board of Battlefields Foundation certainly appears to meet the definition of parliamentary functions. You might want to reflect on the above questions and determine if there are elements that should be considered.

It is quite difficult to provide a response that would encompass the wide array of possibilities; however, I trust that the above explanations will be helpful to you in determining the appropriateness of claims. As always, do not hesitate to seek clarification if you have specific situations that cause you concerns.

Yours truly,



Gary O'Brien  
Clerk of the Senate

c.c.: Hon. Noël A. Kinsella  
Hon. George J. Furey  
Hon. Larry Smith  
Nicole Proulx

## SENATOR PIERRE-HUGUES BOISVENU

**Province:** Quebec

**Appointment date:** 29 January 2010

| <b>Amount at Issue in the Special Arbitration</b>       |                    |
|---|--------------------|
| Total amount of items challenged by the Auditor General | \$61,076           |
| (1) Residency Claims                                    | \$15,826.05        |
| (2) Mileage and Per Diems from NCR to Sherbrooke        | \$5,528.95         |
| (3) Events said to be "Personal Business"               | \$38,576.21        |
| (4) Hospitality   | \$399.17           |
| (5) Postage and Local Taxis                             | \$745.49           |
| <b>TOTAL</b>  | <b>\$61,075.87</b> |

1. Senator Pierre-Hugues Boisvenu had a successful career in the Quebec provincial public service eventually rising to the level of Deputy Minister. Along the way, he and his wife, Diane suffered two terrible tragedies. In 2002, his daughter, Julie was murdered by a newly released prisoner with a record of previous violent offences. Mr. Boisvenu and his wife were surprised at how little support and assistance, counselling and otherwise was available to families of murdered victims.
2. Mr. Boisvenu, with four other fathers who had suffered similar personal tragedies, formed L'Association Des Familles De Personnes Assassinés ou Disparues

- (AFPAD) in 2004. A year later, tragically, a second daughter, Isabelle was killed in a car crash. Two days after Isabelle's death, the family received in the mail her certificate as a newly qualified chartered accountant. Mr. Boisvenu founded Le Fonds Isabelle Boisvenu for the purpose of providing bursaries for studies in the social sciences to explore in a systematic way the impact of crime on its victims and their survivors.
3. The tragedies fuelled Senator Boisvenu's determination not only to organize help for the bereaved families of victims, but to promote public policies to help redress their tragic situation.
  4. Before he became a Senator, Senator Boisvenu wrote a book detailing his experiences and offering advice to those who found themselves in a similar situation. He receives no royalties from the book. Any royalties go to the University of Montreal which now administers the Isabelle Boisvenu Fund, and is used for the purposes of the fund, which Senator Boisvenu hopes to see grow to and beyond the \$200,000.00 level.
  5. In 2005, Prime Minister Stephen Harper was visiting the Sherbrooke area, and Mr. Boisvenu had the opportunity to meet with him and present a list of twelve demands to public policy makers. These demands would later evolve into piece of federal legislation, *The Canadian Victims' Bill of Rights*.

6. Mr. Boisvenu was asked to run as a Conservative candidate but declined in part because of a view that his work for victims' rights would progress better if he were not seen as a partisan figure. However, in August 2009, he was asked if he would be interested in becoming a Conservative Senator and in January 2010, he was appointed.

**CATEGORY ONE – CLAIMS RELATED TO SENATOR BOISVENU’S  
“PRIMARY RESIDENCY” - \$15,826.05**

7. At all material times, Senator Boisvenu owned a house in Sherbrooke, Quebec. He regards Sherbrooke as home. However during the audit period, and in particular 2014, he led an unstable existence because of difficulties in his personal life.
8. After years of uncertainty and marriage counselling, he and his wife, Diane decided to separate. Eventually divorce papers were filed in April 2014. As a result of these marital difficulties, Senator Boisvenu stayed in Sherbrooke less than otherwise might have been the case.
9. Nevertheless, Senator Boisvenu continued to file with the Senate the annual *Declaration of Primary and Secondary Residences* (now appearing as Appendix E



- to the *Senator's Travel Policy 2012*), naming Sherbrooke as his primary residence. His secondary residence was a rented apartment in the Ottawa area.<sup>1</sup>
10. After he and his wife divorced in 2014, she stayed on in the Sherbrooke house. Eventually he acquired a property in Magog.
  11. Senator Boisvenu calculated for the Auditor General that in 2011, he spent 90 days in Sherbrooke; **in 2012 he spent only 45 days in Sherbrooke**. In 2013, the number of days in Sherbrooke showed an increase. Throughout the audit period, he continued for tax purposes to be a resident in Sherbrooke. His credit cards were billed to his Sherbrooke address, his driver's licence and health cards identified Sherbrooke as his place of residence.
  12. The Auditor General takes the position that in the calendar year 2012, Senator Boisvenu's primary residence was in the Ottawa area and that he ought to have amended his *Declaration of Primary and Secondary Residences* accordingly.<sup>2</sup>
  13. **Disposition:** I agree with the Auditor General on this point. Primary residence is a matter of fact. Regardless of the various registrations, Senator Boisvenu was

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<sup>1</sup> Senator Boisvenu's practice is to rent an apartment in the Ottawa area for nine months of the year. During the summer months, when the Senate does not sit, his usual practice is to release the apartment for those three months.

<sup>2</sup> The Senator's *Travel Policy 2012* provides that "Senators are responsible to notify **immediately** the Finance Division of any changes in the status of their residences and to amend the Declaration accordingly." In order to claim reimbursement for living expenses in the NCR, the primary residence of a Senator must be more than 100 km away. Senators whose primary residence is in the NCR are not entitled to have their living expenses reimbursed.

in fact resident in the NCR in 2012 and he is therefore not entitled to claim \$15,826.05 accommodation expenses and per diems as if he were in Ottawa on travel status. A Senator is not entitled to claim travel status when he is living at what is *in fact* his primary residence, even if only for the year.

14. The Senate provisions respecting residence must be purposively interpreted. It regulates to some extent a Senator's financial entitlement. If in fact the Senator was not primarily resident in Sherbrooke in 2012, he ought not to receive financial allowances based on the fiction that he was.
15. The various *formal* documents and registrations are evidence of primary residence but are not conclusive. Here Senator Boisvenu has his roots in Sherbrooke. He was displaced by circumstances. Nevertheless, he spent only 45 days in Sherbrooke in 2012.
16. Counsel for Senator Boisvenu argues that nothing in the Senate rules, policies or guidelines contemplates a counting of the days here and there to establish primary residency. This is true. However, there is no reason for Senator Boisvenu's living expenses in Ottawa to be subsidized by the public purse during 2012 when, in fact, that was his primary home, at least for that year. This has nothing to do with his constitutional qualification to continue to sit as a Senator for Sherbrooke. It seems clear the shift to the NCR was temporary. The issue here is the *Senate Travel Policy*, not the constitution.

17. I am therefore of the view that Senator Boisvenu has not justified the per diem and housing expenses of \$15,826.05 for the year 2012.

**CATEGORY TWO: TRAVEL EXPENSES - \$5,528.95**

18. During 2012, the Senator collected \$5,528.95 for trips *from* the National Capital Region to Sherbrooke. The Auditor General points out that the trips to Sherbrooke were not for Parliamentary business. In his testimony, Senator Boisvenu did not suggest that his trips to Sherbrooke were other than for personal reasons. (His argument, of course, is that he continued to have his primary residence in Sherbrooke and that the proper perspective to view his travel is on the basis of trips going *from* Sherbrooke *to* the National Capital Region.) The rule regarding travel and primary residence operates somewhat unfairly in this case, as it was only the difficulties at home that caused him to relocate to the Ottawa area for 2012. However, in the absence of any evidence that Parliamentary work was done in Sherbrooke during these visits, I conclude with some reluctance that the Auditor General is correct to hold that the travel expenses of \$5,528.95 including mileage and per diems in 2012 were not properly reimbursable.

**CATEGORY THREE: TRAVEL ON OTHER THAN PARLIAMENTARY BUSINESS - \$38,576.21**

19. Senator Boisvenu was in demand as a Quebec Parliamentarian to attend events on behalf of the Conservative government. This was particularly true in the case of

English speaking cabinet ministers who asked Senator Boisvenu to act as their surrogate at francophone gatherings. The bulk of Senator Boisvenu's challenged travel of \$38,576.21 relates to media interviews, lectures to Colleges and Universities, ceremonial events and other meetings connected with his crusade for the rights of victims.

20. Senator Boisvenu was instrumental in the eventual passage of the *Canadian Victims' Bill of Rights* SC 2015 c. 13 s. 2.
21. The Auditor General points out that Senator Boisvenu was very active in the area of victims' rights before his appointment, and that this was a "private interest" that was not converted by his appointment to the Senate into a "public interest". Essentially on this ground and this ground alone, the Auditor General rejected \$38,576.21 in travel claims.
22. In my view, Senator Boisvenu's crusade for victims' rights was *always* a matter of public interest and of important political consequence. While part of the mandate of AFPAD was to console and support families in their private grief, an equally important part of the AFPAD work was to promote changes in public policy to better preserve and protect the rights of victims and their families. The Conservative government made it clear that it was Senator Boisvenu's profile in the victims' rights area that raised the possibility of his appointment to the Senate.

Victims' rights formed a solid plank in the Conservative government agenda. Senator Boisvenu was its most visible salesman in Quebec.

23. Counsel for Senator Boisvenu made the point that the Senator's speeches and lectures changed somewhat after he became a Senator. Before the appointment, he spoke as a grieving father reaching out to other bereaved families. After the appointment, he was a Parliamentarian in a position to speak on behalf of the government on a subject that was an important part of the Conservative "law and order" agenda.
24. Former Quebec Minister Marc Bellemare and Professor Phillippe Bensimon of the University of Ottawa were called to testify in support of this qualitative change in Senator Boisvenu's work and presentations after he joined the Senate. While I accept their evidence that there was an evolution in the role played by Senator Boisvenu, my view is that his crusade for victims' rights *always* had a public dimension and was from its early days a matter of public interest and continued to have a very public dimension as a signature policy of the Harper government.
25. I disagree with the Auditor General that Senator Boisvenu's crusade for victims' rights can be characterized as "personal" rather than "Parliamentary business." In light of the fact that the characterization of these expenses as "personal" is the only ground given by the Auditor General for their disallowance, my view is that

Senator Boisvenu has justified receipt of the \$38,576.21 and need not repay it to the Senate.

**CATEGORY FOUR: HOSPITALITY EXPENSES - \$399.17**

26. Senator Boisvenu says that these expenses were incurred during the audit period to offer refreshments to public interest groups or visitors to his Senate office. The *Miscellaneous Expenditure Account Guidelines* provide that “Hospitality may be extended when the event is related to the senator’s parliamentary functions”:

Examples of hospitality expenses that would be considered eligible are as follows:

- Working meals when discussions on official matters are held with persons from outside the Senate such as government officials, industry, **public interest groups**, etc.
- Meetings with representatives or experts related to the parliamentary work of the senator.

27. Senator Boisvenu offered light refreshments to visiting public interest groups, particularly in relation to victims’ rights.

28. **Disposition:** His claim for hospitality for \$399.17 is justified.

**CATEGORY FIVE: POSTAGE AND LOCAL TAXIS - \$745.49**

29. The Auditor General objects to the postage for mailing copies of the Senator’s book and taxi expenses as being “personal” in nature. Appendix A to the

*Senators’ Research and Office Expense Guidelines* provide that where such expenses are for “Senate related business”, Senators will be reimbursed for:

- All postal services (not eligible for franking privileges)
- Courier services (Purolator, Fedex, etc.)
- Taxis in the National Capital Region

30. It seems to me that distributing a book which is squarely on topic with the Senator’s Parliamentary crusade for victims’ rights, and from which he drew no profit, fits within the overall Senate agenda and postage is a legitimate Senate expense.

31. The taxis are covered by Senate policy and are generally a reimbursable expense. Senator Boisvenu recalls an occasion when he took a taxi to a personal medical appointment. Deduct \$20.00.

32. **Disposition:** Allow \$725.49.

**AMOUNT DUE FROM SENATOR BOISVENU TO THE SENATE BY WAY OF REPAYMENT OF EXPENSES**

| <u>Categories</u> | <u>Amount in Issue</u> | <u>Amount Justified</u> | <u>Balance Owing to Senate</u>         |
|-------------------|------------------------|-------------------------|--|
| Category 1        | \$ 15,826.05           | \$ -                    | \$ 14,918.38 (\$907.67 already repaid) |
| Category 2        | \$ 5,528.95            | \$ -                    | \$ 5,528.95                            |
| Category 3        | \$ 38,576.21           | \$ 38,576.21            | \$ -                                   |
| Category 4        | \$ 399.17              | \$ 399.17               | \$ -                                   |
| Hospitality       | \$ 745.49              | \$ 725.49               | \$ 20.00                               |
| <b>TOTAL</b>      | <b>\$ 61,075.87</b>    | <b>\$ 39,700.87</b>     | <b>\$ 20,467.33</b>                    |

## **SENATOR JEAN-GUY DAGENAI**

**Province:** Quebec

**Appointment date:** 17 January 2012

| <b>Amount at Issue in the Special Arbitration</b>       |         |
|---|---------|
| Total amount of items challenged by the Auditor General | \$3,538 |

1. Senator Jean-Guy Dagenais was a career police officer. He spent 39 years with the Sûreté du Québec. He represented the Association des policières et policiers provinciaux du Québec, where he was the vice-president of finance for eight years.
2. In the first few weeks after his appointment, the Senator hired Richard Desmarais as a political advisor. The claims at issue here essentially involve the travel by Mr. Desmarais between Montreal and Ottawa. As he generally commuted by private automobile, there are no receipts or other documentation to establish the purpose and extent of travel on any particular date.
3. The Senator testified that as there were not many Conservative members of Parliament in Quebec, he was regularly asked to “show the Conservative flag” at Quebec events and assist ministers including Ministers Lebel and Nicholson. From time to time he would be asked by various Ministers to go to the Montreal area to make announcements. On such occasions he would ask Mr. Desmarais to be present to advise on speeches or assist during interviews with journalists and



others. “As Mr. Desmarais is an experienced journalist, it was preferable that he accompany me.” [TR. p. 1]

4. Mr. Desmarais maintains his home at Boucherville, a Montreal suburb close to Longueuil and St. Hyacinthe where many of the Senator’s meetings took place.

**EXPENSE CLAIMS OF STAFF MEMBER RICHARD DESMARAIS**

| Reference Number | Date of Expense  |                  | Full or Partial (F/P) | Contested Amount | Nature of Event   |
|------------------|------------------|------------------|-----------------------|------------------|---|
|                  | Start            | End              |                       |                  |   |
| 21211            | 16 February 2012 | 16 February 2012 | F                     | \$276.61         | Meeting with André Drolet, ex. RCMP and President of Info-Crime, Montreal to discuss potential recipients of Queen’s Silver Jubilee Medal |
| 21219            | 15 March 2012    | 15 March 2012    | F                     | \$261.03         | Meeting with Mario Laprise, Director-General of Sûreté du Québec, in Montreal   |
| 21359            | 26 April 2012    | 26 April 2012    | F                     | \$314.45         | Meeting with Jean-Guy Brillon, local President of the Conservative Party in Saint Hyacinthe Region  |
| 21368            | 4 May 2012       | 4 May 2012       | P                     | \$177.65         | Meeting with Mayor of St. Hyacinthe regarding potential funding of infrastructure and transport   |
| 21372            | 21 June 2012     | 21 June 2012     | P                     | \$151.21         | Meeting with François Pilote of GVM, a  |

|        |                   |                   |   |                   |   |
|--------|-------------------|-------------------|---|-------------------|---|
|        |                   |                   |   |                   | specialist in infrastructure projects                                 |
| 21389  | 20 September 2012 | 20 September 2012 | F | \$268.40          | Meeting Denis Durant of VIA Rail in Montreal re: rail security        |
| 21396  | 26 October 2012   | 26 October 2012   | F | \$405.60          | Attend ceremony to award Queens Jubilee Medal at Sherbrooke           |
| 24477  | 16 November 2012  | 16 November 2012  | F | \$578.60          | Media event to announce military project                              |
| 24481  | 7 December 2012   | 7 December 2012   | F | \$278.90          | Consultation at Brossard for Senator's office<br>Re: Internet Options |
| 24486  | 11 February 2013  | 11 February 2013  | F | \$305.60          | Speech to CEGEP at Longueuil  |
| 24494  | 13 March 2013     | 13 March 2013     | F | \$240.30          | Press conference at Boisbriand for federal announcement               |
| 24500  | 22 March 2013     | 22 March 2013     | F | \$280.50          | Reception in <i>Journée Pacini Pour La Santé</i> at St. Hyacinthe     |
| TOTAL: |                   |                   |   | <b>\$3,538.85</b> |   |

5. The Auditor General's position is as follows:

The employee claimed mileage and per diem expenses ... Two such claims were filed in the 2011-12 fiscal year and 10 in the 2012-13 fiscal year. For most of the trips, we did not have sufficient information to confirm that the travel had taken place as stated in the claims. In some instances, telecommunications records showed that the employee was in the Montréal area early in morning on the day after the event.

The employee stated that, although he works in Ottawa, he frequently stays in the Montréal area, particularly when the Senate is not sitting. He also stated that the travel claims were prepared on the basis of **the principle that employees who work in Ottawa indicate Ottawa as the travel departure point and final destination.** ... employees cannot be reimbursed for travel to their workplace in Ottawa ... The claims did not reflect the distance actually travelled.

6. The Auditor General challenged some of the Desmarais claims on the basis that they “were not for Parliamentary business”. More significantly, the Auditor General questioned claims by Mr. Desmarais for “same day round trips starting from and returning to Ottawa to assist or accompany the Senator.”
  
7. In fact, as Mr. Desmarais readily acknowledges, he frequently stays in his home in Boucherville. He was told at the time of his appointment that because the Senate job is based in Ottawa, Senate policy requires staff to treat Ottawa as the starting point for a work trip regardless of where the journey *actually* started. Accordingly, when Mr. Desmarais stayed at Boucherville, and was called on to attend a function with the Senator at the adjacent Municipality of Longueuil, on the south side of the river, the travel expenses were nevertheless properly claimed from Ottawa to Longueuil and back to Ottawa again, even if Mr. Desmarais returned to Boucherville for the night.

### **Parliamentary Business**

8. There is no reason to doubt the evidence of the Senator and Mr. Desmarais that the meetings they identified took place. Nor is there any reason to doubt the Senator’s view that all of these meetings related to the broad view of “Senate

business” discussed in the “Common Issues” section of this opinion. Clearly Senator Dagenais performed an important role representing the Parliament of Canada at various Quebec functions at a time when there were few Quebec Parliamentarians on the Government side to provide that representation.

**Mr. Desmarais Goes Home to Boucherville**

9. Mr. Desmarais readily admits, as mentioned, that on occasion he would go back and forth to Montreal area events from his home in Boucherville. The Auditor General analyzed some telephone bills of Mr. Desmarais and concluded that on some of the occasions when Mr. Desmarais was supposedly en route from Ottawa to Montreal, he was in fact in the Montreal area already. As of this late date, with respect to the particular trips challenged by the Auditor General, Mr. Desmarais is unable to recall whether he in fact made the trip from Ottawa or not. As stated, he and the Senator were under the impression that it did not matter because being an Ottawa based employee, they thought his travel was *deemed* to begin and end in Ottawa regardless of his actual travel itinerary.
  
10. As a practical matter, the drive from Boucherville to Montreal it is only a distance of about 20 km, which is not sufficient to qualify for “travel status”. Not being on

travel status means Mr. Desmarais could not claim any expenses under the 64-points.<sup>1</sup>

11. Clearly on occasion Mr. Desmarais did in fact do the “round trip” from Ottawa. However, he states that “nos dossiers ne contiennent aucun document permettant de répondre de façon catégorique” regarding the different claims. However, regarding claims #21211, #21219, #21359, #21372 and #21389, he reasons that “ces rencontres ont eu lieu des jeudis de semaines de session parlementaire pendant lesquelles je suis à Ottawa et il est donc logique de déduire que je suis parti d’Ottawa le jeudi pour m’y rendre.”<sup>2</sup>
12. **Disposition:** If Mr. Desmarais is travelling from Boucherville to Longueuil, a distance of only a few kilometres, he cannot charge the public purse for a fictional trip from Ottawa to Longueuil and back to Ottawa again.<sup>3</sup> The *Senate Administrative Rules* provide in Section 10 of Division 4:00, Chapter 4:03 that:

“10. No person shall cause the Senate to pay or reimburse a cost under this chapter **unless the cost was actually incurred**,

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<sup>1</sup> Section 2.4.1 of the *2012 Travel Policy* says “Travellers shall be considered to be on travel status when they are undertaking Senate-related travel that takes them at least 100 km away from their primary residence. In such cases, travel expenses are charged to the 64-point travel system.” Mr. Desmarais was not on travel status when he was in Montreal.

<sup>2</sup> E-mail to the Special Arbitration dated February 23, 2016.

<sup>3</sup> It is quite true that if the staffer is called on Senate business to Longueuil, and happens to be in Winnipeg for personal reasons, the Senate does not reimburse the actual cost of travel from Winnipeg to Longueuil. The staffer’s place of business is in Ottawa, and the Senate would only reimburse the travel costs from Ottawa to Longueuil and back again to Ottawa. But that is not to say that if the staffer in fact finds himself or herself in the city where the meeting takes place, there is entitlement to reimbursement for a hypothetical trip from Ottawa to that city and back again to Ottawa, irrespective of the reality of the situation.

reasonable and authorized, and is either an allowance or is supported by a receipt or other documentation”.

13. Clearly, costs are not “actually incurred” on a fictitious trip. The staff member is already present in the city where the meeting takes place. Costs “actually incurred” provide the upper limit of what is reimbursable.
14. As Mr. Desmarais cannot identify whether he began his journey in Ottawa or Boucherville or elsewhere in relation to any of the other specific claims challenged by the Auditor General (because he simply applied what he understood to be the “round trip rule from Ottawa” formula), it is not possible to find that any of these other claims have been justified as costs “actually incurred”.
15. Senator Dagenais acknowledged in his response to the Auditor General that the concern about “the rules governing employee travel” are “very important and should be dealt with in the administrative overhaul envisaged by the Senate”. This may be so, but from my perspective the situation of Mr. Desmarais is a simple matter. Costs “actually incurred” is a clear limit.
16. As stated, I accept Mr. Desmarais’ explanation for claims 21211, 21219, 21359, 21372 and 21389.
17. The travel money collected by Mr. Desmarais on the other travel claims have not been justified.

18. Accordingly, in my opinion, Senator Dagenais has received “an overpayment” of \$2,267.15 which ought to be repaid to the Senate.

| <u>Claim Number</u> | <u>Amount in Issue</u> | <u>Amount Justified</u> | <u>Balance Owing to Senate</u> |
|---------------------|------------------------|-------------------------|--------------------------------|
| 21211               | \$ 276.61              | \$ 276.61               | \$ -                           |
| 21219               | \$ 261.03              | \$ 261.03               | \$ -                           |
| 21359               | \$ 314.45              | \$ 314.45               | \$ -                           |
| 21368               | \$ 177.65              | \$ -                    | \$ 177.65                      |
| 21372               | \$ 151.21              | \$ 151.21               | \$ -                           |
| 21389               | \$ 268.40              | \$ 268.40               | \$ -                           |
| 21396               | \$ 405.60              | \$ -                    | \$ 405.60                      |
| 24477               | \$ 578.60              | \$ -                    | \$ 578.60                      |
| 24481               | \$ 278.90              | \$ -                    | \$ 278.90                      |
| 24486               | \$ 305.60              | \$ -                    | \$ 305.60                      |
| 24494               | \$ 240.30              | \$ -                    | \$ 40.30                       |
| 24500               | \$ 280.50              | \$ -                    | \$ 280.50                      |
| <b>TOTAL</b>        | <b>\$ 3,538.85</b>     | <b>\$ 1,271.70</b>      | <b>\$ 2,267.15</b>             |

## SENATOR JOSEPH A. DAY

**Province:** New Brunswick

**Appointment date:** 4 October 2001

| Amount at Issue in the Special Arbitration               |          |
|--|----------|
| Total amount of items referred to by the Auditor General | \$19,634 |

1. Senator Joseph Day has a long history of involvement in military matters. He is a graduate of the Royal Military College, Kingston. Before joining the senate, he worked with army and air cadets and has a long standing interest in youth education. The main issue is his use of senate funds to pay his travel expenses incurred attending board meetings of the Duke of Edinburgh Awards, (the Canadian affiliate of a UK charity incorporated by Royal Charter) in the sum of \$12,811.32. This represents over 60% of the amount of the \$19,836.99<sup>1</sup> in issue.
2. The claims in dispute are as follows:

| Claim Number | Travel Dates      | Amount in Issue | Activity  | Auditor General Comments   |
|--------------|-------------------|-----------------|---|--|
| 20387        | Oct. 18-22, 2012  | \$4,815.63      | Attending Board of Directors Meetings of the Duke of Edinburgh Awards | Those trips were primarily in the corporate interest of the youth organization |
| 07195        | Aug. 2-3, 2011    | \$2,237.78      |   |  |
| 07176        | April 14-16, 2011 | \$3,512.19      |   |  |
|              | April 26-29, 2012 |                 |   |  |

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<sup>1</sup> Further review of the claims in issue by the Auditor General showed a calculation error, resulting in a total amount of \$19,836.99 rather than \$19,634.



|       |                   |                                |   |   |
|-------|-------------------|--------------------------------|---|---|
| 15535 |                   | \$2,245.72                     |   |   |
| 07179 | April 27-29, 2011 | \$3,050.96                     | Attending dinner at Royal Military College, Kingston and incidental activities. | We found that the expenses were ineligible because the Senator engaged in personal activities and because activities related to an election are not eligible for reimbursement under the Senate's rules, policies and guidelines. |
| 20403 | Jan. 4-8, 2013    | \$1,366.36<br>Paid<br>\$751.66 | Trip from Fredericton to Ottawa via Quebec City                                 | Claim represents incremental cost for personal activities   |
| 20368 | Jan. 29, 2012     | \$508.28                       | Airfare Toronto to Ottawa   | Claim represents personal activities  |

### THE DUKE OF EDINBURGH REWARDS

3. Senator Day testified that prior to becoming a Senator, he had heard of, but did not participate in, the Duke of Edinburgh Awards. Founded in 1956, the charity has since expanded to 140 countries outside the United Kingdom. The awards recognise the achievement of adolescents and young adults in completing a series of self-improvement exercises modelled on the precepts of the founder of the Duke of Edinburgh's old public school, Gordonstoun in Scotland.
4. After he was appointed a senator, and learned that Senator Trevor Eyton was retiring from the Board of the Duke of Edinburgh Awards (Canada), he was

approached to become its honorary solicitor in Canada and a member of its Canadian board.

5. The evidence is that he was asked to join the Board because he is a Senator.
6. The issue is whether this work on the Board of Directors, and whatever legal work was undertaken for no fee, can be linked to the Senator's "Parliamentary Functions."
7. As discussed in the "Common Issues" section of this Report, Schedule A to the *Senator's Travel Policy 2012* states in Article 15 that "attendance in **charity** and other volunteer work" will **not** be funded. Similarly, Article 20 states that travel for "meetings and activities related to the senator's business or private interests (e.g. **board of directors' meetings** of companies or **charitable organizations**; meetings with clients, suppliers, and other stakeholders, etc.) is **not** funded." On one view, the senate is being asked to subsidize the board of a charity to the extent of \$12,811.32 of travel monies. Equally, on this view, when a Senator sits on a Board of Directors he or she owes a fiduciary duty to the organization and is doing the work of the charity not the work of the Senate.

8. By letter dated December 16, 2013<sup>2</sup>, Senator Day sought direction on these policies from the Internal Economy Committee. In reply, by letter dated January 24, 2014, the Committee advised that:

- (i) travel related to charity or volunteer events **would** be reimbursed **except** if “the event’s purpose is mainly to raise funds.”
- (ii) Senators should ask themselves the following questions to help determine if [meetings of the Board of Directors of a charity] is related to parliamentary functions or not:
  - Is the travel required to achieve an objective that contributes to Senate work?
  - If I was not a senator, would I, or my alternate, still be taking this trip?
  - If I had to publicly respond to questions about how this trip was related to my parliamentary functions, would I feel comfortable doing so?

The above questions appear in section 2.7.6 of the *Senators Travel Policy*. However, the Internal Economy Committee added, when serving as a Board Member, some other questions are also relevant.

- Is remuneration provided to the Board Member (Senator)?

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<sup>2</sup> A copy of this exchange of correspondence is attached hereto as **Appendix F**.

- Is the organization reimbursing, or offering to reimburse, travel expenses to attend the Board meeting?
  - Would the Senator remain a Board Member if he was not a Senator? If so, would remuneration and reimbursement of travel expenses be provided then?
9. Obviously, in 2013, on revisiting at Senator Day's suggestion what it had said in Schedule A to the *Senators Travel Policy 2012*, the Internal Economy Committee interpreted the *Senate Administrative Rules* differently as now *permitting* the Senate funding of participation of Senators on Boards of Directors of suitable charities.
10. Specifically, in response to a direct question from Senator Day, the Internal Economy Committee ruled that:
- The example you provide for the board of [Canadian] Battlefields Foundation certainly appears to meet the definition of parliamentary functions.
11. If expenses of serving on the Board of Directors of the Canadian Battlefields Foundation, a charity founded by Mr. Hamilton Southam in 1992, qualifies for senate travel funding, so too must serving on the Board of the Duke of Edinburgh Awards, in my opinion.
12. The Internal Economy Committee is the authoritative interpreter of the *Senate Administrative Rules* and the *Senators Travel Policy* and Senator Day cannot be faulted for accepting its guidance when he incurred these expenses.

13. He has justified receipt of the \$12,811.32 portion of the claim.

**Claim 07179 – Trip to Royal Military College, Kingston**

14. The Auditor General also challenged \$3,050.96 arising out of Senator Day's trip to Kingston, Ontario to attend a dinner at the Royal Military College on 28 April 2011. The invitation to the dinner announced "Spring Formal Dinner: **Military Charity Fundraiser**." The Senate practice against paying expenses for Senators to attend fundraising events is of long standing, and pre-dated the *Senators Travel Policy, 2012*.
15. Senator Day was on the Senate Defense Committee and on the Veterans Sub-Committee. He explained that he had a continuing close association with the Royal Military College. Amongst other things, he wished to attend because of the retirement of Major Danny McLean, a former athletics' director. Nevertheless, a fundraiser is a fundraiser, however worthy the cause.
16. The Auditor General expressed concern that Senator Day's trip "included a political party election event in Toronto and a meeting at the head office of the same youth organization [Duke of Edinburgh Awards]." However, as the primary purpose of the trip was a dinner billed as a fundraiser, these other objections are no longer relevant.

17. Accordingly, as the announced purpose of this particular dinner was a “**Military Charity Fundraiser**” the sum of \$3,050.96 cannot be justified as a use of Senate resources for “Parliamentary functions.”

**Claim 20403 – (\$1,366.36) 4 - 8 January, 2013, Travel Fredericton to Ottawa**

18. The Auditor General challenges travel expenses for a road trip by Senator Day from Fredericton to Ottawa that the Auditor General concluded was not for parliamentary business. Senator Day voluntarily reimbursed \$751.66 for the mileage from New Brunswick to Quebec City, one night’s accommodation, and breakfast and lunch per diems for the personal portion of this trip. At issue is the balance of \$614.70.
19. The Senator explained that he drove to Ottawa via Quebec, where he spent some “family time”. He spent an extra night in Quebec City for which he paid personally. One night’s hotel stay would have been incurred as a stopover in any event. The Senator then continued to Ottawa to prepare for the Asia Pacific Parliamentary Forum that would take place in mid-January in Japan, including collection of briefing materials, **special** passport and visa. (Senators can be issued a special passport to facilitate international travel on official business. The standard procedure is for Senators to surrender these special passports on returning from official travel, then retrieving the passport from Senate custody when the need next arises. Special passports are not used by Senators for ordinary travel.)

20. Had the Senator flown from New Brunswick to Ottawa the airfare would have been at least \$1,000.00. Instead, he drove and now claims only for the Quebec to Ottawa portion of the trip and related expenses, name \$614.70.
21. There is nothing in the record to question the purpose of Senator Day's trip to Ottawa in preparation for the trip to Japan. He is entitled to his claim of \$614.70.

**Claim 20368 – (\$508.28), Trip from Toronto to Ottawa**

22. The Auditor General challenges travel expenses that he contends were not for parliamentary business.
23. The expense arises out of the tail end of the Senator's winter holiday. He had obtained an Aeroplan ticket from New Brunswick to Toronto to Mexico for a holiday and back to Fredericton. On the way back, he discontinued his Aeroplan flight in Toronto (thereby not using the balance of the Aeroplan ticket to Fredericton) and arranged with Senate Finance to fly directly from Toronto to Ottawa to prepare for a NATO meeting in Washington. The point here is that Senate Finance pre-authorized the ticket from Toronto to Ottawa on January 29. Senator Day otherwise would have flown from Toronto to New Brunswick by Aeroplan then flown from New Brunswick to Ottawa at greater expense to the taxpayer than the challenged Toronto to Ottawa flight and incidental expenses.
24. There is no reasonable basis on which to insist that Senator Day repay \$508.28 for the pre-authorized Toronto to Ottawa ticket.

25. Accordingly, the disposition of Senator Day's claims is as follows:

| <u>Claim Number</u> | <u>Amount in Issue</u> | <u>Amount Justified</u>               | <u>Balance Owing to Senate</u> |
|---------------------|------------------------|---------------------------------------|--------------------------------|
| 07176               | \$ 3,512.19            | \$ 3,512.19                           | \$ -                           |
| 07195               | \$ 2,237.78            | \$ 2,237.78                           | \$ -                           |
| 15535               | \$ 2,245.72            | \$ 2,245.72                           | \$ -                           |
| 20387               | \$ 4,815.63            | \$ 4,815.63                           | \$ -                           |
| 07179               | \$ 3,050.96            | \$ -                                  | \$ 3,050.96                    |
| 20362               | \$ 853.83              | \$ -                                  | (\$853.83 already repaid)      |
| 20383               | \$ 119.05              | \$ -                                  | (\$119.05 already repaid)      |
| 20403               | \$ 1,366.36            | \$614.70 (\$751.66<br>already repaid) | -                              |
| 20368               | \$ 508.28              | \$ 508.28                             | \$ -                           |
| 816                 | \$ 448.54              | \$ -                                  | (\$448.54 already repaid)      |
| 2586                | \$ 678.65              | \$ -                                  | (\$678.65 already repaid)      |
| <b>TOTAL</b>        | <b>\$ 19,836.99</b>    | <b>\$ 13,934.30</b>                   | <b>\$ 3,050.96</b>             |



## SENATOR COLIN KENNY

**Province:** Ontario

**Appointment date:** 29 June 1984

| AMOUNT AT ISSUE IN THE SPECIAL ARBITRATION  |          |
|---|----------|
| Total amount of items referred to the Internal Economy Committee (including applicable taxes) | \$35,549 |

1. Senator Colin Kenny was appointed to the Senate on June 29, 1984. He lives in Ottawa. In the course of over 30 years in the Senate, including a period as Chair of the Senate National Security and Defence Committee from January 29, 2001 to December 30, 2009, he developed a considerable expertise in defence and security matters. He did not return to the Committee until 2014.<sup>1</sup> Although he was no longer a member of any Senate Committee during the audit period,<sup>2</sup> he continued to be interested in defence and security as well as other matters of public interest. He considers travel and meeting journalists, military people and police and other officials, active or retired, to be essential to enhance his understanding of issues. He essentially made and pursued his own Senate agenda at public expense. As he says, “. . . there are a number of people that I have developed across the country who I have come to rely on in terms of their advice on different subjects.”<sup>3</sup> Senator Kenny believes that contacts outside Ottawa tend to be more candid; “The farther you go from the Peace Tower the more truth you get. In Ottawa, we have experienced a situation where there has been centralized control of the message. . . so if

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<sup>1</sup> TR, pg. 16

<sup>2</sup> TR, pg. 32

<sup>3</sup> TR, pg. 7

you have an Admiral coming and testifying before you here [in Ottawa] there is a lot of concern about Question Period tomorrow in his testimony. If you go and visit the same Admiral in Esquimalt or in Halifax, he is going to be a lot more candid.”<sup>4</sup>

2. From time to time, Senator Kenny writes articles and “opt ed” pieces for newspapers, many of which are listed on his website. The office of the Auditor General (sometimes herein referred to as the OAG) found that Senator Kenny failed to justify “at least \$35,549.00”. When asked by his counsel, “who decides whether a particular trip is justified in terms of the **cost – benefit analysis**, if I can use that phrase”, Senator Kenny responded “it’s only a Senator”.<sup>5</sup>

3. Senator Kenny explains that, in effect, Senators have to be self-starters. As he puts it:

“the vast majority of parliamentary work starts off with a Member of the House of Commons or a Senator saying this is something that is important to me and here is why it should be important to you, and they go on to build support. At some point they [are] probably going to go to a committee – and they certainly will have to go to a committee if they [choose] a legislative route – but a legislative route is just one of several options that Senators or Members of the Commons have to promote an issue”<sup>6</sup>

4. Over the last 30 years the Senator has concentrated on three public policy areas namely the environment, programs to reduce smoking and national security and defence.

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<sup>4</sup> TR, pg. 15

<sup>5</sup> TR, pg. 9

<sup>6</sup> TR, pg. 9

5. The Auditor General found inconsistency between calendars supplied by Senator Kenny's office but these discrepancies, such as they are, do not impact on the Special Arbitration.
6. At this point I would make a few preliminary observations about Senator Kenny's situation.
7. There is no reason to believe that Senator Kenny did not meet with the people he said he met with or that they did not discuss matters related in a general way to security and defence or other topics within the scope of his chosen parliamentary functions.
8. Senator Kenny accepts that to qualify for Senate reimbursement the primary purpose of a trip must be parliamentary business. He stated that "there is not a trip under dispute here that was not primarily for public business, and the people who I met with attest to that"<sup>7</sup>. His executive assistant, Ms. Veronica Carrozzi added "the primary purpose of the trip was what we addressed in each claim . . ."<sup>8</sup>.
9. In terms of the *frequency* question, Senator Kenny referred to three other claims<sup>9</sup> which the Auditor General did not challenge, but which Senator Kenny acknowledges "all have remarkably similar, if not the same people, people that fit the same qualifications" as those in contention. Senator Kenny's point was that the Auditor General showed a measure of inconsistency in approving some claims but not others. In my view, however, when Senators have "due regard to the need, frequency, cost and purpose as it relates to a

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<sup>7</sup> TR, pg. 18

<sup>8</sup> TR, pg. 18

<sup>9</sup> Claims 12857, 12859 and 12842

Senator parliamentary function”,<sup>10</sup> regard is to be had to the *cumulative* number of trips to visit “remarkably similar, if not the same people, people that fit the same qualifications.” Senators have to make a judgment whether there may be a diminishing return on the investment of public monies in a multiplicity of trips. The justification exercise is not restricted to an examination of each trip in isolation.

10. The “frequency issue” is illustrated by the Senator’s breakfast meetings with the Globe and Mail journalist, Colin Freeze. The Senator testified that “of the trips that I took during that [audit] time period - - I think there were probably 40 trips in all, and we are dealing with 17 where [Colin Freeze] comes up.” The Auditor General seems to have concluded that breakfast meetings with Colin Freeze were, essentially, a pretext to go to Toronto the night before on personal business and have the Senate foot the hotel bill and other travel expenses.<sup>11</sup> As will be seen, in many such instances I believe the Auditor General’s conclusion is well founded.

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<sup>10</sup>Travel Policy 2.1.3

<sup>11</sup> The following exchange took place at the Special Arbitration:

**Senator Kenny:** I was going to be in town, and I don’t think it’s unreasonable to see my son and his kids if I’m in town.

**Mr. Binnie:** Being in town is contingent on having an early breakfast with Mr. Freeze? That’s the reason for going down the night before?

**Senator Kenny:** Yes, sir. But, you know, when you look at the trips we see here, Freeze comes up a fair bit, but of the trips that I took during that time period - - **I think there were probably 40 trips in all, and we are dealing with 17 where he comes up**, but it’s - - I think it’s reasonable if that’s a good time for him to have the meeting. I think if we were trying to book it at another time, I’d have half the number of meetings that I have with him now, if that. I find him a very valuable contact.

**Mr. Binnie:** But it seems **the Auditor General sees him as a pretext for going down the night before.**

**Senator Kenny:** I think it’s fair to say that’s true. Having said that, the Auditor General appears not to like the idea of going down the night before ever. It’s not - -

**Mr. Binnie:** For example, on the claim we’re looking at, claim 10, other than Mr. Freeze, the first meeting of the day was at noon.

**Senator Kenny:** Yes. I mean, when you’re arranging a trip, people don’t sort of - - I mean, it’s nice if you can say to somebody, “Well, would you be free at ten o’clock?” I presume that’s the sort of conversation that goes

11. There is an additional issue that arises in many of these claims, namely Senator Kenny's preference for limousines over taxis. The *Senate Travel Policy 2012* provides that Senators take taxis rather than limousines except where there is no additional cost.<sup>12</sup>
12. Senator Kenny's executive assistant, Veronica Carrozzi, explained that she dealt with limousine operators who were prepared to match the cost of a taxi in order to keep Senator Kenny's business. As Ms. Carrozzi testified, "we compared [taxi fares] to our limo rates and our limo company as well. We would let them [the limo company] know what the taxi rates were and they would always match them. We did the comparison and if it was different we would let them know and they adjusted them. It was definitely something we were cautious of and we looked at."<sup>13</sup> In these special circumstances, Senator Kenny is entitled to be reimbursed for the limousine expenses in each case where it has been disallowed by the Auditor General where the Senator's preference for limos occasioned no extra cost to the Senate.
13. According to Senate Finance Records Senator Kenny was reimbursed a total of **[\$153,088.64]** for trips to Toronto/Vancouver, Victoria/Edmonton and related side trips during the audit period, as follows:

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on when appointments are being made, but you get people when they are available, and they're not always at a time that's convenient to you.

<sup>12</sup> *Senator's Travel Policy 2012*, article 2.9.5.2

<sup>13</sup> TR, Dec. 8, pg. 41

|                       | Claim #               | Date                        | Total Reimbursed                                 | Destination (# of nights)  |
|-----------------------|-----------------------|-----------------------------|--|--|
| Fiscal year 2011/2012 | T64-12844             | April 12-15, 2011           | \$ 6,874.63                                      | Ottawa-Toronto(1)-Vancouver(2)-Ottawa                                |
|                       | T64-12845             | April 25-29, 2011           | \$ 4,177.03                                      | Ottawa-Montreal-Toronto(2)-Ottawa                                    |
|                       | T64-12847             | May 9-13, 2011              | \$ 9,054.70                                      | Ottawa-Toronto-Calgary-Toronto(1)-Ottawa                             |
|                       | T64-12848             | May 24-28, 2011             | \$ 9,874.21                                      | Ottawa-Vancouver(1)-Victoria-Vancouver(1)-Edmonton-Toronto(1)-Ottawa |
|                       | T64-12849             | June 9, 2011                | \$ 2,421.93                                      | Ottawa-Toronto(1)-Ottawa   |
|                       | T64-12850             | June 24-July 1, 2011        | \$ 8,866.39                                      | Ottawa-Vancouver(2)-Victoria-Vancouver(1)-Toronto(2)-Ottawa          |
|                       | T64-12851             | July 14-16, 2011            | \$ 2,715.39                                      | Ottawa-Toronto(2)-Ottawa   |
|                       | T64-12852             | July 28-30, 2011            | \$ 2,510.09                                      | Ottawa-Toronto(2)-Ottawa   |
|                       | T64-12853             | August 4-5, 2011            | \$ 2,359.59                                      | Ottawa-Toronto(1)-Ottawa   |
|                       | T64-12854             | August 31-September 1, 2011 | \$ 2,215.93                                      | Ottawa-Toronto(1)-Ottawa   |
|                       | T64-12855             | September 21-23, 2011       | \$ 6,593.95                                      | Ottawa-Vancouver(1)-Victoria-Vancouver(1)-Ottawa                     |
|                       | T64-12857             | October 25-31, 2011         | \$ 8,950.08                                      | Ottawa-Vancouver(1)-Victoria-Vancouver(1)-Toronto(4)-Ottawa          |
|                       | T64-12858             | November 16-18, 2011        | \$ 2,766.89                                      | Ottawa-Toronto(2)-Ottawa   |
|                       | T64-12859             | November 23-25, 2011        | \$ 7,501.46                                      | Ottawa-Vancouver(1)-Victoria-Vancouver(1)-Ottawa                     |
|                       | T64-12860             | December 7-9, 2011          | \$ 6,769.16                                      | Ottawa-Vancouver(2)-Ottawa   |
|                       | T64-12861             | January 17-19, 2012         | \$ 2,660.54                                      | Ottawa-Toronto(2)-Ottawa   |
|                       | T64-12863             | February 15-17, 2012        | \$ 7,681.09                                      | Ottawa-Toronto(1)-Vancouver(1)-Ottawa                                |
|                       | T64-12865             | March 8-9, 2012             | \$ 2,460.92                                      | Ottawa-Toronto(2)-Ottawa   |
|                       | T64-12866             | March 28-30, 2012           | \$ 7,400.46                                      | Ottawa-Vancouver(1)-Victoria-Vancouver(1)-Ottawa                     |
|                       | Fiscal year 2012/2013 | T64-12870                   | May 30-31, 2012                                  | \$ 2,493.94  |
| T64-12871             |                       | June 6-7, 2012              | \$ 2,543.44                                      | Ottawa-Toronto(1)-Ottawa   |
| T64-12872             |                       | June 13-19, 2012            | \$ 7,596.98                                      | Ottawa-Vancouver-Victoria-Vancouver(2)-Ottawa                        |
| T64-12873             |                       | July 6-7, 2012              | \$ 2,428.85                                      | Ottawa-Toronto(1)-Ottawa   |
| T64-12874             |                       | July 17-19, 2012            | \$ 2,912.37                                      | Ottawa-Toronto(2)-Ottawa   |
| T64-12875             |                       | July 24-26, 2012            | \$ 5,585.70                                      | Ottawa-Vancouver(2)-Ottawa   |
| T64-23551             |                       | August 29-30, 2012          | \$ 6,376.92                                      | Ottawa-Toronto(1)-Ottawa   |
| T64-23552             |                       | September 4-7, 2012         | \$ 13,774.95                                     | Ottawa-Vancouver(3)-Ottawa   |
| T64-23553             |                       | September 12, 2012          | \$ 230.68  | Ottawa-Toronto(0)-Ottawa   |
| T64-23556             |                       | October 24-26, 2012         | \$ 1,142.08                                      | Ottawa-Vancouver(1)-Victoria-Vancouver(1)-Ottawa                     |
| T64-23555             |                       | November 1-2, 2012          | \$ 495.12  | Ottawa-Toronto-(1)-Ottawa  |
| T64-23559             | November 21-23, 2012  | \$ 670.98                   | Ottawa-Vancouver(2)-Ottawa                       |  |
| T64-23562             | February 6-8, 2013    | \$ 1,103.62                 | Ottawa-Vancouver(1)-Victoria-Vancouver(1)-Ottawa |  |
| T64-23563             | February 13-15, 2013  | \$ 797.98                   | Ottawa-Toronto(2)-Ottawa                         |  |
| T64-23566             | March 25-28, 2013     | \$ 1,080.59                 | Ottawa-Toronto(2)-Vancouver(1)-Ottawa            |  |
|                       | <b>Total</b>          |                             | \$ 153,088.64                                    |  |

## TRIPS TO VANCOUVER/VICTORIA PLUS SIDE TRIPS TO EDMONTON AND TORONTO DURING THE AUDIT PERIOD

14. During the audit period Senator Kenny made numerous trips to Vancouver/Victoria and was reimbursed \$85,522.10. Of this amount, only the sum of \$24,965.55 was put in issue by the Auditor General, and is now at issue in the Special Arbitration. There were, as Senator Kenny pointed out, additional trips to Vancouver/Victoria during the audit period which cost the taxpayer \$60,676.73 to which the Auditor General made no objection.

| <b>ADDITIONAL TRIPS TO VANCOUVER / VICTORIA DURING AUDIT PERIOD</b> |                      |                            |   |
|---|----------------------|----------------------------|---|
| <b>Claim Number</b>   | <b>Travel Dates</b>  | <b>Amount Paid in Full</b> | <b>AUDITOR GENERAL RAISED NO OBJECTION</b>  |
| 12841   | March 6 to 10 2011   | \$7,189.23                 | No OAG objection (Out of audit scope)   |
| 12842   | March 28 to 31 2011  | \$7,425.42                 | No OAG objection (Out of audit scope)   |
| 12857   | October 25-31 2011   | \$8,950.08                 | No OAG objection  |
| 12859   | November 23-25 2011  | \$7,501.46                 | No OAG objection  |
| 12860   | December 7 to 9 2011 | \$6,769.16                 | No OAG objection  |
| 12863   | February 15-17, 2012 | \$7,681.09                 | No OAG objection  |
| 12866   | March 28 to 30 2012  | \$7,400.46                 | No OAG objection  |
| 12875   | July 24-26, 2012     | \$5,585.70                 | No OAG objection  |
| 23552   | September 4-7 2012   | \$13,774.95                | No OAG objection: Includes \$12,815.50 for ten Air Canada Connector Pass Executive credits                              |
| 23556   | October 24-25 2012   | \$1,142.08                 | No OAG objection  |
| 23559   | November 21-23, 2012 | \$670.98                   | No OAG objection  |
| 23566   | March 25-28, 2013    | \$1,080.59                 | No OAG objection  |
| <b>TOTAL PAID and not questioned by the Auditor General</b>         |                      | <b>\$60,556.55</b>         |   |
| <b>TOTAL PAID but challenged by the Auditor General</b>             |                      | <b>\$24,965.55</b>         | OAG Says not justified  |
| <b>GRAND TOTAL</b>  |                      | <b>\$85,522.10</b>         | <b>PAID TO SENATOR KENNY FOR VANCOUVER / VICTORIA TRIPS PLUS SIDE TRIPS TO EDMONTON AND TORONTO DURING AUDIT PERIOD</b> |

**TOPICS PURSUED BY SENATOR KENNY ON HIS TRIPS TO THE WEST COAST WERE GENERALLY RELATED TO PARLIAMENTARY MATTERS**

15. Senator Kenny was able to reconstruct from his senate diaries, website and other documents the media military, police and other officials he spoke to during his various trips. He acknowledges that his practice was to call ahead and initiate the meeting.

Q. Were any of these meetings requested by the people you met with or were they all requested by you?

Senator Kenney: They would all be requested by me, because I would be coming out . . . if they didn't want to meet with me they certainly wouldn't have to but it would be my arrival in Vancouver that would – the staff would work out whether or not they were free, and if they were then we would see them.<sup>14</sup>

Ms. Veronica Carrozzi added:

“We have a list in our office of people in each City that the Senator is looking to meet or are looking to meet him and we do have people calling and say “I'd like to meet the Senator the next time he is in town” and we put them on our Vancouver list, our Victoria list, our Edmonton list.<sup>15</sup>

16. Although Senator Kenney's itineraries were prepared by Ms. Carrozzi and indicated the time and people on his schedule, the Senator has no notes of particular conversations but was able to indicate in a general way discussions of very broad public policies that he recalls having had with various individuals at one time or another.

“One of the major issues that we have been facing for a while is how to recapitalize the fleet, and it's kind of interesting how a few people really understand what is involved in an issue like that. Frankly it's a real challenge to decide what sort of fleet Canada should have given that we are talking about a multi-billion dollar investment.”<sup>16</sup>

. . .

“If I want to get a sense of how smart we are to have a single surface combat ship instead of having destroyers and frigates that we currently have now, that's not a conversation that's very fruitful on the phone.”<sup>17</sup>

. . .

“I don't have a note that gives me more detail about the visit, but I can tell you that spending time with a Regional Director of CSIS was a very

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<sup>14</sup> TR, Dec. 9, pg. 7

<sup>15</sup> TR, Dec. 9, pg. 7

<sup>16</sup> TR, Dec. 8, pg. 17

<sup>17</sup> TR, Dec. 8, pg. 28



productive way of getting a better understanding of how CSIS is functioning and what sort of problems they have.”<sup>18</sup>

...

“The conversation with Admiral Girouard was on the subject of Sea-King replacements. This is the maritime helicopter that is being replaced by Cyclones.”<sup>19</sup>

...

“The files that would come up pretty regularly would be the new fighter aircraft and the recapitalization of the Navy.”<sup>20</sup>

...

“Our concern [at Pearson Airport] was not so much about the drug smuggling but about whether terrorists could take advantage of the same gaps in security as criminals were doing. We encountered people who showed us ways to enter the airport without going through any sort of inspection and without the authorities knowing you were doing it.”<sup>21</sup>

17. As stated, it is important to view Senator Kenny’s frequent trips to Vancouver and Victoria during the audit period in terms of a *cumulative* travel history rather than isolated trip by trip.<sup>22</sup> The requirement to have regard to “frequency” calls for an overall approach rather than a more individual trip analysis in isolation. Accordingly, despite Senator Kenny’s explanation that he needs to stay in touch with contacts across the country, in my view repeated 16trips to Vancouver/Victoria in the two-year audit period for *repeated* visits to a relatively small group of people at a cost to the taxpayer of \$85,522.10 is totally out of proportion to his “parliamentary functions”, especially when during the audit period Senator Kenny was not on any of the Senate Committees or working groups but was essentially free-lancing his own public policy agenda.

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<sup>18</sup> TR. Dec. 8, pg. 35

<sup>19</sup> TR. Dec. 9, pg. 5

<sup>20</sup> TR. Dec. 9, pg. 17

<sup>21</sup> TR. Dec. 9, pg. 26

<sup>22</sup> This is because the Senator’s *Travel Policy 2012* required Senator Kenny to have “due regard with the need, *frequency*, cost and purpose as it relates to a Senator’s parliamentary functions.”

| CHALLENGED TRIPS TO VANCOUVER / VICTORIA (IN WHOLE OR IN PART) DURING AUDIT PERIOD |                            |                          |                       |  |  |   |
|--|----------------------------|--------------------------|-----------------------|--|--|---|
| Claim Number   | Travel Dates               | Amount in Issue          | Full or Partial F / P | Personal Activity  | Parliamentary Function Briefings   | Auditor General Comments  |
| <b>12844</b><br><i>(also stopover in Toronto April 12)</i><br>BLG Tab 3            | 12 to 15 April 2011        | \$6,874.63               | F                     | Medical appointment Thursday April 14  | <i>Vancouver meetings</i><br>Meeting John Gilles (CSIS)<br>Lunch with former Senator Jack Austin<br><br><i>Toronto meetings</i><br>Meet journalist Colin Freeze (1pm) (Globe) and Brian Stewart (CBC) 2:30 p.m.  | Expenses for which we have insufficient or conflicting documentation to determine whether the trip was primarily for parliamentary business.  |
| <b>12848</b><br>BLG Tab 12   | 24 to 28 May 2011          | \$753.79                 | P                     | <ul style="list-style-type: none"> <li>• Medical appointment (Lipo Laser) May 24</li> <li>• Additional Lipo Laser May 26</li> </ul>  | <i>Meetings in Victoria May 25</i> <ul style="list-style-type: none"> <li>• David Pugliese (Journalist)</li> <li>• Rear Admiral (Rtd) Girouard</li> <li>• Tyrone Pile (Ret'd Navy)</li> </ul> <i>Vancouver meetings May 26</i> <ul style="list-style-type: none"> <li>• Tom Jones (RCMP)</li> </ul> <i>Edmonton meetings May 27</i> <ul style="list-style-type: none"> <li>• William Jones (CSIS)</li> </ul> <i>Toronto meetings May 28</i> <ul style="list-style-type: none"> <li>• Former Senator Peter Stolley</li> </ul> | Portion of trip with insufficient or conflicting documentation to support expenses. <ul style="list-style-type: none"> <li>• Dominant purpose of first day expenses was personal for medical treatment instead of Victoria where meeting took place the following day.</li> <li>• Stayed at hotel costing \$68.95 in excess of Senate \$200 limit.</li> </ul> |
| <b>12850</b><br>BLG Tab 2  | 24 June 2011 – 1 July 2011 | \$8,866.39 <sup>23</sup> | F                     | <ul style="list-style-type: none"> <li>• Weekend with friends in San Diego (extra expenses not claimed)</li> <li>• Stopover in Toronto for suit fitting at Sheraton Hotel</li> </ul> | <i>Vancouver Meetings</i> <ul style="list-style-type: none"> <li>• John Gilles (CSIS)</li> <li>• Jonathan Manthorpe (Journalist)</li> </ul> <i>Victoria meetings</i> <ul style="list-style-type: none"> <li>• Emergency measures meeting with EMBC re “tsunami and earthquake preparedness and other issues”</li> <li>• Rear Admiral Nigel Greenwood “re Maritime readiness”</li> </ul> Toronto <ul style="list-style-type: none"> <li>• lunch with Mary Janigan</li> </ul>  | Expenses for which we have insufficient or conflicting documentation to determine whether the trip was primarily for parliamentary business.  |

<sup>23</sup> Auditor General calculated the amount in issue of \$8,860.39, but the actual claim shows a total of \$8,866.39. Total amount in issue adjusted accordingly.

| CHALLENGED TRIPS TO VANCOUVER / VICTORIA (IN WHOLE OR IN PART) DURING AUDIT PERIOD |                              |                    |                       |   |   |  |
|--|------------------------------|--------------------|-----------------------|---|---|--|
| Claim Number   | Travel Dates                 | Amount in Issue    | Full or Partial F / P | Personal Activity   | Parliamentary Function Briefings  | Auditor General Comments   |
|  |                              |                    |                       |   | (Writer)  |  |
| 12855<br>BLG Tab 13  | 21 – 23<br>September<br>2011 | \$245.28           | P                     | none  | <i>Victoria meetings</i><br><ul style="list-style-type: none"> <li>• David Pugliese (Journalist)</li> <li>• Retired Admiral Ken Summers</li> <li>• Gordon Smith (former senior ... public servant and NATO Ambassador)</li> </ul>   | Portion of trip with insufficient or conflicting documentation to support expenses.  |
| 12872<br>BLG Tab 1   | 13 to 19<br>June 2012        | \$7, 596.98        | F                     | 4 day trip to San Diego includes visit USS Nimitz June 15 | <i>Victoria meetings (June 18)</i><br><ul style="list-style-type: none"> <li>• David Pugliese (Ottawa Citizen)</li> <li>• Retired Admiral Tyrone Pile to discuss “recapitalization of Navy fleet)</li> </ul><br><i>Vancouver meetings</i><br><ul style="list-style-type: none"> <li>• Vancouver Police acting Chief Doug LePard</li> <li>• Doug Quan, Postmedia (canceled last minute)</li> </ul> | Expenses for trip pertaining primarily to personal business.   |
| 23562<br>BLG Tab 14  | 6 to 8<br>February<br>2013   | \$628.48           | P                     |   | <i>Meetings in Victoria</i><br><ul style="list-style-type: none"> <li>• Retired Admiral Tyrone Powell</li> <li>• Retired Air Force General Don Macnamara (aircraft procurement)</li> </ul>  | <ul style="list-style-type: none"> <li>• OAG disallows hotel in Vancouver and Victoria! Senator has to stay somewhere.</li> <li>• No business in Vancouver per breaks journey and takes seaplane</li> <li>• Could have flown Victoria to Ottawa on Feb. 7 after 12:30 meeting (seaplane flight at 2:40)</li> </ul> |
| <b>TOTAL IN ISSUE</b>  |                              | <b>\$24,965.55</b> |                       |   |   |  |

18. In all but two of the six trips put in issue by the Auditor General, Senator Kenny’s own agenda lists personal, medical or vacation reasons, such as the four-day weekend holiday in San Diego from June 24 to July 1, 2011.

19. My conclusion on the individual claims to Vancouver/Victoria is as follows:

- (a) **Claim # 12844:** When viewed in the context of the frequent trips to Vancouver/Victoria to which the Auditor General made no objection, this additional claim of \$6,874.63, including a plane fare of \$5,714.54, on a trip which involved a personal medical appointment in Vancouver and a single meeting with Mr. John Gilles of CSIS (plus a lunch with a former colleague, Senator Jack Austin) has not been justified. Even if considered Senate business rather than personal (the medical appointment), it fails entirely any “cost-benefit” analysis.
- (b) **Claim #12848:** The Auditor General has not contested that Senator Kenny was justified in flying to Vancouver/Victoria on May 24, then onwards to Edmonton and Toronto, at a cost of \$7,783.09. He had a full day of meetings in Victoria on May 25. He diverted through Vancouver for a lipo laser treatment on May 24 and again for a further lipo laser treatment on May 28, however this did not add to the overall cost of his trip. The Auditor General only questioned the Senator’s arrangements between Vancouver and Victoria.

Counsel for Senator Kenny demonstrated that under Air Canada’s peculiar Business Class pricing policy, the difference between a full Business Class fare from Ottawa to Vancouver compared with a full Business Class fare from Ottawa to Victoria is sufficient to enable Senator Kenny to interrupt his trip in Vancouver and take the (economy class) helicopter from Vancouver to Victoria. The Senators *Travel Policy 2012* gives Senators reasonable flexibility in their travel arrangements. Senator Kenny was entitled to a hotel plus dinner and incidentals

on his arrival in Vancouver en route to Victoria. Accordingly, Senator Kenny has justified \$ 484.84 of the contested amount.

- (c) **Claim #12850:** Senator Kenny's flight arrangements on this trip cost \$6,940.82. He did have meeting with some of his contact people in Vancouver and Victoria but these were added on to a weekend holiday with friends in San Diego from Saturday, June 25 to Monday, June 27. In my view, the **primary purpose** of the trip was personal. However, there were additional expenses associated with incidental Senate business in Vancouver and Victoria. On Senator Kenny's return to Ottawa through Toronto, he went for a suit fitting at the Sheraton Gateway Hotel and stayed over to have lunch with Mary Jannigan, a journalist with whom he met frequently throughout the audit period. In my view, Senator Kenny has justified his **Claim # 12850** to the extent of \$912.06, plus taxis of \$109.00 for a total justification of \$1,021.06 on a total claim of \$8,866.39.
- (d) **Claim #12855:** In this claim, the Senator was reimbursed \$6,593.95. It is another case where the Auditor General has not questioned the cost of the flight to Vancouver/Victoria but objects to the Senator taking a helicopter from Vancouver to Victoria rather than the direct (and seemingly just as expensive) Business Class flight directly to Victoria. For the reasons given previously under **Claim # 12848**, I think the Senator has justified the \$245.28 Helijet fare.
- (e) **Claim #12872:** The Auditor General rejected the entire claim of \$7,596.98. While I do not doubt that Senator Kenny met with a journalist in Victoria, a retired Admiral in Victoria, and the acting Police Chief in Vancouver, it seems

clear these meetings were built around a 4-day trip to San Diego which included a courtesy night aboard the aircraft carrier USS Nimitz (for which Senator Kenny made no expense claim). Once again, Senator Kenny is entitled to recover the incremental costs of his senate business in Victoria and Vancouver in the amount of \$725.88 plus his breakfast on June 19 of \$15.60 plus \$238 for taxis all of which amounts to a total justification of \$ 979.48 on the total claim of \$7,596.98.

- (f) **Claim # 23562:** This is another situation where the Auditor General has not challenged the trip to Victoria as such, but apparently concluded that Senator Kenny ought to have flown directly to Victoria rather than stop in Vancouver and taken the Helijet to Victoria. For the reasons already stated in Claims **12848** and **12855** the peculiarities of Air Canada's pricing is such that the indirect route to Victoria occasioned no additional expense. Accordingly, Senator Kenny has justified \$569.88.

**TORONTO TRIPS BY SENATOR COLIN KENNY CHALLENGED (IN WHOLE OR IN PART) DURING AUDIT PERIOD**

20. With respect to Senator Kenny's trips to and from Toronto (whether or not in connection with a trip to Vancouver/Victoria) there is no reason to doubt that Senator Kenny met with the people he claims to have met and that they discussed what he says they discussed. While described in rather vague terms by Senator Kenny in his testimony, the subject matter fits within the overall framework of his Senate interests.
21. The issues again are frequency, overall proportionality and, in some cases, a primary purpose that was personal in nature. The challenged trips to Toronto have to be viewed in light of many unchallenged trips to Toronto where Senator Kenny has been fully

reimbursed and where the Auditor General offered no challenge. The reimbursement for *unchallenged* trips was **\$29,213.07**.<sup>24</sup>

22. I turn now to the **challenged** trips.

| <b>CHALLENGED TORONTO TRIPS BY SENATOR COLIN KENNY<br/>(IN WHOLE OR IN PART) DURING AUDIT PERIOD</b> |                         |                        |                        |  |  |  |
|--|-------------------------|------------------------|------------------------|--|--|--|
| <b>Claim Number</b>  | <b>Travel Dates</b>     | <b>Amount in Issue</b> | <b>Full or Partial</b> | <b>Personal Activity</b>   | <b>Parliamentary Function Briefings</b>  | <b>Auditor General Comments</b>  |
| 12849<br>BLG Tab 11  | 9 June 2011             | \$2,421.96             | F                      | Dinner with Barbara  | <ul style="list-style-type: none"> <li>Meeting CBC Journalist Mark Kelley (CBC)</li> <li>Meeting with Mary Janigan (writer) and Paul Vrbanac (CSIS) (cancelled “mid-trip”)</li> </ul>  | Expenses for which we have insufficient or conflicting documentation to determine whether the trip was primarily for parliamentary business. |
| 12851<br>BLG Tab 4   | 14 July to 16 July 2011 | \$2,715.39             | F                      | Shopping trip on July 14 to retailer of Inuit carvings   | <ul style="list-style-type: none"> <li>Breakfast with Colin Freeze (Globe)</li> <li>12:30 coffee with Police Chief Bill Blair re international law enforcement on Great Lakes“ International Border Enforcement Team”</li> </ul> | Expenses for which we have insufficient or conflicting documentation to determine whether the trip was primarily for parliamentary business. |
| 12852  | 28 to 30 July 2011      | \$429.15               | P                      | PAID   |  |  |
| 12853  | 4 to 5 August 2011      | \$277.80               | P                      | PAID   |  |  |
| 12858<br>BLG Tab 5   | 16 to 18 November 2011  | \$598.20               | P                      | <ul style="list-style-type: none"> <li>Suit fitting at Raja Fashions</li> <li>Private dinner at Scaramouche</li> </ul> | <ul style="list-style-type: none"> <li>Breakfast meeting with Colin Freeze (Globe)</li> <li>Mid-morning meeting with Jon</li> </ul>  | Disallow November 16 hotel and incidentals (.... Business) and limo car pick up and fuel   |

| Claim #   | Date                        | Total Reimbursed | Destination (# of nights)                                   |
|-----------|-----------------------------|------------------|---|
| T64-12847 | May 9-13, 2011              | \$ 9,054.70      | Ottawa-Toronto-Calgary-Toronto(1)-Ottawa                    |
| T64-12854 | August 31-September 1, 2011 | \$ 2,215.93      | Ottawa-Toronto(1)-Ottawa                                    |
| T64-12857 | October 25-31, 2011         | \$ 8,950.08      | Ottawa-Vancouver(1)-Victoria-Vancouver(1)-Toronto(4)-Ottawa |
| T64-12863 | February 15-17, 2012        | \$ 7,681.09      | Ottawa-Toronto(1)-Vancouver(1)-Ottawa                       |
| T64-23553 | September 12, 2012          | \$ 230.68        | Ottawa-Toronto(0)-Ottawa                                    |
| T64-23566 | March 25-28, 2013           | \$ 1,080.59      | Ottawa-Toronto(2)-Vancouver(1)-Ottawa                       |
| 24        |                             | \$ 29,213.07     |   |

| <b>CHALLENGED TORONTO TRIPS BY SENATOR COLIN KENNY<br/>(IN WHOLE OR IN PART) DURING AUDIT PERIOD</b> |                             |                        |                        |                          |  |  |
|--|-----------------------------|------------------------|------------------------|--------------------------|--|--|
| <b>Claim Number</b>  | <b>Travel Dates</b>         | <b>Amount in Issue</b> | <b>Full or Partial</b> | <b>Personal Activity</b> | <b>Parliamentary Function Briefings</b>  | <b>Auditor General Comments</b>  |
|  |                             |                        |                        |                          | Kay (National Post)<br>• 3 p.m. coffee with Bill Blair   | surcharge (BLG Tab 18) as well as breakfast lunch incidentals on November 18   |
| <b>12861</b><br>BLG Tab 6  | 17 to 19<br>January<br>2012 | \$512.79               | P                      | None listed              | <ul style="list-style-type: none"> <li>• Breakfast meeting with Colin Freeze</li> <li>• Lunch meeting with Brigadier General Craig Hilton of Canadian Forces College</li> <li>• Meeting with Jon Kay of National Post</li> </ul> | Disallow January 17 expenses as Senator Kenny says no activities necessary because of another breakfast meeting January 18 day<br>• \$14.65 for extra cost of limo   |
| <b>12865</b>   | 8 to 17<br>March 2012       | \$246.92               | P                      | PAID                     |  |  |
| <b>12870</b><br>BLG Tab 7  | 30 to 31<br>May 2012        | \$316.05               | P                      | Dinner at Scaramouche    | May 30<br><ul style="list-style-type: none"> <li>• Lunch with Garfield Mahood (anti-smoking)</li> </ul> May 31<br><ul style="list-style-type: none"> <li>• Breakfast meeting with Colin Freeze</li> </ul>                        | <ul style="list-style-type: none"> <li>• Disallow hotel, some meals and incidentals</li> <li>• Limo charges</li> </ul>   |
| <b>12871</b><br>BLG Tab 8  | 6 to 7 June<br>2012         | \$275.20               | P                      |                          | <ul style="list-style-type: none"> <li>• Breakfast meeting with Colin Freeze</li> <li>• Coffee with Jon Kay (National Post)</li> <li>• Lunch with Michael Den Tandt (National Post)</li> </ul>                                   | <ul style="list-style-type: none"> <li>• Allow \$1,915.63 Air Canada ticket</li> <li>Disallow hotel and in part meal and incidentals plus limo.</li> </ul>   |
| <b>12873</b><br>BLG Tab 9  | 6 to 7 July<br>2012         | \$288.97               | P                      | Isobel's birthday        | Meeting with<br><ul style="list-style-type: none"> <li>• Mary Janigan (Writer)</li> <li>• Michael McCallion (urban search and rescue)</li> </ul>   | <ul style="list-style-type: none"> <li>• Deducts hotel and per diem for extending stay an additional day to have breakfast with former Senator Peter Stolley (and Isobel's birthday)</li> <li>Plus extra charge</li> </ul> |
| <b>12874</b><br>BLG Tab 15   | 17 to 19 July<br>2012       | \$441.34               | P                      |                          | <ul style="list-style-type: none"> <li>• Meeting with Andrew Phillips (Toronto Star) and various Journalists at 2:30 p.m. on July 18</li> <li>• Meeting with Alan Thomas (urban search and rescue)</li> </ul>                    | \$55.37 hotel charge in excess of \$200 limit<br><ul style="list-style-type: none"> <li>• Limo charges \$16.00</li> <li>• Balance repaid \$369.97</li> </ul> Total is \$441.34   |



| <b>CHALLENGED TORONTO TRIPS BY SENATOR COLIN KENNY<br/>(IN WHOLE OR IN PART) DURING AUDIT PERIOD</b> |                              |                        |                        |   |   |  |
|--|------------------------------|------------------------|------------------------|---|---|--|
| <b>Claim Number</b>  | <b>Travel Dates</b>          | <b>Amount in Issue</b> | <b>Full or Partial</b> | <b>Personal Activity</b>                        | <b>Parliamentary Function Briefings</b>   | <b>Auditor General Comments</b>  |
| 23555<br>BLG Tab 10  | 1 to 2<br>November<br>2012   | \$244.97               | P                      | November 1<br>dinner with son<br>Rob and family | <ul style="list-style-type: none"> <li>• Nothing November 1</li> <li>• Breakfast meeting with Collin Freeze</li> <li>• Lunch with Matt Gurney (National Post)</li> </ul>              | <ul style="list-style-type: none"> <li>• Extra day for personal reasons</li> </ul> |
| 23563<br>BLG Tab 17  | 13 to 15<br>February<br>2013 | \$ 255.95              | P                      | February 13<br>dinner at<br>Scaramouche         | February 14 meetings <ul style="list-style-type: none"> <li>• Breakfast meeting with Colin Freeze</li> <li>• Brian Stewart (CBC)</li> <li>• Ian McDougall (airport safety)</li> </ul> | Limo 18.00 <sup>25</sup><br>Repaid <u>237.95</u><br>\$ 255.95                      |
| <b>TOTAL AMOUNT IN ISSUE</b>   |                              | <b>\$8,070.82</b>      |                        |   |   |  |

### **DISPOSITION OF CHALLENGED TORONTO TRIPS**

23. **Claim #12849:** The Senator travelled to Toronto on a \$1,881.73 plane ticket to meet with a journalist, Mark Kelly and yet another meeting with Mary Jannigan. Even assuming that the primary purpose of the trip was not personal (“dinner with Barbara”), this trip when added to all the Senator’s other trips to Toronto violates the frequency test.
24. **Claim #12851:** This is a two-day trip to Toronto during which Senator Kenny purchased some Inuit Sculptures and had another of his visits with the journalist, Colin Freeze and police chief Bill Blair (to talk about integrated border enforcement on the Great Lakes). (Senator Kenny met again with Chief Bill Blair on November 17.) Even if this trip could be characterized as business rather than personal, there is no plausible justification for yet

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<sup>25</sup> Auditor General calculated the limo surcharge as \$21.30, but the actual receipts show \$18.00. Total amount in issue adjusted accordingly.

another Toronto trip having regard to the numerous other Toronto trips for which Senator Kenny has been reimbursed.

25. **Claim #12858:** Senator Kenny's airfare of \$1,870.43 has not been put in issue. Senator Kenny explains the need to go to Toronto the day before his Senate business on the basis that his meeting with Colin Freeze was a breakfast meeting at 8:30 a.m.<sup>26</sup> On this occasion he had a suit fitting the day before at Raja Fashions and a dinner at Scaramouche. The Senator had meetings on November 17 with Colin Freeze, Jon Kay of the National Post and Chief Bill Blair. On a cost-benefit basis, the overnight stay was unnecessary. The OAG put in issue only \$598.20. The Senator is entitled to an extra \$47.25 for meals and incidentals and \$16.30 for the limousine cost, but the balance of reimbursement in the sum of \$550.95 for claim 12858 has not been justified.
  
26. **Claim # 12870:** This is another two day trip to Toronto including breakfast with Colin Freeze. While Senator Kenny had meetings on both Wednesday, May 30 and Thursday, May 31, he has not justified going to Toronto the night before as Senate business. However, he is entitled to be reimbursed for the limousine service for a total of \$283.15.
  
27. **Claim #12871:** Here again the cost of the flight (\$1,915.63) has not been challenged. At issue is his decision to go down the night before in order to have his usual 8:30 a.m. breakfast with Colin Freeze. The cumulative pattern of breakfast meetings with Colin Freeze, necessitating a trip down the night before and a hotel stop over, offends

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<sup>26</sup>As mentioned, breakfast meetings with Colin Freeze are Senator Kenny's constant reason for going to Toronto, the day previous to his Senate business. Colin Freeze is known to meet people (including Senator Kenny) at times of the day other than breakfast.

“reasonableness” as well as the “frequency” branch of the cost benefit analysis. The Auditor General put in issue \$275.20. Senator Kenny is entitled to the \$32.90 for a partial daily allowance, and the \$16.30 for limousine service. A total of \$49.20 of the disputed \$275.20 has therefore been justified.

28. **Claim #12873:** Senator Kenny’s plane fare of \$1,915.63 is not put in issue. He had meetings in Toronto on July 6. The Auditor General questioned the reason for his stay over in Toronto which was in part to have breakfast with a former Senate colleague, Peter Stollery, but also to attend his granddaughter’s birthday party on the Saturday prior to the flight back to Ottawa. In my view the stay over in Toronto was primarily for personal family reasons. He has justified the claim to the extent of \$104.60.
29. **Claim #12874:** This involved a three day trip to Toronto from July 17 to July 19, 2012. The air fare of \$1,915.63 is not an issue. Of the \$441.34 in issue, Senator Kenny has repaid \$369.97. Of the balance, he is entitled to be credited for the additional limo charges of \$16.00.
30. **Claim #12861:** This is another trip where a breakfast meeting with Colin Freeze is said to justify staying at a Toronto hotel the night before. In addition, to Colin Freeze, Senator Kenny met with Brigadier General Craig Hilton of the Canadian Forces College and Jon Kay of the National Post (again). The Auditor General did not object to the plane fare of \$1,893.03. Stretching one day of meetings over two days is a constant practice of the

Senator. It has not been shown to be justified on this occasion. Accordingly, the \$ 512.79<sup>27</sup> should be repaid.

31. **Claim #23555:** This is yet another case where a breakfast meeting with Colin Freeze is put forward as justification for Senator Kenny to travel to Toronto the day before his Senate business. In this case, he enjoyed the evening with his son's family, which suggests that the trip to Toronto the night before was in fact for personal reasons. In my view, the extra night has not been justified. Apart from the breakfast meeting with Colin Freeze, he had a lunch meeting with Matt Gurney, a columnist with the National Post. The Senator has justified the limo service charges of \$18.00 but not the extended stay in Toronto on November 1. He should therefore reimburse the Senate \$226.97.
  
32. **Claim #23563:** This is another occasion when a breakfast meeting with Colin Freeze is used to justify going to Toronto and having dinner at Scaramouche the night before. However, the Auditor General has not challenged the overnight stay, and Senator Kenny has voluntarily repaid \$237.95. He is entitled to repayment of \$18.00 for his limousine service.

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<sup>27</sup> Auditor General included an amount of \$14.00 for limousine surcharges which was already deducted from the claim at the time it was processed. Auditor General put in issue a full day of per diem for January 17<sup>th</sup>, however Senator Kenny only claimed lunch, dinner and an incidental. Amount in issue has been reduced by a total of \$29.35.

**SENATOR KENNY’S TRIPS TO MONTREAL**

| <b>Claim Number</b>        | <b>Travel Dates</b>                 | <b>Amount in Issue</b> | <b>Full or Partial</b> | <b>Personal Activity</b>                      | <b>Parliamentary Function</b>  | <b>Auditor General Comments</b> |
|----------------------------|-------------------------------------|------------------------|------------------------|---|--|---------------------------------|
| <b>12845</b>               | 25 to 29 April 2011                 | \$519.12               | P                      | REPAID  |  |                                 |
| <b>12856</b><br>BLG Tab 16 | 29 September 2011<br>2 October 2011 | \$756.58               | P                      | Visit alma mater in New Hampshire and Vermont | Meeting with Bruno Plourde (Commander, Black Watch, re militia issues and distribution of Queens Jubilee Medal |                                 |
| <b>12864</b>               | 24 to 25 February 2012              | \$240.66               | P                      | REPAID  |  |                                 |

33. **Claim # 12856:** This claim involves a personal trip by Senator Kenny to revisit university towns in New Hampshire, Vermont and Quebec. However, on his drive back to Ottawa, Senator Kenny arranged some Senate business, namely a meeting with the Commander of the Black Watch Regiment, Bruno Plourde, in Montreal. The Senator recalls discussing the role of the Regiment in Afghanistan and the distribution of Senator Kenny’s allocation of the Queen’s Jubilee Medals. In the end, about a dozen of these medals were allocated to the Black Watch Regiment. If it were not for his visit with the Commander of the Black Watch Senator Kenny could have continued to drive back to Ottawa. He is therefore entitled to the expenses associated with the Senate business *incidental* to his personal itinerary, being the cost of the hotel in Montreal and associated one day allowance for meals and incidentals. These were incremental costs only. He is therefore entitled to \$273.78.

**Post Scripts**

34. As mentioned in the earlier part of this opinion, the Deloitte Report on Senator Pamela Wallin put a number of "networking events" in issue, and the "networking" element of

"Parliamentary Functions" was referred by Deloitte's to the Steering Committee of the Internal Economy Committee for comment. Deloitte's reported that "The Steering Committee determined that, while occasional exceptional occurrences for special events might be acceptable, *the volume and pattern* of the events listed would not qualify them as Senate business".(p.4) In my view the cumulative "networking" limitation expressed by the Steering Committee in adopting the Deloitte Report on Senator Wallin is a form of proportionality between Senate business and the expenditure of Senate resources that applies as well to Senator Kenny's travel habits.

35. As counsel for Senator Kenny noted, the Auditor General often flagged trips where Senator Kenny's diaries or schedules included a personal purpose, but did not question others where there was no documented evidence of a personal purpose. This is true, but in those cases the personal purpose seemed to supply a rationale for a trip which did not appear otherwise to be reasonably justifiable justified in terms of Senate business.

**DISPOSITION OF SPECIAL ARBITRATOR WITH RESPECT TO SENATOR KENNY CLAIMS**

| <u>Claim Number</u> | <u>Amount in Issue</u> | <u>Amount Justified</u> | <u>Balance Owing to Senate</u>       |
|---------------------|------------------------|-------------------------|--------------------------------------|
| 12844               | \$ 6,874.63            | \$ -                    | \$ 6,874.63                          |
| 12845               | \$ 519.12              | \$ -                    | (\$519.12 already repaid)            |
| 12848               | \$ 753.79              | \$ 484.84               | \$ 268.95                            |
| 12849               | \$ 2,421.96            | \$ -                    | \$ 2,421.96                          |
| 12850               | \$ 8,866.39            | \$ 1,021.06             | \$7,361.54 (\$483.79 already repaid) |
| 12851               | \$ 2,715.39            | \$ -                    | \$2,488.19 (\$227.20 already repaid) |
| 12852               | \$ 429.15              | \$ -                    | (\$429.15 already repaid)            |
| 12853               | \$ 277.80              | \$ -                    | (\$277.80 already repaid)            |
| 12855               | \$ 245.28              | \$ 245.28               | \$ -                                 |
| 12856               | \$ 756.58              | \$ 273.78               | \$226.37 (\$256.43 already repaid)   |
| 12858               | \$ 598.20              | \$ 63.55                | \$188.80 (\$345.85 already repaid)   |
| 12861               | \$ 512.79              | \$ -                    | \$226.62 (\$286.17 already repaid)   |
| 12864               | \$ 240.66              | \$ -                    | (\$240.66 already repaid)            |
| 12865               | \$ 246.92              | \$ -                    | (\$246.92 already repaid)            |
| 12870               | \$ 316.05              | \$ 283.15               | \$ 32.90                             |
| 12871               | \$ 275.20              | \$ 49.20                | \$ 226.00                            |
| 12872               | \$ 7,596.98            | \$ 979.48               | \$ 6,617.50                          |
| 12873               | \$ 288.97              | \$ 104.60               | \$ 184.37                            |
| 12874               | \$ 441.34              | \$ 16.00                | \$55.37 (\$369.97 already repaid)    |
| 23551               | \$ 16.00               | \$ 16.00                | \$ -                                 |
| 23555               | \$ 244.97              | \$ 18.00                | \$ 226.97                            |
| 23562               | \$ 628.48              | \$ 569.88               | \$ 58.60                             |
| 23563               | \$ 255.95              | \$ 18.00                | (\$237.95 already repaid)            |
| <b>TOTAL</b>        | <b>\$ 35,522.60</b>    | <b>\$ 4,142.82</b>      | <b>\$ 27,458.77</b>                  |

## SENATOR SANDRA LOVELACE NICHOLAS

**Province:** New Brunswick

**Appointment date:** 21 September 2005

| AMOUNT SUBMITTED TO SPECIAL ARBITRATION        |          |
|--|----------|
| Total amount questioned by the Auditor General | \$75,227 |

1. Senator Sandra Lovelace Nicholas, a member of the Maliseet First Nation, and a resident of the Tobique First Nation Reserve in north central New Brunswick, was appointed to the Senate in 2005 by Prime Minister Paul Martin as part of the Liberal government's effort to promote reconciliation with aboriginal people. She had been an outspoken advocate for repeal of provisions in the *Indian Act* that discriminated against native women (of which she had had direct experience). The year 2005 was the 20<sup>th</sup> anniversary of that repeal. Senator Lovelace Nicholas was expected to and did fulfill a **leadership** role following her appointment to the Senate, as she had before her appointment.
2. Senator Lovelace Nicholas testified that she also has a **representative** role in the Senate with obligations to the Maliseet First Nation as well as to her Province and the other Maritime Provinces and its minorities. As the only aboriginal Senator from New Brunswick, she was required to attend many meetings in Fredericton and travel to communities throughout the province as well as elsewhere in the Atlantic region to discuss issues of concern, especially to native communities.
3. The Senator is accustomed to stay overnight at a hotel in Fredericton when travelling to and from Ottawa because of the long distance to her home at Tobique First Nation, a two-and-a-half hour drive from Fredericton. Occasionally inclement weather prevented safe



travel home. However, she adopted the practice of extended stays at the Lord Beaverbrook Hotel in Fredericton in addition to a night to break the journey. These extended stays formed the bulk of the Auditor General's challenges to her expenses.

4. The Senator points out that a great many individuals find it easier to meet with her in Fredericton than to travel to the Tobique First Nation, for both geographic and confidentiality reasons. She meets regularly with members of band councils, elders, aboriginal women concerning issues of violence, individuals with housing issues, and with aboriginal students.
5. The Senator explains that it was her practice to stay an additional night in Fredericton before and after Senate sittings to give her Aboriginal "constituents" an extra day to meet with her. Unfortunately, the Senator's informal style of consultation generates little in the way of documentation. Not surprisingly, she recalls little of dates and specific meetings unless they were recorded in her travel expense claims. **Essentially her position is that if the records show she was in Fredericton on certain dates than she *must* have been meeting with "constituents", because that is what she does when she is in Fredericton.** However, "accountability" requires something more than such generalizations.
6. The Senator's evidence is that her extended stays at the Lord Beaverbrook Hotel were generally without any particular meetings lined up in advance. Her practice was simply to "be there" for anyone who wished to consult.

7. The striking aspect of her position, however, is that the Senator offered no evidence from the people or groups she met with in Fredericton to confirm such meetings, or other more specific information, whether documentary (for example recent letters confirming past meetings would be sufficient) or oral evidence from somebody other than the Senator herself. Of course, the more detail the better. In the circumstances, I have her evidence that if she was in Fredericton, she was probably meeting with “constituents” but such a position without oral or documentary corroboration from any of the individuals or groups she met with, does not amount to “accountability.” There were many other **personal** reasons for the Senator to stay in Fredericton.
  
8. There is no doubt that the Senator does valuable and much-needed work in her travels around New Brunswick and the other Maritime Provinces but the purpose of the **travel** allowance is to facilitate **travel** from point of origin to her destination, not to finance establishment of a “constituency clinic” in Fredericton.<sup>1</sup>
  
9. Having said that, the nature of the Senator’s scattered constituency and her work especially with Native women is certainly relevant to the Special Arbitration. Where

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<sup>1</sup> Counsel for Senator Lovelace Nicholas submits that just as members of the House of Commons hold constituency “clinics” or walk-in offices for consultations, which are acknowledged to be directly related to Parliamentary business, it was quite appropriate for the Senator to hold a “clinic” in Fredericton when she was already passing through there for the purpose of taking a flight or arriving on a flight. The Senate thereby saved the cost of mileage to and from Tobique. This is perfectly sensible, but simply making oneself “available” does not constitute travel status within the confines of the *Senator’s Travel Policy*.

specific information is available that connects her travel expense to her Senate work in Fredericton such information will of course lay the foundation for reimbursement.

#### **MEALS WHILE ON TRAVEL STATUS**

10. In a number of instances, the Auditor General challenged the payment of meal allowances on the days when the Senator was driving to or from Fredericton and Tobique. The Senator is entitled to reimbursement for those expenses.
11. When the Senator leaves the Tobique she is on “travel status” and entitled to claim meal allowance and incidentals. Equally, on her return from Fredericton to Tobique, she is entitled to reimbursement for whatever meals fall within travel time until she reaches home plus incidentals. Travel status does not end until she reaches the Tobique Reserve.
12. With that general introduction, I turn to the claims:
  - (a) **Claim # 08158 (Tab 1 – March 19 to March 31, 2011) - \$738.56** falls outside the two year audit period and need not be repaid by the Senator.
  - (b) **Claim 23190 (Tab 27) (November 1, to November 8, 2012) Amount: \$1,042.30.** This illustrates the Senator’s usual practice of staying an extra night in Fredericton before and after Senate sittings. The Senator returned to Fredericton November 1 and left for Ottawa on November 5, she then returned on November 7 and stayed at the Lord Beaverbrook Hotel two nights (November 7 and November 8) before travelling to the Tobique Reserve on her return journey to

Ottawa, again on November 9. The Senator is certainly entitled to November 1 and, again November 7 on her return but there is no “travel” justification for November 2, 3, 4 and 8. These amounts should be repaid.

(c) **Claim # 09284 (Tab 2 - May 8 to May 15, 2011) - \$567.19** should be read with **Claim # 09284** (Tab 43) and concerns the Fredericton end of the trip that eventually took the Senator from Fredericton to Whitehorse and back. The Auditor General objected to the Senator claiming an extra hotel night in Fredericton on her way to Whitehorse (thereby making one day available if constituents wished to meet with her) and May 14 (being a stopover and an extra night on her way back from Whitehorse). The Senator cannot recall who she met with and what subjects may have been discussed with any individual in this period. I have no reason to doubt the Senator’s truthfulness when she speaks of her *usual practice* of issuing an “open door” invitation on such occasions, but she doesn’t know whether on most occasions whether any of her constituents profited from the opportunity. The Senator thinks she *probably* saw people on May 9 and May 14, but cannot positively affirm that that is the case. Accountability requires more than general evidence of “being there”. The claim of \$567.19 has not been justified.

(d) **Claim #08164 (Tab 3 – June 13 to June 19, 2011) - \$437.84** involves one hotel night in Fredericton on June 18, which was the weekend prior to *National Aboriginal Day 2011*. As the Senate was sitting, the Senator was obliged to return to Ottawa on Monday, June 20, 2011. *National Aboriginal Day* attracts

people from First Nations Communities from all over New Brunswick and, as the Aboriginal representative in the Senate, the Senator is expected to be there. It would appear that under the Auditor General's view she was entitled to stay in Fredericton on Friday, June 17 after disembarking from her flight from Ottawa, then required to travel to Tobique on Saturday, June 18, but drive back to Fredericton on Sunday, June 19 in preparation for her flight back to Ottawa on Monday, June 20. In my view, the Senator's position is quite reasonable. *National Aboriginal Day* is a significant event and the Senator was right to think it was important for her to attend. Apart from anything else, her room on June 18 at the Lord Beaverbrook Hotel in Fredericton was \$162.72, and thus cheaper than the \$220 mileage allowance to drive to and from Tobique. In my view, accordingly, the Senator has justified the \$437.84 claimed.

- (e) **Claim #08162 (Tab 4 – June 20 to June 29, 2011) - \$237.77.** This claim involves an “extended” one day in Fredericton during which the Senator believes she probably met with constituents in the usual way. There are no supporting details. In my view, the accommodation plus meal allowances for June 29 have not been justified as a *travel* expense. The Senator ought to repay \$237.77.
  
- (f) **Claim #08163 (Tab 5 – July 7 to July 18, 2011) - \$515.39:** This stay in Fredericton followed the Senator's participation in the *International Indigenous Leadership* gathering in Vancouver. Again the Auditor General's concern is with two extra hotel nights in Fredericton at the conclusion of the trip. The Senator recalls that on this occasion she held meetings with New Brunswick aboriginal

leaders to report on the initiatives discussed at the *International Indigenous Leadership* which included various initiatives for funding young aboriginal entrepreneurs and educational opportunities. The Senator explained that it is difficult to organize aboriginal leaders in New Brunswick into plenary session. They come to see her in small groups. In my view the two-day extension on July 16 and 17 to report to her constituents has been justified and need not be repaid.

- (g) **Claim #08171 (Tab 6 – August 3 to August 6, 2011) – \$504.74.** The Auditor General contests Fredericton hotel nights on August 4 and 5 and associated meals for a trip to Fredericton to meet with New Brunswick First Nation’s Women (as indicated on the travel expense claim). The Senator explained that she did not convene the meeting. She was an invited participant and was expected to attend. There is no reason to think the Senator did not participate in meetings as indicated on her travel expense claim. The Auditor General was prepared to allow one night but the Senator testified that her meetings took longer. I accept her evidence. I do not think that she need repay the \$504.74.
- (h) **Claim #08175 (Tab 7 – August 17 to 23, 2011) - \$684.41.** In this claim, the Senator travelled from the Tobique reserve about two and half hours to Fredericton on August 17, stayed in Fredericton on August 17 and August 18, then went on to a formal meeting of Aboriginal Chiefs, Elders and students in St. Andrews by the Sea. The Auditor General objects to her second hotel night on her way to St. Andrews, and an extension of two nights in Fredericton (beyond the one permitted night) on her way back to Tobique. The Senator has no

particular recollection of what business was done in Fredericton on the way down or on the way back. In the absence of more specific information as to what Senate business *may* have been done in those three days in Fredericton it cannot be said that the use of Senate resources for the stay at the Lord Beaverbrook Hotel has been justified.

- (i) **Claim #19529 (Tab 8) (November 18 to 27, 2011) (\$800.38).** The Auditor General challenged two instances of extended stay. On November 18 the Senator left Tobique and had her “travel” night in Fredericton. (Curiously, the first night was wrongly disallowed by the Auditor General.) She then stayed in Fredericton November 19 and 20, before flying to Ottawa on Monday, November 21.
- (j) The Senator explains that the three nights in Fredericton at the beginning of this trip were directly related to her attempts to deal with the problem of abused native women in New Brunswick and in particular to facilitate entry of some women into the Gignoo transition house, which looks after abused native women on a temporary basis until more permanent accommodation can be found. The issue of violence against native women is very much on the agenda of the Senate Committee on Aboriginal Affairs. Further, on November 26 and 27, the Senator participated in a session at St. Thomas University of the First Nations studies program.
- (k) It seems to me that these are all specific examples of “outreach” to the members of the native community, and constitutes the work of representation for which

Senator Lovelace Nicholas was appointed. The expense is therefore justified. She need not repay the \$800.38 under this claim.

- (l) **Claim # 19530 (Tab 9) (November 28 to December 4, 2011) (\$387.69<sup>2</sup>).** The Auditor General challenges an extended stay in Fredericton (December 3 and 4). There is no indication in the travel expense claim of any special purpose for this extended stay and the Senator has no recollection and no records. In my view, the extra two days have not been justified and the Senator should repay \$387.69.
  
- (m) **Claim #19549 (Tab 10) (December 5 to 11, 2011) (\$387.69).** In this case, the Senator arrived in Fredericton from Ottawa on December 9. She was certainly entitled to stay in Fredericton overnight December 9. The Auditor General challenges her extended stay on December 10 and 11. Again, there is no specific information other than the Senator's "usual practice" of "being there" and making herself available. Generalities do not amount to accountability. The Senator ought to repay the \$387.69.
  
- (n) **Claim #19531 (Tab 11) (December 12, to 24, 2011) (\$1,399.92).** In this case, the Senator returned to Fredericton from Ottawa on December 17 and was entitled to stay overnight to break the journey. However, the Senator has also claimed accommodation and meals for December 18 through 23. In the absence of any

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<sup>2</sup> Auditor General calculated the amount in issue of \$409.97, but the actual claim shows a total of \$387.69. Total amount in issue adjusted accordingly.



concrete information to justify those additional four nights, I would disallow them.

- (o) **Claims #19533 (Tab 12) and #19532 (Tab 13) (December 29, 2011 to January 3, 2012) (\$950.34<sup>3</sup>).** The Senator indicates the purpose of her trip to Fredericton was to meet with aboriginal women. She points out that the holiday season, and the accompanying consumption of alcohol, leads to an increase in violence in some First Nation's households, and it is important for her to be available in Fredericton to offer support.
- (p) There are a number of confusing features of these two claims. The Senator claims \$114 mileage to return to Tobique on December 31, yet it appears from the hotel bills that she did not return to Tobique on December 31, but stayed on in Fredericton until January 3. On January 1, 2012 claim she requested \$109 in mileage to return to Fredericton, although it seems likely she was already there, as she paid the hotel bill for the previous night. I appreciate the Senator's concern about increased domestic violence during the holiday season, but these two claim forms seem to have been put together without much care and attention and I conclude that \$950.34 has not been justified.

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<sup>3</sup> Auditor General calculated the amount in issue for claim 19532 at \$411.42. This included an amount of \$87.87 that was already deducted from the Senator's reimbursement. The amount in issue should not have been reduced by \$87.87 again. The new total in issue has been adjusted accordingly.

- (q) **Claim #19542 (Tab 14) (January 22 to 24, 2012) (\$151.42).** This claim involves travel from Tobique to Fredericton to Halifax (where the Senator attended meetings related to Aboriginal culture) and her return to Fredericton where the Senator spent January 22 and 23 on her “two nights” policy. I would disallow (as did the Auditor General) one of her two night’s stay in Fredricton of \$151.42.
- (r) **Claim #19537 (Tab 15) (February 3, to 12, 2012) (\$839.08<sup>4</sup>).** The Auditor General did not question the transportation costs. However, this claim includes \$210.72 for the Senator’s day trip from Tobique to Fredericton on February 3. It seems to me the meal allowance on that day is justified. The Auditor General also challenges the Senator’s two-day stay in Fredericton on February 4 and 5 before leaving for Ottawa on February 6. The night of February 5 on the eve of her departure to Ottawa is justified, as stated, but the nights of February 3 and 4 are not. The Senator’s position is that on her return from Ottawa on February 10, the weather closed in, and she was obliged to stay in Fredericton from February 10 until the roads cleared sufficiently to permit her to return home on February 13. She has produced weather records showing that the snow fall in Fredericton on February 11 was 7.1 cm. The Senator points out that travel on the main highways is one thing but travel on the back road to Tobique in bad weather is quite

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<sup>4</sup> Auditor General calculated the amount in issue of \$838.88, but the actual claim shows a total of \$839.08. Total amount in issue adjusted accordingly.

another. She actually noted on her travel expense claim the existence of a storm as the reason for remaining in Fredericton.

- (s) It is unfair to second-guess with hindsight road safety on a back road in New Brunswick in winter. I would therefore respectfully disagree with the Auditor General and consider the hotel nights of February 11 and 12 and associated allowances to be a justified expense. However, the hotel bill for February 3 and 4 and allowances for February 4 should be repaid.
- (t) **Claim # 19536 (Tab 16) (February 13 to 19, 2012) (\$210.72).** On this claim the Senator says she extended her stay in Fredericton by one night because of an apprehended storm which was forecast although it did not materialize to the extent expected. She is supported by weather reports. Again, the Senate rules permit a Senator to take health and safety into consideration in making travel arrangements and in my view the extra night was justified in the circumstances of a New Brunswick winter.
- (u) **Claim #19540 (Tab 17) (February 27 to March 4, 2012) (\$178.07).** The only issue here is one night's accommodation (March 3) where the Senator remained in Fredericton for an extra night before proceeding to Tobique. According to weather reports produced by her counsel, the snow fall in Fredericton on March 3, 2012 was 17.8 cm. In my view, the Senator is entitled to consider road safety and the accommodation and associated daily allowance were justified and the \$178.07 need not be repaid.

- (v) **Claim #19548 (Tab 18) (March 5 to March 18, 2012) (\$1,653.11).** The Senator arrived from Ottawa on March 9 but remained in Fredericton for the nights of March 10 to 17 inclusive. The Senator says that she took a day to travel to Burnt Church in relation to an allegation of elections fraud, which subsequently resulted in a hearing in the Federal Court of Canada, which removed the Chief and a number of councillors from office. A particular dispute concerning a particular band election in which the Senator was an on-looker, and significant allegations of election fraud against individual members of council, do not justify the better part of a week in Fredericton. I conclude that one extra night for the visit to Burnt Church is justified but otherwise, in my view, the balance of Claim 19548 should be repaid.
- (w) **Claim 19544 (Tab 19) (April 1, to April 9, 2012) (\$1,694.16).** The Senator was in Fredericton from April 1 to April 9, 2012. The Senator filed evidence that at this time there was heavy spring flooding in the upper St. John River waterways throughout western and northern New Brunswick, caused by unseasonably warm temperatures. The village of Perth-Andover, close to Tobique, declared a state of emergency and issued a mandatory evacuation order to roughly 500 people. At Tobique 53 residents were evacuated from the First Nation reserve. About 150 reserve properties sustained significant damage in the flooding. The Senator says she made good use of her time in Fredericton on aboriginal matters. Given that the Senator was returning from her Senate work in Ottawa, and that the Senate policy authorizes a Senator to take into account health and safety considerations,

there seems to me to be no reason to second guess the Senator's concern for her safety by continuing her journey home to the flooded reserve. I would therefore recommend that she **not** be required to reimburse the sum of \$1,694.16.

- (x) **Claim #23177 (Tab 20) (April 22 to 29, 2012) (\$209.32).** Again, the Auditor General challenges the second night accommodation in Fredericton on her return from a Senate sitting in Ottawa. The Senator offers no particular justification for this stop-over. I therefore consider her claim of \$209.32 is not justified.
- (y) **Claim #23178 (Tab 21) (April 29 to May 6, 2012) (\$564.49).** This claim involves an extension of two nights in Fredericton on the Senator's return from a conference in Edmonton entitled *Aboriginal Inclusion Works*. This is an important conference that promotes economic initiatives in aboriginal communities. The Auditor General does not question the value of the conference or the general expenses but concluded that the Senator should have returned to Tobique two days earlier than she did.
- (z) The Senator says that she met with local chiefs and other aboriginal people to update them both on the conference as well as studies being undertaken, and policies developed by the Senate Aboriginal Affairs Committee. She would not have attracted a comparable audience to Tobique, 205 kilometers away. In the circumstances, the Senator has provided sufficiently precise information about the stop-over to justify the \$564.49.

- (aa) **Claim #23197 (Tab 22) (May 7 to 14, 2012) (\$869.03).** The Senator arrived in Fredericton from Ottawa on May 10 and was therefore entitled to stay over on May 10. In fact, she stayed in Fredericton until leaving for Montreal on May 15 (see Claim # 23198). Her Travel Claims form discloses that a *Women's First Nations Conference* was held in Fredericton May 10 to 14 at which the Senator made a presentation on the work of the Senate Aboriginal Committee. In my view, the conference justifies the \$869.03.
- (bb) **Claim #23198 (Tab 23) (May 15 to 23, 2012) (\$960.08).** This file involves the Senator's attendance at a conference on *Archeological Aboriginal Studies* in Montreal from May 15 to May 18. She returned to Fredericton on May 18 and remained until the 23<sup>rd</sup>. The Auditor General challenges four hotel nights namely May 19, 20, 21 and 22. The Senator says that the four extra nights in Fredericton were devoted to the usual variety of issues affecting aboriginal people who wish to meet with her, as well as the disputed elections at Burnt Church. She has no real information about what, if any, Senate business was done during those four days. In my view, the nights of May 20, 21 and 22 have not been justified and I would disallow them.
- (cc) **Claim #23180 (Tab 24) (June 2 to 10, 2012) (\$450.14).** The Auditor General challenged the nights of June 3 and 9 and associated daily allowances. The Senator left Fredericton for Ottawa on June 4 and was therefore entitled to be reimbursed for her hotel room on June 2. The night of June 3 has not been justified. The Senator returned to Fredericton on June 8 and says that June 9 and

10 she attended a workshop in Fredericton on Aboriginal Self Governance. This is an issue of concern to the Senate Committee on Aboriginal Affairs. In my view, her claim is justified to the extent of \$210.12. The balance of \$240.02 should be repaid.

- (dd) **Claim #23181 (Tab 25) (June 11 to 18, 2012) (\$237.57).** In this case, the Auditor General challenges one hotel night (June 16). The Senator arrived in Fredericton from Ottawa on June 15. She returned to Ottawa on Monday, June 18. She states that the purpose of returning to Fredericton was for meetings with members of the St. Mary's first nation in Fredericton. In any event, had the Senator driven from Fredericton to Tobique on Saturday, June 16 and returned to Fredericton on Sunday, June 17 to catch her flight to Ottawa on June 18, she would have incurred mileage of \$218, plus the hassle and fatigue of a five hour return journey. The Senator has justified her reimbursement of \$237.57.
- (ee) **Claim #23185 (Tab 26) (September 2 to 6, 2012) (\$750.51<sup>5</sup>).** The Senator went from Tobique to Fredericton for a conference on violence against women and the Auditor General has found the mileage and one night's hotel accommodation to be justified but challenged the three nights of September 3, 4 and 5. The Senator explains that the conference took more than one day. She participated throughout. The Senator has justified the reimbursement of \$750.51

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<sup>5</sup> Auditor General calculated the amount in issue of \$751.11, but the actual claim shows a total of \$750.51. Total amount in issue adjusted accordingly.

- (ff) **Claim #23189 (Tab 28) (November 18 to 24, 2012) (\$45.50).** The Auditor General challenges one meal of \$45.50. These meals were taken during a day of travel from Tobique to Fredericton on November 18 and on her return trip from Fredericton to Tobique on November 24. The Senator is entitled to meals while on travel status. The Senator need not repay the \$45.50.
- (gg) **Claim #23188 (Tab 29) (November 25 to December 2, 2012) (\$252.95).** The Auditor General challenges accommodation for the Senator's second night in Fredericton after returning from Ottawa on November 30. The Senator offers no particular justification for the extended stop-over. In my view, the Senator ought to repay the \$252.95.
- (hh) **Claim #26551 (Tab 30) (February 2 to 19, 2013) (\$1,215.87<sup>6</sup>).** The Auditor General challenged hotel nights for February 2 and 4, and again February 16 to 18. The Senator travelled to Fredericton on February 2 and remained until February 5 when she flew to Ottawa to attend the Senate. She is entitled to February 2 but not February 3 and 4 (in the absence of some concrete and credible explanation for the extended stay). Equally, she returned from Ottawa to Fredericton on February 15, and was entitled to February 15 but not February 16, 17 and 18. However, the Senator has produced evidence that on February 16 there was a snow storm in which 12.4 cm of snow hit central New Brunswick and

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<sup>6</sup> Auditor General calculated the amount in issue of \$1,238.75, but the actual claim shows a total of \$1,215.87. Total amount in issue adjusted accordingly.



she therefore decided to remain until the roads were clear. This did not happen until February 19. She was entitled to make this judgment call. Accordingly, I think she has justified Claim # 26551 except as to the hotel and associated allowances for February 3 and 4. She should therefore repay **\$483.30**

- (ii) **Claim # 27176 (Tab 31) (February 21 to 25, 2013) (\$755.45).** In the case the Auditor General challenges three nights' accommodation being February 22, 23 and 24. As explained in the Senator's travel expense claim, the purpose of her trip to Fredericton was to attend the three day meeting of the Maliseet First Nation Grand Council in Fredericton. This is an important event that fell within the scope of her parliamentary functions and her claim is justified.
  
- (jj) **Claim #27177 (Tab 32) (February 27 to March 2, 2013) (\$755.45).** The Auditor General challenges hotel nights February 28, March 1 and 2. The Senator explains that she attended a three-day meeting of the Maliseet Aboriginal Council where New Brunswick First Nations dealt with the politically contentious issue of whether to split the Maliseet Council from the Mi'kmaq Council and sit separately instead of together. She regarded this decision as an issue of real importance. The Senator need not repay the sum of \$755.45.

- (kk) **Claim #27180 (Tab 33) (March 23 to April 2, 2013) (\$1,239.50<sup>7</sup>)**. The Auditor General challenges March 24 (being the second night after the Senator's arrival in Fredericton from Tobique) as well as March 29, 30, 31 and April 1 following the Senator's return from Ottawa on March 28. No real information is available to support the conduct of any Senate-related business. April 1 does not fall within the audit period. The Senator should repay March 24, 29, 30 and 31 being \$966.60.
- (ll) **Claim #27178 (Tab 34) (March 8 to 11, 2013) (\$4,993.30)**. This claim involved a major meeting of the Aboriginal Council of the Atlantic Provinces in Halifax. Senator Lovelace Nicholas attended along with her "designated traveller", Karen Perley. The Senator explains that there are a number of workshops that run in parallel at the Aboriginal Council's meeting and that she wanted her "designated traveller" to attend meetings that the Senator herself was unable to attend because she was at a different workshop. Ms. Perley speaks Maliseet and has a deep knowledge about Maliseet culture and issues affecting the community. The purpose of the meeting (to attend the Aboriginal Council of the Atlantic Provinces) was set out on the travel expense claim itself. It seems to me the Senator's attendance at such a meeting would be a legitimate expectation of the only Aboriginal Senator in Atlantic Canada. Accordingly, claim 27178 in the sum of \$4,993.30 is justified.

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<sup>7</sup> Auditor General calculated the amount in issue of \$1,238.75, but the actual claim shows a total of \$1,239.50. Total amount in issue adjusted accordingly.

(mm) **Claim #27179 (Tab 35) (March 8 to 11, 2013) (\$3,980.60)**. This claim involves the expenses of the Senator's "designated traveller", Karen Perley to attend the above conference. While little is said in the *Senator's Travel Policy 2012* about the justification for paying the travel expenses of a "designated traveller" who is not a spouse, in my view, such expenditures must still be justified as linked to the Senator's Parliamentary functions, and pass the reasonableness, cost-benefit and proportionality tests. Karen Perley is not a member of the Senator's staff and is not a spouse and has really nothing to do with the Senate except acting on occasion as "an alternative set of eyes and ears" for the Senator. In the circumstances, here, however there is a direct link to supporting the Senator's Parliamentary work and the cost of travel of the designated traveller was justified.

(nn) **Claim #8159 (Tab 36) (May 16 to 23, 2011) (\$4,636.88<sup>8</sup>)**. This claim involves a trip by the Senator from Tobique to Halifax to attend two days of meetings with the Regional Office of the Department of Indian Affairs and to use the occasion of the many Aboriginal leaders assembled for that consultation to review with them other issues which the Senator wished to pursue politically at the Senate Committee of Aboriginal Affairs. In my view this activity was legitimately linked to her position as Senator and the travel claim of \$4,636.88 was justified.

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<sup>8</sup> Auditor General calculated the amount in issue of \$4,636.98, but the actual claim shows a total of \$4,636.88. Total amount in issue adjusted accordingly.

- (oo) **Claim # 8160 (Tab 37) (May 17 to May 22, 2011) (\$2,431.51).** This is a claim for the expenses of Karen Perley to attend the Halifax conference referred to in the Senator's claim #8159, above. Unlike the earlier Halifax conference, where the Senator reasonably considered it related to Senate business to have Karen Perley attend parallel workshops and thus allow the Senator herself to derive greater benefit from the conference as a whole, no such justification exists in this case. In fact, the travel expense claim for Karen Perley reveals no stated purpose at all. I would disallow this claim in full.
- (pp) **Claim #8169 (Tab 38) (September 30 to October 6, 2011) (\$1,201.39).** The Senator travelled to Halifax to attend the celebration of Treaty Day and the opening of an Aboriginal Art Gallery. The Senator was in Halifax September 30 to October 2. She explained that Treaty Day provides a major coming together of aboriginal peoples in Nova Scotia and from elsewhere in the Maritimes. On that basis, it seems to me sufficiently linked to her parliamentary functions to be treated as a justifiable expense.
- (qq) **Claim #8174 (Tab 39) (September 30 to October 2) (\$2,201.96).** Claim involves the expenses of Karen Perley to attend the same gatherings to Halifax as expensed by the Senator in Claim #8169. Ms. Perley went as a "designated traveller" but there is no justification. On her travel expense claim there is no reference to Treaty Day. The purpose, she states, was to "attend opening of Aboriginal Art Gallery with Senator". There is no reason why the Senate should pay the expense of Ms. Perley to attend the opening of an Art Gallery in Halifax,

even though there were likely interesting gatherings in addition to the opening. I would disallow this claim in full.

- (rr) **Claim #8166 (Tab 40) (January 20 to January 22, 2012) (\$2,194.56).** This involves a second visit to Halifax to attend an art gallery of aboriginal artists by the designated traveller, Karen Perley. As with the previous claim I can see no justification for the public paying the designated traveller to attend the gallery opening and would disallow the claim.
- (ss) **Claim #23184 (Tab 41) (July 19 to July 22, 2012) (\$3,268.35).** This claim involves a trip by the Senator from Tobique to Halifax to meet with the Association of First Nations Women. The particular purpose of the meeting was to consider studies in education, a matter which the Senator had promoted at the Senate Committee on Aboriginal Affairs. This meeting was appropriately linked to the Senator's parliamentary functions and was justified.
- (tt) **Claim #19550 (Tab 42) (January 19 to January 23, 2012) (\$3,038.48).** This is yet another trip to Halifax to attend the opening of an aboriginal artist's gallery. Art Gallery openings are not an activity sufficiently linked to Parliamentary functions to justify the expenditure of public funds. The Senator spent January 19 and 20 in Fredericton and again January 22 in Fredericton on her way back to Tobique. The dominant purpose of the trip was personal and should be disallowed in full.

- (uu) **Claim #09284 (Tab 43) (May 8 to May 15) (\$9,870.86).** The purpose of this trip to Whitehorse was at the invitation of Senator Lillian Dyck, who is a colleague and belongs to a Saskatchewan First Nation. Senator Dyck's life formed the subject matter of the play. Senator Lovelace Nicholas had known Senator Dyck for years before being appointed to the Senate. It is clear that the primary purpose of the trip was a personal journey of friendship by the Senator and that any Senate functions were incidental to the personal journey. It is not suggested that there were any extra costs associated with whatever meetings took place linked to senatorial duties. In my view, no part of this claim has been justified.
- (vv) **Claim # 19538 (Tab 44) (February 22 to February 27, 2012) (\$7,938.15).** In this case, the Senator travelled from Tobique to Fredericton on February 21 - left for Vancouver on February 22 and returned to Ottawa on February 27. The purpose of the trip to Vancouver was to attend the *19<sup>th</sup> Annual National Aboriginal Achievement Awards*. This is a major gathering of the Aboriginal Leadership from across Canada to honour achievement in education, business, politics and other fields of endeavour. It is widely attended by Senators, Members of Parliament and, of course, aboriginal leaders. The Senator filed a letter from her colleague, the Honourable Dennis Paterson who explains that he also attended the Annual National Aboriginal Achievement Awards and has been reimbursed for the costs without protest from the Auditor General. In my view this function is linked to the Senator's parliamentary role and duties and was justified.

(ww) **Claim # 19541 (Tab 45) (February 22 to February 25, 2012) (\$7,826.49)**. This claim involves the designated traveller, Karen Perley, to attend the 19<sup>th</sup> *Annual Aboriginal Achievement Awards* in Vancouver along with the Senator. In my view, the trip by the designated traveller to Vancouver to attend an awards dinner is not justified. Its cost of \$7,826.49 is out of all proportion to any public benefit. It satisfied no Senate purpose. It fails the cost-benefit test. I would therefore disallow this claim in full.

**ACCORDINGLY, I WOULD DISPOSE OF THE CLAIMS AS FOLLOWS:**

| <u>Claim Number</u> | <u>Amount in Issue</u> | <u>Amount Justified</u> | <u>Balance Owing to Senate</u> |
|---------------------|------------------------|-------------------------|--------------------------------|
| 09284               | \$ 10,438.05           | \$ -                    | \$ 10,438.05                   |
| 08164               | \$ 437.84              | \$ 437.84               | \$ -                           |
| 08162               | \$ 237.77              | \$ -                    | \$ 237.77                      |
| 08163               | \$ 515.39              | \$ 515.39               | \$ -                           |
| 08171               | \$ 504.74              | \$ 504.74               | \$ -                           |
| 08175               | \$ 684.41              | \$ -                    | \$ 684.41                      |
| 19529               | \$ 800.38              | \$ 800.38               | \$ -                           |
| 19530               | \$ 387.69              | \$ -                    | \$ 387.69                      |
| 19549               | \$ 387.69              | \$ -                    | \$ 387.69                      |
| 19531               | \$ 1,399.92            | \$ -                    | \$ 1,399.92                    |
| 19533               | \$ 451.05              | \$ -                    | \$ 451.05                      |
| 19532               | \$ 499.29              | \$ -                    | \$ 499.29                      |
| 19542               | \$ 151.42              | \$ -                    | \$ 151.42                      |
| 19537               | \$ 839.08              | \$ 505.19               | \$ 333.89                      |
| 19536               | \$ 210.72              | \$ 210.72               | \$ -                           |
| 19540               | \$ 178.07              | \$ 178.07               | \$ -                           |
| 19548               | \$ 1,653.11            | \$ 178.07               | \$ 1,475.04                    |
| 19544               | \$ 1,694.16            | \$ 1,694.16             | \$ -                           |
| 23177               | \$ 209.32              | \$ -                    | \$ 209.32                      |
| 23178               | \$ 564.49              | \$ 564.49               | \$ -                           |
| 23197               | \$ 869.03              | \$ 869.03               | \$ -                           |
| 23198               | \$ 960.08              | \$ 240.02               | \$ 720.06                      |
| 23180               | \$ 450.14              | \$ 210.12               | \$ 240.02                      |

|       |    |           |    |           |    |           |
|-------|----|-----------|----|-----------|----|-----------|
| 23181 | \$ | 237.57    | \$ | 237.57    | \$ | -         |
| 23185 | \$ | 750.51    | \$ | 750.51    |    |           |
| 23190 | \$ | 1,042.30  | \$ | 30.50     | \$ | 1,011.80  |
| 23189 | \$ | 45.50     | \$ | 45.50     | \$ | -         |
| 23188 | \$ | 252.95    | \$ | -         | \$ | 252.95    |
| 26551 | \$ | 1,215.87  | \$ | 732.57    | \$ | 483.30    |
| 27176 | \$ | 755.45    | \$ | 755.45    | \$ | -         |
| 27177 | \$ | 755.45    | \$ | 755.45    | \$ | -         |
| 27180 | \$ | 1,239.50  | \$ | 272.90    | \$ | 966.60    |
| 27178 | \$ | 4,993.30  | \$ | 4,993.30  | \$ | -         |
| 27179 | \$ | 3,980.60  | \$ | 3,980.60  | \$ | -         |
| 8159  | \$ | 4,636.88  | \$ | 4,636.88  | \$ | -         |
| 8160  | \$ | 2,431.51  | \$ | -         | \$ | 2,431.51  |
| 8169  | \$ | 1,201.39  | \$ | 1,201.39  | \$ | -         |
| 8174  | \$ | 2,201.96  | \$ | -         | \$ | 2,201.96  |
| 8166  | \$ | 2,194.56  | \$ | -         | \$ | 2,194.56  |
| 23184 | \$ | 3,268.35  | \$ | 3,268.35  | \$ | -         |
| 19550 | \$ | 3,038.48  | \$ | -         | \$ | 3,038.48  |
| 19538 | \$ | 7,938.15  | \$ | 7,938.15  | \$ | -         |
| 19541 | \$ | 7,826.49  | \$ | -         | \$ | 7,826.49  |
| TOTAL | \$ | 74,530.61 | \$ | 36,507.34 | \$ | 38,023.27 |



## SENATOR TERRY MERCER

**Province:** Nova Scotia

**Appointment date:** 7 November 2003

| For the period from 1 April 2011 to 31 March 2013   |          |
|---|----------|
| Total amount of items referred to the Internal Economy Committee (including applicable taxes) | \$29,338 |

1. Senator Terry Mercer says he has three personal interests: “one is in charitable work, two is in the continued success of the Liberal Party of Canada and the Liberal Party of Nova Scotia, and the third and most importantly is my family.” (Tr. 25) He is a strong believer in the representative role of a Senator. “I work for the people of Nova Scotia, “he testified,” not the Senate.”
2. Senator Mercer’s professional career was spent as a fundraiser for a number of different charities over many years. The Senator obviously believes in the importance of charitable giving (“philanthropy”) as a “social good” and in the public interest. In light of government cutbacks, good causes may have to rely more and more on private philanthropy.
3. Senator Mercer explained that when he became a Senator, he ceased any professional involvement in fundraising. However, such is his interest in philanthropy, he pursued his ambition for years to get Parliament to recognize

“National Philanthropy Day”. The project succeeded in 2012 when Parliament enacted *An Act respecting National Philanthropy Day* which in its operative part simply reads as follows:

NATIONAL PHILANTHROPY DAY

2. Throughout Canada, in each and every year, the 15<sup>th</sup> day of November shall be known as “National Philanthropy Day.”

**THE CLAIMS**

4. The claims involving Senator Mercer can be divided in three groups. The first set of claims relates to travel expenses incurred by the Senator’s spouse for travel between Ottawa and Nova Scotia. There are seven claims in this category.
5. The second category of claims relates to travel expenses incurred by the Senator attending various meetings of the Association of Fundraising Professionals (AFP). He has been a member of the AFP for many years. He is still a member of its international board, but holds no position on the board of directors or otherwise with AFP Canada. On two of these trips to attend AFP functions, he was accompanied by his wife. In this second category there are four claims.
6. The third category of claims relates to travel from Ottawa to Toronto by the Senator, accompanied by his wife, with respect to partisan Liberal Party business. The Auditor General classified this trip as personal business.
7. I will deal with each of these three categories in turn.

**CATEGORY ONE: CLAIMS INVOLVING MRS. MERCER BETWEEN HALIFAX AND OTTAWA IN CONNECTION WITH MOVING IN OTTAWA FROM A HOUSE TO A CONDO**

|   | <b>Claim No.</b> | <b>Date of Travel Expense</b> | <b>Amount put in issue by Auditor General</b> | <b>Full or Partial (F/P)</b> | <b>Description</b>                                  | <b>Senator Mercer's Position</b>   |
|---|------------------|-------------------------------|---|------------------------------|---|--|
| 1 | 18717            | 4 – 7 April 2011              | \$3,402.24                                    | F                            | Mrs. Mercer travel Halifax-Ottawa to NCR residence. | To be closer to Parliament Hill the Mercers decided to sell their home in the Elmvale Acres area in Ottawa to move into a condo near the Hill. To do that, the home on Camrose Street needed to be prepared for sale. While Senator Mercer was attending to Senate business elsewhere, Mrs. Mercer travelled between Halifax and Ottawa to prepare the house for sale. |
| 2 | 17332            | 24-29 April 2011              | \$1,687.55                                    | P                            | Mrs. Mercer travel Halifax-Ottawa to NCR residence. | See claim 1.   |
| 3 | 17334            | 1-9 May 2011                  | \$1,812.92                                    | P                            | Mrs. Mercer travel Halifax-Ottawa to NCR residence. | See claim 1.   |

|  |       |                                  |                       |   |  |  |
|--|-------|----------------------------------|-----------------------|---|--|--|
| 4  | 25328 | 13<br>November<br>2012           | \$921.06 <sup>1</sup> | F | Mrs. Mercer<br>travel Halifax-<br>Ottawa to<br>NCR<br>residence. | While Senator Mercer<br>was attending to other<br>duties in Northern<br>Alberta, New Brunswick<br>and Washington, the<br>new residence in Ottawa<br>continued to need<br>organizing. It could<br>wait for several trips to<br>Ottawa by both Senator<br>& Mrs. Mercer but the<br>Senator & Mrs. Mercer<br>thought it was an<br>efficient use of Senate<br>resources for Mrs.<br>Mercer to travel<br>between Halifax and<br>Ottawa to handle this<br>part of their Ottawa life. |
| 5  | 25329 | 15-26<br>November<br>2012        | \$921.06              | P | Mrs. Mercer<br>travel Halifax-<br>Ottawa to<br>NCR<br>residence. | See Claim 1.   |
| 6  | 25342 | 14-25<br>February<br>2013        | \$895.64              | P | Mrs. Mercer<br>travel Halifax-<br>Ottawa to<br>NCR<br>residence. | See Claim 1.   |
| 7  | 25343 | 28 February<br>– 4 March<br>2013 | \$895.63              | P | Mrs. Mercer<br>travel Halifax-<br>Ottawa to<br>NCR<br>residence. | See Claim 1.   |
| <b>TOTAL AMOUNT IN DISPUTE ON ISSUE ONE: \$10,536.10</b> |       |                                  |                       |   |  |  |

<sup>1</sup> Auditor General calculated the amount in issue of \$870.21, but the actual claim shows a total of \$921.06.  
Total amount in issue adjusted accordingly.

8. Senator Mercer's position on the "housing issue" is that "if there was something that was going to be accomplished that was going to benefit me as a senator and in my duties as a senator, then I thought that that was a legitimate expenditure. For example, in this case getting me out of that house in Ottawa South to a condo within a kilometre of Parliament Hill was of direct benefit to me, of direct benefit to the Senate and of direct benefit to my participation in my Senate duties. I thought it was a legitimate expenditure." (Tr. 32)
9. **Disposition:** the Senate provides relocation expenses, including related travel, when a Senator takes up office at the beginning of his or her term, and at the end. However, the cost of moving house within Ottawa in the 8<sup>th</sup> year of Senator Mercer's term was a personal expense not a Senate expense. No doubt, as Senator Mercer says, he could operate more efficiently out of a home that is organized than out of a home that is disorganized, but not everything that helps a Senator operate more efficiently is a reimbursable travel expense.
10. People in the private sector move house within their communities at their own expense. In my opinion, moving house within Ottawa was not an eligible Parliamentary purpose.

11. Mrs. Mercer could, of course, have done what she had to do when in Ottawa with her husband when he was there on Senate business. But at all times relevant to these claims, the Senator was away from Ottawa.

12. I do not accept the argument that had both the Senator and his wife travelled back and forth from Halifax to organize the same move it would have doubled the cost to the Senate. If the Senator had come to Ottawa just to unpack boxes, and put up bookshelves he would not have come to Ottawa on Senate business. Therefore associated travel for the Senator and his wife would not have been reimbursable.

**CATEGORY TWO: EXPENSES OF THE SENATOR ATTENDING MEETINGS OF THE ASSOCIATION OF FUNDRAISING PROFESSIONALS [AFP] TO LOBBY SUPPORT FOR HIS PHILANTHROPY BILL**

13. There are five claims in this category.

|   | <b>Claim No.</b> | <b>Date of Travel Expense</b> | <b>Amount put in issue by Auditor General</b> | <b>Full or Partial (F/P)</b> | <b>Description</b>   | <b>Senator Mercer's Position</b>   |
|---|------------------|-------------------------------|---|------------------------------|--|--|
| 8 | 17356            | 4-6 August 2011               | \$6,327.13                                    | F                            | Senator Mercer travel Halifax-Saskatoon for the "2011 Canadian AFP Leadership Retreat" | All of these claims relate to efforts to obtain lobbying support from the fundraising community. |
| 9 | 19211            | 13-16 October                 | \$1,093.13                                    | F                            | Senator Mercer travel  |  |

|   |       |                         |            |   |  |  |
|---|-------|-------------------------|------------|---|--|--|
|   |       | 2011                    |            |   | Halifax-Montreal for the AFP Board Meetings and Leadership Academy   |  |
| 10  | 19208 | 13-16 October 2011      | \$435.24   | F | Mrs. Mercer travel Ottawa-Montreal to accompany the Senator to the AFP Board Meetings and Leadership Academy |  |
| 11  | 20880 | 29 March – 4 April 2012 | \$3,292.86 | F |  |  |
| 12  | 22553 | 29 March – 4 April 2012 | \$4,252.44 | F |  |  |
| <b>TOTAL AMOUNT IN ISSUE IN CATEGORY TWO: \$15,400.80</b> |       |                         |            |   |  |  |

14. At the meetings of the AFP that Senator Mercer attended there was always “government relations” on the agenda. He spoke to various items as appropriate. However, his main focus was enactment of the National Philanthropy bill, which, as stated, was a major legislative preoccupation for Senator Mercer for many years. The above expenses, according to Senator Mercer, relate mostly to lobbying for support for that bill.

15. As Senator Mercer testified, he needed to “get support for this bill from Conservative and NDP Parliamentarians.” He testified, “I can go talk to Conservative MPs and senators all I want” but in light of his Liberal partisanship he did not consider himself a good prospect to win over Conservative and NDP support. On the other hand, many members of the AFP had good connections in the other parties and the Senator sought to exploit their connections to get support for the bill. “I’m a big Liberal,” he explained, “at that time, I was much more partisan than I even am now. I’m still very partisan and proud of it, but I knew that wasn’t going to get me anywhere. I might have picked up some support, but I needed broad support.” (TR. p. 40) Accordingly, he testified:

“what I wanted to do was to say to the members of the AFP, “Here’s the problem. Our problem is if we collectively want to get this bill passed, then we need to get the support of, particularly, Conservative senators and Conservative MPs.” The way to do that was for us - - that was a “royal us” - - supporters of the bill, to reach out Conservative MPs and senators to say, “We like this bill. We think it’s important. To us it’s important to the community,” and again always pointing out to them that there was no cost to the statute, because one of the concerns the Conservatives had raised as we talked about it was, “Then you’re going to come back and ask us for money.” (TR. pp. 46-47)

16. He credits his work within the AFP with generating much of the effective lobbying of Conservatives and NDP Parliamentarians. Eventually the lobbying was successful and the bill was enacted.
17. **Disposition:** In my view, Senator Mercer’s travel expense incurred to galvanize members of the Association of Fundraising Professionals to lobby support for his



legislative project, especially amongst the Conservatives and NDP, was directly related to his Parliamentary functions. It is true that passage of the bill, to the extent it increases support for fundraising, will benefit his comrades still in the world of charitable fundraising, but it must often be the case that work in Parliament benefits a trade or occupation to which a Senator formerly belonged. The AFP travel contributed to passage of legislation that Parliament considered to be in the public interest.

18. Once it is established that his advocacy for a National Philanthropy Day bill was a legitimate political objective, as it was, the expenses were reimbursable. The claims under this category should be allowed.

**CATEGORY THREE: TRIP OF SENATOR MERCER AND HIS WIFE TO TORONTO ON PARTISAN POLITICAL BUSINESS**

19. There are two claims in this category.

|    | <b>Claim No.</b> | <b>Date of Travel Expense</b> | <b>Amount put in issue by Auditor General</b> | <b>Full or Partial (F/P)</b> | <b>Description</b>  | <b>Senator Mercer's Position</b> |
|----|------------------|-------------------------------|---|------------------------------|---|----------------------------------|
| 13 | 20876            | 15-16 December 2011           | \$1,868.66                                    | F                            | Senator Mercer travel Ottawa-Toronto to attend to partisan business and community | Partisan political purposes      |

|  |       |                     |            |   |   |                             |
|--|-------|---------------------|------------|---|---|-----------------------------|
|  |       |                     |            |   | event at Parkdale-High Park and to meet with stakeholders |                             |
| 14   | 20877 | 15-16 December 2011 | \$1,583.41 | F | Travel Ottawa to Toronto for partisan political purposes  | Partisan political purposes |
| <b>TOTAL AMOUNT IN ISSUE IN CATEGORY THREE: \$3,452.07</b> |       |                     |            |   |   |                             |

20. The Senator explains that he “travelled to meet privately with the individuals in the Toronto area who might play a role in the future of the Liberal Party of Canada. December 15 and 16 were deadlines for the delegate selection for the upcoming convention and for submissions for amendments to the constitution.” (TR. p. 50) The deadline for submissions was flagged on his contemporaneous office agenda. His wife, whose travel claim is in issue, accompanied him.
21. While in Toronto, they attended an evening function at the curling club of which they were members when living in Toronto but the Senator testified that the “primary” [he called it “principal”] purpose of the trip to Toronto was “the people I met with during the day” for partisan purposes.
22. **Disposition:** there is no reason to disbelieve the Senator as to the primary purpose of the trip to Toronto. Under the Senate rules in 2011, he was entitled to

have his spouse along for the trip. His wife's expenses are therefore reimbursable.

23. Accordingly, the results of the Special Arbitration are as follows:

| <u>Categories</u> | <u>Claim Number</u> | <u>Amount in Issue</u> | <u>Amount Justified</u> | <u>Balance Owing to Senate</u> |
|-------------------|---------------------|------------------------|-------------------------|--------------------------------|
| Category 1        | 18717               | \$ 3,402.24            | \$ -                    | \$ 3,402.24                    |
|                   | 17332               | \$ 1,687.55            | \$ -                    | \$ 1,687.55                    |
|                   | 17334               | \$ 1,812.92            | \$ -                    | \$ 1,812.92                    |
|                   | 25328               | \$ 921.06              | \$ -                    | \$ 921.06                      |
|                   | 25329               | \$ 921.06              | \$ -                    | \$ 921.06                      |
|                   | 25342               | \$ 895.64              | \$ -                    | \$ 895.64                      |
|                   | 25343               | \$ 895.63              | \$ -                    | \$ 895.63                      |
| Category 2        | 17356               | \$ 6,327.13            | \$ 6,327.13             | \$ -                           |
|                   | 19211               | \$ 1,093.13            | \$ 1,093.13             | \$ -                           |
|                   | 19208               | \$ 435.24              | \$ 435.24               | \$ -                           |
|                   | 20880               | \$ 3,292.86            | \$ 3,292.86             | \$ -                           |
|                   | 22553               | \$ 4,252.44            | \$ 4,252.44             | \$ -                           |
| Category 3        | 20876               | \$ 1,868.66            | \$ 1,868.66             | \$ -                           |
|                   | 20877               | \$ 1,583.41            | \$ 1,583.41             | \$ -                           |
| TOTAL             |                     | \$ 29,388.97           | \$ 18,852.87            | \$ 10,536.10                   |

## SENATOR PANA MERCHANT

**Province:** Saskatchewan

**Appointment date:** 12 December 2002

| <b>Amount referred to Special Arbitration</b>  |         |
|--|---------|
| Total amount of items challenged by the Auditor General (including applicable taxes) | \$5,500 |
| Amount repaid after 5 June 2013 and before 7 May 2015                                | \$511   |

1. The Auditor General's principal concerns are as follows:

- (i) On four separate occasions, the Senator and her spouse extended their stays or stopped over in Montreal, Toronto, or Calgary. According to the expense claims, the stated purpose of those trips was parliamentary business. The incremental cost was \$3,169.34.
- (ii) The Senator claimed expenses for part of an international trip that were not previously approved according to the Senate's rules, policies, and guidelines. The ineligible amount was \$511, **which the Senator repaid.**
- (iii) The Auditor General found that on one occasion the Senator's spouse travelled with the Senator to Ottawa. When the Senator returned home, the spouse went to Vancouver instead. The incremental cost for this portion of the spouse's trip was said to be \$1,819.58.

2. The detailed claims are as follows:

| Reference Number | Date of Expense |                  | Full or Partial (F/P) | Amount in Issue | Senator Merchant's Statement of Senate-Related Activity   |
|------------------|-----------------|------------------|-----------------------|-----------------|---|
|                  | Start           | End              |                       |                 |   |
| 15452            | 1 April 2011    | 5 April 2011     | P                     | \$274.25        | Stopover in Montreal to attend weekend functions with the Greek community leading up to the Hellenic Israel Relations Conference  |
| 15453            | 13 April 2011   | 15 April 2011    | P                     | \$681.04        | Stopover in Toronto for Hellenic Community activities including senior politicians and the Greek Ambassador   |
| 15457            | 28 August 2011  | 3 September 2011 | P                     | \$1,294.10      | Stopover in Calgary re: Global Women's Summit, and the Daughters of Penelope and to liaise with promoters of the Prime Minister's dinner.   |
|                  |                 |                  |                       | \$864.25        | Stopover in Toronto and Calgary to promote Greek issues and Hellenic meetings and the Prime Minister's dinner<br>Incremental cost of flight Ottawa to Calgary instead of Ottawa to Regina |
| 21469            | 1 May 2012      | 4 May 2012       | P                     | \$55.70         | Per diem expenses of \$55.70 while on travel status   |
| 21464            | 29 May 2012     | 14 June 2012     | P                     | \$152.55        | Unauthorized "day room" at the Fairmont Chateau Laurier   |
| 21468            | 29 May 2012     | 12 June 2012     | P                     | \$358.88        | Unauthorized stay beyond pre-approved dates   |

|       |                 |                 |   |            |  |
|-------|-----------------|-----------------|---|------------|--|
| 21454 | 30 October 2012 | 2 November 2012 | P | \$1,819.58 | Incremental cost of spousal travel to Vancouver instead of returning to Regina |
|-------|-----------------|-----------------|---|------------|--|

## DISCUSSION

3. Senator Pana Merchant is of Greek birth. She arrived in Canada when she was 14. Her career, as well as her work in the Senate, has been focussed to a significant extent on new Canadians, ethnic Groups, communities of Greek origin but other ethnicities as well. She was a founding member of the Canadian Race Relations Foundation and is on the Board of Directors of the Immigrant Women of Regina (Tr. 10). At one time, she served on the Committee on Foreign Affairs. Internationally she is a member of the World Hellenic Parliamentarians and sits on the parliamentary network of the World Bank and the IMF.
4. Senator Merchant sees her work with ethnic communities as part of her role in politics. She is carrying the Liberal message to people who might otherwise not hear it. As she says, “I’ve been a political person . . . my role here in the Senate is political” (Tr. 11). She is the first and only Greek woman ever to be appointed to the Senate.
5. Her maiden speech in the Senate was on the issue of the return of the Elgin Marbles to Greece in time for the 2004 Olympics. (The UK did not oblige). During the years being audited, Senator Merchant was involved in the preparation for the Global Summit of Women that was held in Greece in 2012. She represented the Canadian Government at the conference because, she says, she was Greek and it was taking place in Greece. She led a Canadian delegation of business women and academics. Women from 80 countries attended.

6. Over the years, she has also been involved with Canadian Parents for French.
7. Senator Merchant emphasizes that from the time of her appointment in 2002 until after the Audit Period the only other Liberal party parliamentarian from Saskatchewan was Ralph Goodale. Thirteen MPs were Conservatives. It was important to be active in the community to get out the Liberal party message.

#### **LITTLE DOCUMENTATION WAS PROVIDED BY SENATOR MERCHANT TO THE AUDITOR GENERAL**

8. One problem with this series of claims is that Senator Merchant did not collect documentation in time to satisfy the Auditor General's schedule. In any event, on occasion documentation is difficult. She points out that when meeting with volunteer organizations there is frequently no formal agenda or other documents because there is no paid staff to prepare printed materials.
9. In any event, the Auditor General challenged a number of these claims because of the evidentiary vacuum. **In many cases documents have now been produced.** Where the Senator has produced appropriate supporting documentation, or has a clear recollection of an event, her claim for reimbursement will be decided on the *present* evidentiary record.

#### **Claim # 15452 – *Extended Stay in Montreal***

10. The Auditor General challenges the extended stay of Senator Merchant in Montreal during the weekend prior to the Hellenic-Israel Relations Conference in that city. She says Montreal is an important part of her Greek constituency with about 100,000 people of Greek origin. There are five Greek language schools. The Senator was invited to weekend events by the former MP, Eleni Bakopanos.

11. The Senator has now filed documentary evidence to establish that activities within the Hellenic community in Montreal on the Saturday and Sunday included a radio interview at CFMB, a reception at the Hellenic Community Centre in Outremont, and meeting people of Greek origin at the St. Nicholas Greek Orthodox Church in Laval.
12. Senator Merchant attempted to provide these documents to the Auditor General but she was too late in doing so and the Auditor General's office advised that no new information would be considered.
13. **Disposition:** The weekend's activities were clearly arranged to meet members of the Greek Community and as such formed part of Senator Merchant's "representative" role in the Senate. Claim # 15452 has been justified.

**Claim # 15453 – *Extended Stay in Toronto***

14. The Senator flew from Regina to Toronto and on the stopover attended a major dinner for the Hellenic community as an invited honoured guest. As Ottawa was her destination, she stayed overnight in Toronto, travelled to Ottawa to do her business, and returned to Toronto and onwards to Regina the next day.
15. **Disposition:** The Senator could have stayed one night in Toronto and one night in Ottawa but instead she stayed in Toronto for two nights and flew to Ottawa and back the next day. (TR. pg. 57) Her stopover in Toronto is in line with the Senate "outreach" policy towards ethnic communities and is on that basis justified.



**Claim # 15457 – PART ONE – *Stopovers in Toronto and Calgary***

16. Senator Merchant flew from Ottawa, where she attended a Senate Caucus meeting, to Toronto and Calgary before returning to Regina. In Toronto she met with organizers from the Daughters of Penelope regarding Greek language schools and tried to resolve an immigration issue for Greek caregivers. There were organizational meetings related to the 2012 Global Summit of Women in Athens.
17. In Calgary, the Senator met with members of the American Hellenic Educational Philanthropic Association (AHEPA) and the Daughters of Penelope who were planning a Greek community banquet to honour the Prime Minister of Canada (the dinner eventually took place as planned).
18. **Disposition:** Senator Merchant and her husband paid their own way back from Calgary to Regina. In my view the stop overs in Toronto and Calgary were linked to parliamentary business and the incremental cost was justified.

**Claim 15457 – PART TWO – *Excess Air Fare***

19. The Senator and her spouse returned from Ottawa to Calgary instead of Regina. The Auditor General calculated that the incremental cost of flying to Calgary instead of Regina to be \$864.25, based on his view that the cost of the flight from Ottawa to Calgary was \$2,069.00 but only \$1,230.50 to Regina. The Senator disputes the calculation. She points to **Claim # 21454**, which is dated a few days later, where the business class fare on October 30 from Regina to Ottawa was \$1,712.40, not \$1,230.50. Accordingly, the difference should be \$2,069.00 less \$1,712.40 or \$356.60 rather than

\$864.25. Senator Merchant should reimburse the Senate \$713.20 under claim 15457 in respect of her and her spouse.

**Claim #21464** - *Cost of a Day Room at the Fairmount Chateau Laurier*

20. On May 29, Senator Merchant arrived in Ottawa that day. She left that afternoon for Athens at 3:15 p.m. There is no provision in the Senate Rules to defray the cost of a day room in the circumstances.

21. **Disposition:** The \$152.55 has already been repaid.

**Claim #21468** – *Extended Stopover on Athens Trip*

22. This travel claim arose out of Senator Merchant’s trip to Athens, Greece for the Global Summit 2012. She had authority to be on travel status May 31 to June 3. However, the Senator included in her claim for reimbursement June 4, 5 and 6.

23. **Disposition:** The \$358.88 has already been repaid.

**Claim # 21454** – *Unauthorized Travel by Spouse*

24. Senator Merchant’s spouse, Tony Merchant, flew from Ottawa to Vancouver instead of returning from Ottawa to Regina.

25. The Auditor General says that no “Parliamentary purpose” was served by the spouse’s trip to Vancouver. However, the Parliamentary “purpose” of family reunification had already been served by the Senator and her spouse being together in Ottawa October 30 to November 2. There was no requirement for a new “Parliamentary purpose” to justify

the spouse's departure from Ottawa. Further, in November 2012, it was not required that spouses travel together.<sup>1</sup>

26. As to the difference in air fare, the Auditor General calculated that the Senator should repay \$1,819.58. However, on **claim #21454**, the *actual* air fare from Regina to Ottawa is shown as \$1,712.40 and the *actual* air fare from Ottawa to Vancouver is \$1,819.58. This is the best evidence of the difference in air fare at the beginning of November 2014. It would therefore appear that the Senate is entitled to reimbursement for the difference of \$1,819.58 less \$1,712.40 being \$107.18.

**Claim 21469**

27. The per diem expenses of \$55.70 for May 1, 2012 has been justified.

**ACCORDINGLY, SENATOR MERCHANT SHOULD REPAY THE SENATE AS FOLLOWS:**

| <u>Claim Number</u> | <u>Amount in Issue</u> | <u>Amount Justified</u> | <u>Balance Owing to Senate</u> |
|---------------------|------------------------|-------------------------|--------------------------------|
| 15452               | \$ 274.25              | \$ 274.25               | \$ -                           |
| 15453               | \$ 681.04              | \$ 681.04               | \$ -                           |
| 15457               | \$ 1,294.10            | \$ 937.50               | \$ 356.60                      |
| 15457               | \$ 864.25              | \$ 507.65               | \$ 356.60                      |
| 21469               | \$ 55.70               | \$ 55.70                | \$ -                           |
| 21464               | \$ 152.55              | \$ -                    | (\$152.55 already repaid)      |
| 21468               | \$ 358.88              | \$ -                    | (\$358.88 already repaid)      |
| 21454               | \$ 1,819.58            | \$ 1,712.40             | \$ 107.18                      |
| <b>TOTAL</b>        | <b>\$ 5,500.35</b>     | <b>\$ 4,168.54</b>      | <b>\$ 820.38</b>               |

<sup>1</sup> Policy 2.6.4 of the *Senator's Travel Policy 2012* provides:

- (a) that designated travellers shall be limited to:
- (i) travel between the Senator's province or territory and the NCR;
  - (ii) travel with the senator within the Senator's province or territory;
  - (iii) travel elsewhere in Canada up to a maximum six (6) travel points per fiscal year.

Counsel for the Senator points out that under the last category i.e. "travel elsewhere in Canada up to a maximum of 6 travel points per fiscal year" there is no requirement that the spouse travel with the Senator at that time.

**SENATOR LOWELL MURRAY (RETIRED)**

**Province:** Ontario

**Appointment date:** 13 September 1979

**Retirement date:** 26 September 2011

| <b>Value of Claims referred to Special Arbitration</b>   |          |
|--|----------|
| Total amount of claims challenged by the Auditor General | \$16,300 |

1. The Auditor General concluded that during the audit period, the Senator travelled to Nova Scotia on six occasions, sometimes with his spouse, **primarily** for personal reasons. The Senator, in retirement mode, was moving from Pakenham, Ontario to take up permanent residence at his house at Margaree Forks, Cape Breton Island. From time to time on these visits he travelled elsewhere in Nova Scotia to take soundings from his political network.
2. Senator Murray served in the Senate as an Ontario Senator for about 32 years. He lived a commuting distance west of the National Capital Region. He has been absorbed in partisan politics since the 1970's when he came to Ottawa to work for Senator Wallace McCutcheon. He held a series of high level posts in the Progressive Conservative Party with an emphasis on the concerns of Atlantic Canada. While he was appointed to the Senate to represent Ontario, Senator Murray dedicated much of his time and energy to the politics and policies of

Atlantic Canada, and did so up to the date of his retirement, September 26, 2011, and undoubtedly does so to this day.

3. Senator Murray rejects the Auditor General's conception of the Senate and its workings. In his comments included in the Auditor General's Report, Senator Murray wrote:

The issue arising from the audit team's analysis of six of these claims is whether **each travel claim must relate to a specific event or to a parliamentary debate or initiative within the timeframe of the audit.** With respect, a body of knowledge on public policy issues cannot be built up in this way, and so I have a different understanding and experience based on 32 years in the Senate. Long established procedures did not require that a paper trail be kept of senators' activities while on travel status; such a rule would have presented other problems, to the extent that confidential discussions or sensitive issues were involved.

4. Other Senators endorse the complaint about the Auditor General's "narrow view", and a sense of unfairness at being compromised by changing Senate administrative practices over the years, and the evolving Senate demands in respect of accountability ("a paper trail"). However, the fact is that in the spring of 2011 Senator Murray was moving home to Nova Scotia. At the end of their tenure, Senators are entitled to 1 relocation (paid from a central budget), as well as 4 round trips that can be used for up to 1 year after the date of

retirement/resignation (also centrally paid). Relocation expenses are distinguished from travel for “Parliamentary functions”.<sup>1</sup>

5. In a written statement dated August 27, 2015, Senator Murray disputes what he considers to be the Auditor General’s “surmise that travel to Nova Scotia was **entirely** personal and involved **no** inquiries or discussions pertaining to a long Parliamentary career that focused heavily on understanding and articulating the attitudes and issues of Nova Scotia and the other provinces of Atlantic Canada.” However, accepting that these trips were partly personal and partly political, the question is which of these two aspects was the **dominant** purpose. He spent much of the spring and summer of 2011 in Cape Breton. When the Senator points out that his trips were not “**entirely** personal”, it seems to me his choice of language is an acknowledgement that in the context of re-establishing a home on Cape Breton the trips were **primarily** personal although no doubt, as the Senator says, there were many discussions with Cape Bretoners and others during the spring and summer of 2011 period touching on politics.
  
6. I have no reason to doubt that the Senator made these travel claims in good faith but they simply fell outside the proper ambit of Senate travel which must be

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<sup>1</sup> SAR – Chapter 4:05 at Section 7 provides for post-retirement as follows:  
“A former Senator who retired or resigned is entitled, for the purpose of closing the Senator’s office and otherwise winding up the Senator’s parliamentary affairs, to four travel points and all associated benefits during the one-year period from the day the person ceased to be a Senator.”

primarily for Parliamentary functions.<sup>2</sup> The dominant purpose of these six trips was personal and they are not therefore reimbursable by the Senate.

| <u>Claim Number</u> | <u>Amount in Issue</u> | <u>Amount Justified</u> | <u>Balance Owing to Senate</u> |
|---------------------|------------------------|-------------------------|--------------------------------|
| 13994               | \$ 3,335.38            | \$ -                    | \$ 3,335.38                    |
| 13995               | \$ 3,127.08            | \$ -                    | \$ 3,127.08                    |
| 13998               | \$ 3,085.51            | \$ -                    | \$ 3,085.51                    |
| 14000               | \$ 3,016.27            | \$ -                    | \$ 3,016.27                    |
| 14001               | \$ 2,686.42            | \$ -                    | \$ 2,686.42                    |
| 14003               | \$ 74.10               | \$ -                    | \$ 74.10                       |
| 14002               | \$ 975.84              | \$ -                    | (\$975.84 already repaid)      |
| <b>TOTAL</b>        | <b>\$ 16,300.60</b>    | <b>\$ -</b>             | <b>\$ 15,324.76</b>            |

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<sup>2</sup> On 21 September 2011, the Senator took a return trip from Ottawa to Toronto. The Senator stated that his travel claim was filed in error. The cost was \$976.00, and has been fully repaid.

## SENATOR DENNIS PATTERSON

**Province:** Nunavut

**Appointment date:** 27 August 2009

| Value of Claims referred to Special Arbitration         |          |
|---|----------|
| Total amount of items challenged by the Auditor General | \$22,985 |
| Amount repaid after 5 June 2013 and before 7 May 2015   | \$6,200  |

1. Senator Patterson was appointed to represent Nunavut. The principal issue here is payment of the bill from McMillan LLP of \$15,206.69. The account represents the cost of “constitutional advice” rendered by a partner in the firm, Mr. Eugene Meehan, respecting the requisites for compliance by Senator Patterson with the constitutional “property” qualification set out in s. 23 (3) of the *Constitution Act 1867* as follows:

- (3) He shall be legally or equitable seised as of **Freehold** for his own Use and Benefit of Lands or Tenements held in Free and Common Socage ... within the Province for which he is appointed, of the Value of **Four Thousand Dollars**, over and above all Rents, Dues, Debts, Charges, Mortgages, and Incumbrances due or payable out of or charged on or affecting the same:

2. Most of the land in Nunavut is owed by the Crown. Private interests tend to be leasehold. Senator Patterson says he was advised by Mr. Marc Audcent, then



Parliamentary Counsel and Law Clerk to the Senate, to obtain a legal opinion for his “back pocket” in the event of a challenge.

3. In a written submission to the Special Arbitration dated February 8, 2016, subsequent to the hearing, Senator Patterson explains his concern that as:

“the vast majority of Nunavut property owners ... only own property in leasehold title, I have been increasingly concerned about the possibility that a large majority of Nunavut residents may therefore be ineligible to be appointed to the Senate of Canada.

...

I was anxious to receive an outside opinion on whether owning my home in Iqaluit was sufficient to satisfy the property ownership requirements for a Senator in Canada in the Constitution Act.

...

In my desire to pursue a solution to my dilemma, I acted quickly in retaining the services of Mr. Meehan. It was, perhaps, naiveté that caused me to not question the rather high hourly rate of \$950 per hour which he quoted me, accompanied though it was with promises of a discount. In retrospect, I should have ... asked for a reduced fee for work which was primarily research with minimal advocacy; I would not have faced the need to attempt to carry over my office expenses for legal fees from one fiscal year to the next.

...

[1] did expect a formal legal opinion on the question of residency and the Nunavut land holding system, which I failed to receive. In hindsight, I should have demanded that opinion before authorizing payment of the final invoice.

4. At an early stage of the McMillan LLP retainer, Mr. Meehan provided his opinion that leasehold was not equivalent to freehold and that Senator Patterson would have to look for some available freehold property in the Territory.

5. Senator Patterson began to look around for one of the few freehold interests which might be available for purchase, and eventually found one. The real estate transaction was completed and McMillan LLP rendered a bill for \$15,206.69.

6. Senator Patterson requested Mr. Meehan to provide a “one page opinion” on the constitutional problem, which the Senator thought could be of help to future northern Senators, but Mr. Meehan having by then resigned from McMillan LLP, never obliged and Senator Patterson never followed up.

7. McMillan LLP billed out the work prior to March 31, 2012, for the entire mandate. As Senator Patterson acknowledges, the firm did no new work from and after April 1, 2012 (the start of the new fiscal year) and Senate Finance therefore questioned the attempt to pay the balance of the McMillan LLP account from the Senator’s following year’s budget.

8. Senate Finance eventually issued a “confirming order” for McMillan LLP to continue its work in the new fiscal year but no new work was done. McMillan LLP eventually submitted a new account for the outstanding balance with the same invoice number but no indication of a date. The new bill was paid by the Senate but challenged by the Auditor General.

9. **Disposition:** Payment of the balance of the McMillan LLP bill was not a proper use of Senate resources in the 2012-13 fiscal year. There were no services rendered in that year. All of the work done by McMillan LLP had been completed and billed in the

old fiscal year. There was nothing new for the firm to bill in 2012-13 and, of course, McMillan LLP never suggested otherwise.

10. Senator Patterson believes money might have been made available from a different Senate “legal assistance” budget, but that possibility, real or not, is outside the scope of the Special Arbitration.

11. Senator Patterson was paid \$13,762.12 on account to the McMillan LLP bill in the new fiscal year. This was not justified under the rules governing the use of Senate resources and must be repaid.

| <u>Claim Number</u> | <u>Amount in Issue</u> | <u>Amount Justified</u> | <u>Balance Owing to Senate</u> |
|---------------------|------------------------|-------------------------|--------------------------------|
| 19421               | \$ 5,205.00            | \$ -                    | (\$5,205 already repaid)       |
| 16762               | \$ 995.25              | \$ -                    | (\$995.25 already repaid)      |
| INV-PAT11218        | \$ 1,480.30            | \$ -                    | (\$1,480.30 already repaid)    |
| INV-PAT12018        | \$ 1,542.45            | \$ -                    | (\$1,542.45 already repaid)    |
| INV-4002136         | \$ 13,762.12           | \$ -                    | \$ 13,762.12                   |
| <b>TOTAL</b>        | <b>\$ 22,985.12</b>    | <b>\$ -</b>             | <b>\$ 13,762.12</b>            |

**SENATOR ROBERT W. PETERSON (RETIRED)**

**Province:** Saskatchewan

**Appointment date:** 24 March 2005

**Retirement date:** 19 October 2012

| <b>Amount at Issue in the Special Arbitration</b>       |          |
|---|----------|
| Total amount of items challenged by the Auditor General | \$11,493 |

| <b>Reference Number</b> | <b>Date of Expense</b> |                  | <b>Full or Partial (F/P)</b> | <b>Contested Amount</b> | <b>Auditor General's View</b>             |
|-------------------------|------------------------|------------------|------------------------------|-------------------------|---|
|                         | <b>Start</b>           | <b>End</b>       |                              |                         |   |
| 17746                   | 22 December 2011       | 27 December 2011 | F                            | \$11,492.61             | Travel was primarily for personal reasons |

1. The Honourable Robert Peterson was deeply involved in the controversy over the monopoly of the Canadian Wheat Board. He is a professional engineer and described himself as a “community activist” and is a former Liberal Senator from Saskatchewan. There was much activity in the fall of 2011 on the Canada Wheat Board file. When the Senate session concluded in 17 December 2011, not to resume until January 31, 2012, he returned to his home in Regina. Five days later he returned with his spouse to Ottawa to attend to various matters. The question was whether those “matters” were primarily Senate business or primarily personal business. On the personal side, Senator Peterson took his staff and spouses to “an

appreciation dinner” and entertainment at the National Art Centre “to recognize their contribution to the efficient operation of my office throughout the year”. The cost of these events was paid for by Senator Peterson personally.

2. While in Ottawa, he went to his Senate office and, as he described it, “attended to year-end business” and provided direction to his staff in dealing with the accumulation of responses to a Canada Wheat Board petition. On December 24, he and his wife flew to Toronto and spent Christmas with his family. He then returned to Regina on December 27.
3. **Disposition:** It seems clear that the *primary* purpose of this trip of the Senator and his wife over Christmas to Ottawa and Toronto was personal. The Senator’s visit to his office is described in very vague terms as giving “direction to my staff and to put my papers and files in order.” This was clearly Senate business, but of a housekeeping nature and was incidental to a number of personal and family activities. In itself, on a cost-benefit basis, the Senator’s office housekeeping hardly justified the cost of an \$11,492.61 trip to Ottawa.
4. It is quite understandable that the Senator would want to have a Christmas celebration with his Ottawa office staff, and visit with his family in Toronto at Christmas, but these are personal matters. No incremental cost was incurred by the Senator for going into his office to “give direction to his staff and to put his papers and files in order”.

5. The Senator takes the view, in common with a number of his colleagues, that it is really not for anyone else to question when a Senator comes to the Ottawa office and for what purpose and for how long. The job is in Ottawa. If the Senator thinks it useful to be in Ottawa, that should be an end to the story. However, as discussed, the *Senate Administrative Rules* requires the Senators themselves to take a hard look before incurring substantial travel expenses (in this case \$11,492.61). While I appreciate that an outsider should be very slow to second guess a Senator's opinion as to the necessity of coming into the Ottawa office, in this case, the surrounding circumstances are such that it is simply unreasonable to say the *primary* reason for the five day trip was a bit of Senate business.

| <u>Claim Number</u> | <u>Amount in Issue</u> | <u>Amount Justified</u> | <u>Balance Owing to Senate</u> |
|---------------------|------------------------|-------------------------|--------------------------------|
| 17746               | \$ 11,492.61           | \$ -                    | \$ 11,492.61                   |
| TOTAL               | \$ 11,492.61           | \$ -                    | \$ 11,492.61                   |

## SENATOR DONALD NEIL PLETT

**Province:** Manitoba

**Appointment date:** 27 August 2009

| <b>Amount at Issue in the Special Arbitration</b>       |         |
|---|---------|
| Total amount of items challenged by the Auditor General | \$4,095 |
| Amount repaid after 5 June 2013 and before 7 May 2015   | \$2,975 |

1. Senator Donald Plett built a substantial plumbing and heating business in Manitoba. A former national President of the Conservative Party of Canada, he is a staunchly political partisan and proud of it.
2. He has served on a number of Senate Committees, including the Standing Committee on Legal and Constitutional Affairs, where he took a particular interest in victim's rights.

| Reference Number | Date of Expense |              | Full or Partial (F/P) | Amount in Issue | Auditor General's View  |
|------------------|-----------------|--------------|-----------------------|-----------------|---|
|                  | Start           | End          |                       |                 |   |
| 15758            | 10 July 2011    | 12 July 2011 | P                     | \$714.53        | Senator Plett took a flight to Ottawa from Calgary instead of Winnipeg and should repay the incremental extra cost. |

3. Senator Plett was in Calgary visiting family when he was called by Minister Vic Toews and asked to fly to Ottawa to meet with the head of Corrections Canada, Don Head, and Senator Boisvenu on parole and victims' issues. The Auditor General seems to have concluded that "I should have flown home [to Winnipeg] on my personal dime and then taken an airplane from there to Ottawa". [Tr. 4]. Senator Plett has produced a letter from then Minister Vic Toews confirming the ministerial request for Senator Plett to attend the meeting.
  
4. **Disposition:** A Senator is authorized to travel on "official business" which is defined in the *Senate Administrative Rules* to include "public business that has been ... requested in writing by a Minister of the Crown."<sup>1</sup> In this case the writing from the Minister came after rather than before the trip but that is a distinction without a practical difference. The trip from Calgary was at the Minister's request. The expense was justified.

| Reference Number | Date of Expense |                 | Full or Partial (F/P) | Amount in Issue | Auditor General's View                         |
|------------------|-----------------|-----------------|-----------------------|-----------------|--|
|                  | Start           | End             |                       |                 |  |
| 19155            | 4 December 2011 | 5 December 2011 | P                     | \$221.90        | Trip to Montreal not on Parliamentary business |

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<sup>1</sup> SAR Division 1; c. 1:03, "definitions"



5. On 4 to 5 December 2011, the Senator and his spouse travelled from Landmark, Manitoba to Montreal, before travelling to Ottawa. The Senator had a meeting in Montreal but at this stage he cannot recall who he met with or what they talked about but he believes “it had do to with some party matters.”
  
6. **Disposition:** The Senator kept no documents to refresh his memory and cannot offer any justification for the trip. The \$221.90 should therefore be repaid to the Senate.

| Reference Number | Date of Expense |                  | Full or Partial (F/P) | Amount in Issue | Auditor General's View     |
|------------------|-----------------|------------------|-----------------------|-----------------|----------------------------|
|                  | Start           | End              |                       |                 |                            |
| 19170            | 5 February 2012 | 11 February 2012 | P                     | \$182.55        | Trip was personal business |

7. On this trip to Montreal, Senator Plett recalls meeting with his colleague, Senator Leo Housakos to discuss party matters. Senator Plett of course meets regularly in Ottawa with Senator Housakos. Senator Plett volunteered the information that the Winnipeg Jets were in town to play the Montreal Canadians and he went to the game. As he testified with admirable candour, “Listen, I mean, it was Winnipeg playing, if you want to look it up. So what am I going to say?” [TR. p. 13]

8. **Disposition:** Senator Plett gets full marks for candour. The primary reasons for the trip to Montreal was personal – to see the hockey game. The amount of \$182.55 should be repaid to the Senate.
9. Accordingly, Senator Plett has been over-reimbursed to the extent of \$404.45 which should be repaid to the Senate.

| <u>Claim Number</u> | <u>Amount in Issue</u> | <u>Amount Justified</u> | <u>Balance Owing to Senate</u> |
|---------------------|------------------------|-------------------------|--------------------------------|
| 15758               | \$ 714.53              | \$ 714.53               | \$ -                           |
| 19155               | \$ 221.90              | \$ -                    | \$ 221.90                      |
| 19170               | \$ 182.55              | \$ -                    | \$ 182.55                      |
| 22411               | \$ 262.20              | \$ -                    | (\$262.20 already repaid)      |
| 24891               | \$ 2,712.81            | \$ -                    | (\$2,712.81 already repaid)    |
| TOTAL               | \$ 4,093.99            | \$ 714.53               | \$ 404.45                      |

**SENATOR NICK G. SIBBESTON**

**Territory:** Northwest Territories

**Appointment date:** 2 September 1999

| <b>Value of Claims referred to Special Arbitration</b>   |          |
|--|----------|
| Total amount of claims challenged by the Auditor General | \$50,102 |

1. Senator Sibbeston represents the Northwest Territories. He is one of the few aboriginal leaders in the Senate and considers that he has a broad responsibility to keep in touch with many of the communities scattered across the Territories' million and a half square kilometers and to represent the aboriginal people as well as non-aboriginal people who live there. In the winter months travel is often difficult.
2. Senator Sibbeston contends that the Auditor General's staff did not understand the way in which "Parliamentary Functions" are performed in the north. It is an informal society. Frequently, there is no internet. Meetings are arranged at the last minute. As Senator Sibbeston explains:

In the North, things are often done by simply phoning. In many communities, there is no internet, so it would be done primarily by phone – just saying, "I'm coming to town. I'll see you when I'm there. Those are the kinds of communications I had ... but I wasn't able to convince [the Auditor General] of that point." (Transcript, pg. 5)

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[In Fort Providence] there's a band, there's a Metis local and there is a group dealing with the residential schools. And then there is a hamlet – the municipal government. Apart from that, there are a few little government departments and offices, but I just couldn't remember.

**Mr. Binnie:** But you're saying that, in this period, you have no reason to go to Fort Providence other than to conduct the kind of meetings you describe.

**Senator Sibbeston:** That's right. I wouldn't go there for a holiday. [TR. p. 28]

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It was frustrating at times to discuss these things with the Auditor General's staff. We would say, "Well, what do you view as valid parliamentary business? What is the role of a senator?" They would say, "Well, it's parliamentary business."

So it gets pretty difficult to prove something if you have no standard to apply to it. [The Senator's] position is that his business includes communicating with constituents and discussing with them issues that he deals with in Ottawa, whether it is to hear their input or to provide them with advice or information. [TR. p. 22]

3. At the same time, Senator Sibbeston is quick to acknowledge that many of the trips in question mixed personal and Senate business:

To drive from Fort Simpson to Edmonton is about a 20-hour drive ... it's cheaper to drive to Edmonton [than fly] and I will do that occasionally – not all the time. It's a break from flying. Often times, we will go to Edmonton and eventually come back with things that we purchased – food and stuff like that which are much cheaper in Edmonton than Fort Simpson. [TR. p. 30]

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**Mr. Binnie:** And in part doing personal stuff.

**Senator Sibbeston:** Yes, I admit that, because you don't – you know, buying things, that are not available in the North. [TR. p. 16]

4. Senator Sibbeston and his wife also had family living in Edmonton and Red Deer and, from time to time, personal medical appointments in the south.
5. For the most part, Senator Sibbeston was unable to provide any specific recollection of Senate business in Edmonton. It was just his general practice when in Edmonton to visit with patients, or inmates or other northerners:

Edmonton is sort of the central hospital that patients who have serious conditions are sent to in Edmonton. [1] visited a number of people, but we are not able to identify at this point in time, three years later, who they were.

**Mr. Binnie:** It's a hunch that that's what you were probably doing.

**Senator Sibbeston:** Yes, because I often do that. [TR. p. 15]

6. This is not very satisfactory. First of all, it sidesteps the question of the *primary* or *dominant* purpose of extended stopovers in Edmonton. Secondly, it amounts to saying that if the Senator was in Edmonton, he *must* have been doing *some* Senate business. However, there were many personal reasons for these stop-overs and, unlike many of his trips in the Northwest Territories, there is nothing in the way of corroborating evidence of Senate business.
7. This is not at all to say that in the absence of documentation I would not accept Senator Sibbeston's word for what he did and when he did it if only he could

remember with a little bit of detail just what he was doing in southern cities like Edmonton and Victoria and why was he doing it.

8. By contrast, the Senator and his staff have assembled (post-dating the Auditor General's report) a pretty solid recollection of his travels in the Northwest Territories during the audit period.
9. Senator Sibbeston has filed a letter dated July 9, 2015 from Chief Joachim Bonnetrouge of the Deh Gah Got'ie First Nation at Fort Providence, Northwest Territories confirming four different meetings with Senator Sibbeston to meet with the Chief, Councillors and members of the community with regard to "matters relating to concerns of our First Nation including issues related to land claims, residential schools and other matters related to Federal concerns". While this statement is rather general, it certainly corroborates the Senate purpose of many of Senator Sibbeston's trips to Fort Providence and, as will be seen, taken in conjunction with the Senator's testimony, justifies reimbursement of the Senator's expenses for those trips.
10. The Senator has also filed a letter dated July 21, 2015 from Patrick Scott, the Negotiations Coordinator for the Dehcho First Nations about discussions in relation to the Dehcho Land Claim and Self-Government Treaty, "the pending Devolution Agreement, the MacKenzie Gas Project and other issues." While Mr. Scott is unable to confirm specific dates (his calendar and numerous files were

lost when his computer crashed in 2014), he confirms that he had frequent meetings in Yellowknife with Senator Sibbeston during the audit period. According to Mr. Scott's letter, it was routine for Senator Sibbeston "to contact me for updates whenever he was in Yellowknife." This again is some independent corroboration of Senate business during stopovers in Yellowknife. The Senator testified in some detail about meetings with Mr. Scott and others in Yellowknife and elsewhere.

11. Senator Sibbeston has also filed a letter dated July 21, 2015 from Robert Burke who confirms three different meetings with Senator Sibbeston in 2011 and 2012. Mr. Burke says "we talked about residential school and other matters of federal concern ... I am an aboriginal artist from the NWT [and] painted a series called The Residential School Experience which is on display at the Northern Life Museum at Fort Smith NWT." The Senator describes Mr. Burke as an informal advisor on residential school issues, but this hardly justifies the expenses in Victoria. Mr. Burke had no particular role in the residential school controversies. Unlike the letters from Chief Bonnetrouge and Mr. Scott, the letter from Mr. Burke falls short of justification for the stopovers to visit with Mr. Burke. My view is that the stopovers in Victoria, British Columbia, should be treated as *primarily* personal visits. Whatever incremental Senate business was added in conversations with Mr. Burke did not add cost to the visit.

12. In many of Senator Sibbeston's claims there is reference to difficulties travelling in the Northwest Territories particularly in winter. There are car breakdowns. There are storms. There are unanticipated stopovers. In my view, when Senator Sibbeston was engaged in these trips on Senate business, including going to or returning from Ottawa, a good deal of latitude should be given to his discretion in making his travel arrangements. The Senate travel policies specifically contemplate that in making travel arrangements a Senator is entitled to take into account health and safety concerns. In such instances, therefore, in my opinion, Senator Sibbeston's claims are justified.

13. Finally, it should be noted that the high cost of travel in the north means that some expense claims – for spousal travel for example - seem very high. However, family reunification is an important Senate value, and as was explained in Senator Sibbeston's arbitration:

People don't realize the cost of travel [in the north]. I'm flying to Yellowknife next week. I'm going up to meet with a number of people. The airfare return to Yellowknife is \$1,400. You can fly to Turkey for \$800; ... You can go from Ottawa to Turkey for about half what it costs to fly to Yellowknife.

When you start to go out from Yellowknife – and I've gone to Inuvik, and that's \$2,500 return. You can fly to Australia from Ottawa for the cost of flying from Ottawa to Inuvik. [TR. p. 30]

14. I am conscious of the fact that, on that account, a judgment call on some of Senator Sibbeston's challenged expenses can have significant financial consequences for the Senator and his family.



15. I now turn to the individual claims challenged by the Auditor General. The “notes” of the activities are provided by Senator Sibbeston.

**CATEGORY ONE: CLAIMS FOR WHICH ADDITIONAL DOCUMENTATION AND/OR EXPLANATION PROVIDED**

| Claim # | Amount   | Evidence                               | Notes by Senator Sibbeston   |
|---------|----------|--|--|
| 16890   | \$187.61 | Auditor excluded all costs of stopover | Stopovers are a necessary part of travel from Ottawa to Fort Simpson |

16. **Disposition:** The Senator’s wife, Karen, was returning home from Ottawa. She stayed additional days in Edmonton and Yellowknife at her own expense. A direct trip with minimum stopovers would have required a hotel stay and partial per diems each way, in any event i.e. on June 3 and June 8. On the other hand, Senator Sibbeston acknowledges that the full per diem on June 4 (\$86.35) should be repaid to the Senate. Accordingly, the Senator is entitled to a net reimbursement of \$273.96 less \$86.35 for a net sum of \$187.61.

| Claim # | Amount     | Evidence                                      | Notes |
|---------|------------|---|-------|
| 17951   | \$1,206.45 | E-mails, reports on visit to YCC, trip report |       |

17. In this case the Auditor General has disputed a four day stopover in Yellowknife for meetings with Carmen Moore from the NWT Premier’s office, a supper

meeting to discuss renewal of the 2014 Health Accord, and meetings with the Warden of the North Slave Young Offender Facility and the Warden of the North Slave Correctional Centre. These meetings are documented in emails. A meeting with Premier Bob McCloud regarding economic development and evolution was cancelled due to ill health. He also met with Department of Justice officials.

18. **Disposition:** The documentation and information was not available to the Auditor General but it, in my view, justifies the stopover in Yellowknife.

| Claim # | Amount   | Evidence  | Notes |
|---------|----------|---|-------|
| 17952   | \$234.40 | Car rental was required because personal car broke down |       |

19. **Disposition:** this claim concerns the Senator's trip to Yellowknife in January 2012. He had driven to Yellowknife in his own car but a breakdown occurred and he had to rent a car to get around to various meetings in the City. The car rental was justified. I would allow the credit for the sum of \$234.40.

| Claim # | Amount   | Evidence                                    | Notes  |
|---------|----------|---|--|
| 17953   | \$872.59 | Letters from Joachim Bonnetrouge, Pat Scott | Only part of claim denied – no reasons given |

20. This claim carries on from the period covered by claim 17952. Senator Sibbeston has produced letters from Chief Joachim Bonnetrouge, of the Deh Gah Got'ie First Nation in Fort Providence, and Patrick Scott, the negotiations coordinator for the Dehcho First Nation. Senator Sibbeston's meeting with Chief Bonnetrouge was in connection with a "draft letter to Enbridge" related to the pipeline.
21. **Disposition:** Given the lapse of time since this trip, the confirmatory evidence provided by Senator Sibbeston suffices to justify reimbursement of \$872.59.

| Claims #      | Amount   | Evidence                              | Notes  |
|---------------|----------|---------------------------------------|--|
| 17971 / 17972 | \$439.55 | Letter from Robert Burke re: Victoria | Can provide no documentation of hospital visits in Edmonton \$296.54 |

22. These claims also concern travel by Senator Sibbeston and his wife, Karen to Edmonton, where the Senator recalls visiting "constituents at medical facilities to ensure they were receiving all their benefits". The stopover in Edmonton cost \$296.54. The Senator and his wife carried on to Victoria where he met with the aboriginal artist, Robert Burke. The Auditor General has not challenged the airfare Yellowknife/Edmonton/Victoria.

23. **Disposition:** The stopovers in issue were for personal reasons with a little added Senate business tacked on at no incremental expense. I would therefore disallow claim 17971 that totals \$439.55.

| Claim # | Amount   | Evidence                     | Notes  |
|---------|----------|------------------------------|--|
| 16876   | \$408.49 | Letter from Father Szatanski | A second night of private accommodation was claimed in error: \$50.00. |

24. The disputed sum relates to Senator Sibbeston’s attendance at the funeral of Jonas Marcellais, a prominent aboriginal leader in Nahanni Butte. Senator Sibbeston has provided a letter from Father Szatanski, who presided at the funeral, who confirms that Senator Sibbeston took the opportunity to meet to discuss substantive issues with “leaders and community members” (as well as providing a simultaneous translation for many parts of the funeral service into a South Slave language.)

25. **Disposition:** Claim is justified for \$408.49.

| Claim # | Amount   | Evidence                      | Notes                              |
|---------|----------|-------------------------------|------------------------------------|
| 16897   | \$586.38 | Letter from Chief Bonnetrouge | Senate business at Fort Providence |

26. **Disposition:** The meetings with Chief Bonnetrouge of the Deh Gah Got'ie First Nation are documented and justify the reimbursement claim.

| Claim # | Amount   | Evidence                 | Notes |
|---------|----------|--------------------------|-------|
| 17943   | \$533.87 | Letter from Robert Burke |       |

27. These claims arise out of a stopover from the Senator and Mrs. Sibbeston to visit Robert Burke.

28. **Disposition:** In my view, the dominant purpose of this stopover was personal and is not justified as a Senate expense.

| Claim # | Amount   | Evidence                      | Notes |
|---------|----------|-------------------------------|-------|
| 17954   | \$473.51 | Letter from Chief Bonnetrouge |       |

29. **Disposition:** Justified – see claim 16897.

| Claim # | Amount   | Evidence   | Notes |
|---------|----------|--|-------|
| 17964   | \$289.71 | Car rental was required because personal car broke down. |       |

30. **Disposition:** Justified

| Claim # | Amount   | Evidence | Notes   |
|---------|----------|----------|---|
| 17966   | \$238.12 |          | I had to fly to Yellowknife in order to go home to Fort Simpson. While in Yellowknife, I received a ride with someone going to Fort Simpson so drove instead of flying. I stayed overnight in Fort Providence because the length of travel between Yellowknife and Fort Simpson. The AG questioned the extra expense even though there was a net saving to the government by driving instead of flying. |

31. **Disposition:** Justified.

| Claim # | Amount     | Evidence                      | Notes |
|---------|------------|-------------------------------|-------|
| 17969   | \$1,017.83 | Letter from Chief Bonnetrouge |       |

32. **Disposition:** Justified as in claim 16897.

| Claim # | Amount                | Evidence                | Notes |
|---------|-----------------------|-------------------------|-------|
| 18098   | \$586.44 <sup>1</sup> | Letter from Robert Burk |       |

<sup>1</sup> Auditor General calculated the amount in issue of \$588.43, but the actual claim shows a total of \$586.44. Total amount in issue adjusted accordingly.

33. **Disposition:** Stopovers in Victoria that included a visit to Mr. Burke were not primarily for Senate business. Disallowed.

| Claim # | Amount   | Evidence   | Notes |
|---------|----------|--|-------|
| 22283   | \$464.10 | Letters from Steven Kakfwi, former Premier of the Northwest Territories, and Mr. Scott |       |

34. **Disposition:** Meetings in Yellowknife were justified.

| Claim # | Amount     | Evidence   | Notes                            |
|---------|------------|--|----------------------------------|
| 22284/5 | \$1,560.15 | Letter from Native Canadian Centre on June 1, 2012 | Linked to Hospitality claim 8578 |

35. The primary purpose of this three day trip to Toronto was a visit to the Native Canadian Centre and a related dinner on the first night. The incremental cost of a dinner with representative of the Centre was reimbursed under claim 8578. However, Senator and Mrs. Sibbeston stayed on for two extra nights.

36. **Disposition:** Sufficient justification for one overnight stay only. The other two nights in Toronto were for personal reasons and should be paid back..

| Claim # | Amount     | Evidence                  | Notes                                   |
|---------|------------|---------------------------|---|
| 22288   | \$1,433.46 | Similar to other meetings | No specific documentation was obtained. |

37. Chief Bonnetrouge has no record of a meeting on this date despite his records of other other meetings with the Senator. Senator Sibbeston has no specific recollection of any meetings.

38. **Disposition:** Claim not justified.

| Claim # | Amount     | Evidence  | Notes   |
|---------|------------|---|---|
| 22295   | \$1,623.60 | Letter from Patrick Scott re: Dehcho negotiations | Probably connected to speech to Metis Council |

39. The justification is too generic.

40. There is nothing to connect Senator Sibbeston's three day trip to **Yellowknife** August 1-3, 2012 with a speech to the Metis Council in **Fort Providence** two weeks later.

41. **Disposition:** Disallowed.

| Claim # | Amount  | Evidence               | Notes |
|---------|---------|------------------------|-------|
| 23886   | \$88.60 | At dispute is an extra |       |



|  |  |  |  |
|--|--|--|--|
|  |  | <p>per diem for a stopover. I was travelling to join Committee for travel. My expenses were covered by the committee starting with the hotel on the 22<sup>nd</sup>. All other expenses were legitimate for the length of time required to reach Edmonton.</p> |  |
|--|--|--|--|

42. **Disposition:** Additional day in Edmonton has not been justified. Disallowed.

| Claim #  | Amount   | Evidence                                 | Notes   |
|----------|----------|--|---|
| 26029/28 | \$899.80 | Letter from Scott re: Decho negotiations | Senator has no recollection of any particular discussions with Mr. Scott at this time |

43. **Disposition:** Disallowed.

| Claim # | Amount                  | Evidence  | Notes  |
|---------|-------------------------|---|--|
| 26048   | \$4,175.60 <sup>2</sup> | Letters from Steven Kakfwi, Patrick Scott, Heron, Klondike, Vital | Extended 11 day stay in Yellowknife over New Years |

<sup>2</sup> Auditor General calculated the amount in issue of \$4,271.50, but the actual claim shows a total of \$4,175.60. Total amount in issue adjusted accordingly.

44. The Senator spent from December 28, 2012 to January 9, 2013 in Yellowknife. There is evidence of a dinner meeting with former Premier Steve Kakfwi on New Year's Eve, and a couple of notes from people in hospital confirming visits.
45. **Disposition:** The primary purpose of this **11 day visit** to Yellowknife over New Years was personal. There are no incremental expenses claimed in respect of incidental Senate business. The claim is disallowed.

| Claim #        | Amount     | Evidence  | Notes  |
|----------------|------------|---|--|
| 26042<br>26045 | \$4,824.05 | Eight day stay in Yellowknife January 18 to 25, 2013 for Senator Sibbeston and his wife | Senator Sibbeston met on January 22, 2013 with the NWT Economic Opportunity Advisory panel. He may have met with Mr. Scott, Mr. Heron and NPR Limited Partnership. |

46. This eight day trip was primarily personal. Aside from a meeting with the Economic Opportunities Advisory panel on January 22, the Senator *may* have met with Mr. Scott of the Dehcho First Nations (who has no records). The Senator refers to a possible meeting with Mr. Jack Heron but Mr. Heron's letter reference meetings with the Senator in December and February but nothing in January.
47. **Disposition:** None of this justifies eight days of travel status for Senator and Mrs. Sibbeston in Yellowknife. The amount of \$4,824.05 has not been justified.

**CATEGORY TWO: CLAIMS REGARDING SPOUSAL TRAVEL, MISSING DOCUMENTATION AND EVIDENCE (OR NOT) OF PARLIAMENTARY BUSINESS**

| Claim # | Amount     | Evidence   | Notes   |
|---------|------------|--|---|
| 17948-9 | \$8,430.92 | Originally planned to join my spouse in Ottawa but had a change of plans | Travel policy applicable was silent on reasons for spousal travel or on requirements for my spouse to travel with me. |

48. **Disposition:** Senator Sibbeston has provided a satisfactory explanation for his “change of plans”. The cost of Mrs. Sibbeston’s trip to Ottawa should be reimbursed.

| Claim # | Amount                  | Evidence   | Notes  |
|---------|-------------------------|--|--|
| 22293   | \$3,267.40 <sup>3</sup> | Originally planned to join my spouse in Ottawa but had a change of plans | Travel policy applicable limited spousal travel but did not explicitly require spouses to travel together between home region and NCR (did require it for other types of travel) |

49. **Disposition:** Same as 17948-9. Allowed.

| Claim #         | Amount     | Evidence                                    | Notes   |
|-----------------|------------|---|---|
| 23900 and 23883 | \$1,439.09 | Karen travelled with me as far as Edmonton. | Travel policy applicable at the time limited spousal travel but |

<sup>3</sup> Auditor General calculated the amount in issue of \$3,262.89, but the actual claim shows a total of \$3,267.40. Total amount in issue adjusted accordingly.

|  |  |  |   |
|--|--|--|---|
|  |  | <p>I continued to Ottawa. Karen remained in Edmonton for a family visit – at no extra cost – and then travelled back to Ottawa to rejoin me there, taking the train at no cost to Toronto and then flying to Ottawa. The AG ruled this was ineligible because of the length of the stopover in Edmonton. I believe the purpose of both trips fall within the ‘maintaining the integrity of the family’ provision of the travel policy.</p> | <p>did not explicitly require spouses to travel together between home region and NCR. Policy is also silent on length of layover.</p> |
|--|--|--|---|

50. Mrs. Sibbeston made a number of stopovers for personal reasons. No claim is made in respect of the incremental costs of her stopover. In the end Mrs. Sibbeston did rejoin the Senator at their condo in Gatineau.

51. **Disposition:** Claim should be allowed.

| Claim # | Amount     | Evidence  | Notes  |
|---------|------------|---|--|
| 17928/9 | \$1,130.56 | Senator acknowledges that the “documentation was weak”. | The meetings were arranged by phone and no documentation exists. Enbridge has been unable to confirm that the meetings occurred. The aboriginal organization that may have been visited has ceased operations so no documentation can be obtained. |

52. Documentation is weak, as the Senator himself says.

53. **Disposition:** It seems the primary purpose of this trip to Edmonton was personal.  
Disallowed.

| Claim # | Amount     | Evidence  | Notes  |
|---------|------------|---|--|
| 17957/8 | \$1,471.68 | Evidence that I travelled to Quebec City for the stated purpose exists. | The AG disputed that supporting the NWT ice-sculpture team was not Parliamentary business. I disagree. |

54. **Disposition:** Travel to Quebec City to cheer on his son who was a member of the NWT ice-sculpture team is not Senate business. Disallowed.

**CATEGORY THREE: TRIPS FOR WHICH SENATOR SIBBESTON IS SIMPLY UNABLE TO ACCOUNT**

| Claim # | Amount   | Evidence | Notes   |
|---------|----------|----------|---|
| 17971/2 | \$296.54 |          | Edmonton portion of claim – no documentation of work done can be provided |
| 16886/7 | \$313.32 |          | Edmonton portion of claim – no documentation of work done can be provided |
| 17933/4 | \$594.60 |          | Edmonton portion of claim – no documentation of                           |

|              |                   |  |   |
|--------------|-------------------|--|---|
|              |                   |  | work done can be provided   |
| 17956        | \$592.89          | An associated hospitality claim was accepted by the AG | No other documentation of work done can be provided                       |
| 22298        | \$163.45          |  | Edmonton portion of claim – no documentation of work done can be provided |
| <b>TOTAL</b> | <b>\$1,960.80</b> |  |   |

55. As indicated earlier, I do not think it fair to insist on documentation if the Senator has some clear recollection or can provide satisfactory oral testimony. None of that was offered here.

56. **Disposition:** These claims are disallowed in the absence of any evidence or corroboration by documents or oral testimony or otherwise.

**CATEGORY FOUR: CLAIMS MADE IN ERROR AND/OR SENATOR SIBBESTON IS READY TO REPAY**

| <b>Claim #</b> | <b>Amount</b> | <b>Evidence</b>  | <b>Notes</b>  |
|----------------|---------------|--|---|
| 16890          | \$86.35       | Part of claim  | Agree extra per diem should be repaid   |
| 16900          | \$248.76      |  | Agree extra hotel and per diem should be repaid   |
| 17947          | \$192.40      | Part of Claim, see also claims with additional documentation | Agree some per diems were claimed in error (see notes in other package) accept repayment of |

|  |           |   |   |
|--|-----------|---|---|
|  |           |   | the amount identified by AG   |
| 18100  | \$1139.20 | At issue is a delayed return by my spouse; her ticket cost more for the same route than the one I paid for.       | Although I can't control the fluctuations of airfares, the principle of no extra cost for layovers means this should be repaid. |
| 16876  | \$50.00   |   | An extra private accommodation was claimed in error.<br>ALREADY AGREED  |
| 26797  | \$354.99  |   | Agreed that hotel allowance was exceeded and claimed in error<br>ALREADY AGREED   |
| 17936  | \$165.90  | Change fee for flight as a result of stopover.  | The principle of no extra cost for layovers means this should be repaid.<br>ALREADY AGREED                                      |
| 22290,<br>22294,22297,23877,<br>23881, 23882 | \$39.10   | Over charges for some per diems   | Agreed to repay<br>ALREADY AGREED   |
| Telephone Calls                              | \$1533.26 |   | Agree these charges were made in error and should be repaid<br>ALREADY AGREED   |
| Taxis  | \$912.66  | These charges were for medical appointments which I felt were justified as a way of minimizing time away from the | If this is a misunderstanding of the taxi policy, these charges were made in error and should be repaid                         |

|       |            |        |  |
|-------|------------|--------|--|
|       |            | office |  |
| TOTAL | \$4,722.62 |        |  |

57. **Disposition:** As these amounts are to be repaid they are withdrawn from the Special Arbitration.

### HOSPITALITY CLAIMS

58. Senator Sibbeston has justified the following:

- a) Claim 04211 - **\$29.66** - The Land Claims Coalition
- b) Claim 6427 - May 2, 2012 lunch meeting with Bertha Rabesca-Zoe who was legal counsel for the T'licho Nation, a self-governing First Nation in the NWT. Federal issues were discussed. **\$172.74**  
 May 13<sup>th</sup>, 2012 lunch meeting with Steve Kakfwi, former premier of NWT and economic development consultant. Federal issues were discussed. Policy advisor was present. **\$100.24**
- c) Claim 08577 - May 13, 2012 – dinner with residential school survivor to discuss case; name withheld for confidentiality reasons. **\$93.16**  
 May 31, 2012 – lunch with M. Snow, Federal issues were discussed, policy advisor was present. **\$94.30**
- d) Claim 8578 - June 1, 2012 Dinner with reps from Native Canadian Centre Toronto related to travel 22284 (see confirmation letter). **\$207.54**
- e) Claim 8579 - July 27, 2012 Lunch with E. Browning, G. Antoine and other interested stakeholders regarding Nahanni Park Expansion – a major federal initiative affecting the NWT. **\$167.39**



- f) Claim 08580 - June 28, 2012 meeting with Steve Kakfwi, former premier of NWT and economic development consultant. Federal issues were discussed. **\$41.91**
- g) Claim 8581 - June 22, 2012 meeting to plan awarding of Jubilee medals. **\$73.12**
- h) Claim 8599 - October 28, 2012 meeting with Father Szantaski (and others) re residential school reconciliation. Federal issue. **\$105.74**
- i) Claim 8600 – November 4, 2012 - residential school issues discussed. **\$114.53**  
November 16, 2012 northern issues discussed. **\$58.39**

**TOTAL: \$ 1,258.72**

**CONCLUSION**

| <u>Categories</u> | <u>Amount in Issue</u> | <u>Amount Justified</u> | <u>Balance Owing to Senate</u> |
|-------------------|------------------------|-------------------------|--------------------------------|
| Category 1        | \$ 25,215.04           | \$ 8,774.90             | \$ 16,440.14                   |
| Category 2        | \$ 15,739.65           | \$ 13,137.41            | \$ 2,602.24                    |
| Category 3        | \$ 1,960.80            | \$ -                    | \$ 1,960.80                    |
| Category 4        | \$ 4,722.62            | \$ -                    | \$ 4,722.62                    |
| Hospitality       | \$ 2,457.12            | \$ 1,258.72             | \$ 1,198.40                    |
| <b>TOTAL</b>      | <b>\$ 50,095.23</b>    | <b>\$ 23,171.03</b>     | <b>\$ 26,924.20</b>            |

**SENATOR TERRY STRATTON (RETIRED)**

**Province:** Manitoba

**Appointment date:** 25 March 1993

**Retirement date:** 16 March 2013

| <b>Amount at Issue in the Special Arbitration</b>   |         |
|---|---------|
| Total amount of items challenged by the Auditor General as “not for Parliamentary business” | \$5,466 |

1. Senator Terry Stratton was appointed to represent the Red River region of Manitoba. In his earlier career, he was a businessman, teacher and consultant. He served as Opposition Whip from 2001 until 2004 when he became Deputy Leader of the Opposition. When the Conservatives took office in 2006, he was appointed Government Whip in the Senate, serving until December 31, 2009. During his 20 years in the Senate, the Honourable Terry Stratton acquired a very broad experience on a number of committees and occupied varied leadership roles. For several years, he was the Chair of the Standing Committee on Conflict of Interest for Senators.

| Reference Number | Date of Expense |              | Full or Partial (F/P) | Amount in Issue  | Senator's Explanation                              |
|------------------|-----------------|--------------|-----------------------|--|--|
|                  | Start           | End          |                       |  |  |
| 19774            | 15 June 2012    | 20 June 2012 | P                     | Airfare (marginal cost): \$149.45<br>Mileage: \$9.32<br>Car rental: \$166.16<br>Hotel: \$618.03<br>Per diem: \$15.60<br>Per diems: \$232.90 <sup>1</sup> | Trip to Calgary to deal with potential controversy |
| 19775            |                 |              | P                     | Mileage: \$9.32<br>Taxi: \$30.00   | As above   |
| 19776            | 15 June 2012    | 20 June 2012 | F                     | Full claim for spouse travel   | As above   |

2. With respect to these expenses, former Senator Stratton explained to the Auditor General that:

“I travelled [to Calgary] at the request of my leadership in order to deal with a sensitive issue that needed to be dealt with directly with the individual. It did not to my knowledge, involve the government; rather **its aim was to limit embarrassment to two of the country's institutions.** I view that as one of the roles of a senator and one that I have utilized at other times in my former role as a whip, with other individuals or senators. In each case I carried out meetings face to face with the individual involved in order to send a clear message, in an attempt, not always successful, of preventing a problem from occurring.”

3. In this case, Senator Stratton travelled to Calgary to meet with an individual who had worked many years on different jobs within the Progressive Conservative Party and eventually the Conservative government. Sometime later, after leaving

<sup>1</sup> Unable to reconcile the per diems in issue by the Auditor General

his position with the party, this person went to Calgary and “hooked up with a woman that ... let’s just say the two of them out in public caused ... embarrassment both to the [University of Calgary] and to the Senate of Canada.” Accordingly, the then Senator Stratton went to Calgary to remonstrate with this individual. The Senator took his wife “because we wanted to keep under the radar ... Unfortunately [the visit] didn’t have much of an effect because it became quite public and, as such, he was forced to resign the position [with the University of Calgary].” (Tr. 2). The Honourable Terry Stratton’s view is that in dealing with these sensitive cases “it really wasn’t effective over the phone.” You had to sit down “with the individual” face to face – and I can be pretty direct when it’s needed – and say “look you’ve got to stop this.” ”

4. **Disposition:** In my view, this trip was primarily of a personal nature. As former Senator Stratton indicated, he and this individual had “a long history” .... and in fact [he] was a friend of sorts.” (Tr. 2-3). Senator Stratton was dealing with a potential embarrassment to his friend and to the party as well as to his friend’s new employer. It had nothing very much to do with Parliament. In my view, it cannot be said that the trip was primarily for “Parliamentary business”.

| Reference Number | Date of Expense  | Full or Partial (F/P) | Amount in Issue       | Senator's Explanation |
|------------------|------------------|-----------------------|-----------------------|-----------------------|
| 19789            | 22 November 2012 | P                     | \$422.31 <sup>2</sup> | Early retirement      |
| 19791            | 22 November 2012 | P                     | \$1,756.01            | Early retirement      |

5. Former Senator Stratton provided the following explanation to the Auditor General:

“I left the Senate two weeks early, recognizing that any expense on my part that [the Auditor General may deem in the audit of Senators’ expenses] to be inadmissible, could be covered off by the savings accrued to the Senate in air travel, hotels and per diem expenses for those two weeks. That was the primary reason that I left two weeks before my mandatory retirement date.”

6. **Disposition:** The Senator has not really contended that this trip was for any “Parliamentary function”. At best his idea was a sort of rough justice – his early departure would avoid potential new travel costs that he might or might not have charged to the Senate in the remaining two weeks. His idea is that such a potential “saving” might offset any overpayment to him on past claims which the Auditor General might subsequently identify. A potential offset is not the same thing as reimbursable travel expenses “actually incurred” in relation to Parliamentary functions. As such, it is not reimbursable.

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<sup>2</sup> Unable to reconcile the per diems in issue by the Auditor General

7. Accordingly, the total amount owing by the Honourable Terry Stratton to the Senate is \$5,466.70.

| <u>Claim Number</u> | <u>Amount in Issue</u> | <u>Amount Justified</u> | <u>Balance Owing to Senate</u> |
|---------------------|------------------------|-------------------------|--------------------------------|
| 19774               | \$ 1,191.45            | \$ -                    | \$ 1,191.45                    |
| 19775               | \$ 39.32               | \$ -                    | \$ 39.32                       |
| 19776               | \$ 2,057.61            | \$ -                    | \$ 2,057.61                    |
| 19789               | \$ 422.31              | \$ -                    | \$ 422.31                      |
| 19791               | \$ 1,756.01            | \$ -                    | \$ 1,756.01                    |
| <b>TOTAL</b>        | <b>\$ 5,466.70</b>     | <b>\$ -</b>             | <b>\$ 5,466.70</b>             |

## SENATOR DAVID TKACHUK

**Province:** Saskatchewan

**Appointment date:** 8 June 1993

| <b>Amount at Issue in the Special Arbitration</b>       |         |
|---|---------|
| Total amount of items challenged by the Auditor General | \$7,391 |

1. Senator David Tkachuk had a successful career as a teacher and businessman prior to being appointed to the Senate by Prime Minister Brian Mulroney government. He has continued in private business in a minor way as a Board member of Calian Technologies, which holds meetings from time to time both in Ottawa and Saskatchewan.

### CATEGORY ONE: MIXING PUBLIC AND PRIVATE BUSINESS

| Reference Number | Date of Expense |                 | Full or Partial (F/P) | Amount in Issue                        | Auditor General's Position |
|------------------|-----------------|-----------------|-----------------------|--|----------------------------|
|                  | Start           | End             |                       |  |                            |
| 18588            | 8 November 2011 | 9 November 2011 | F                     | \$3,800.44<br><i>Repaid \$1,900.22</i> | Personal business          |

2. On 8 November 2011, the Senator flew from Saskatoon to Ottawa to attend a private corporation's board meeting and other business meetings unrelated to Senate business in the afternoon and again the following morning. The Senator

- went to his Senate office for part of the evening of November 8. He flew back to Saskatoon on 9 November 2011.
3. The Auditor General concluded that the trip was primarily for private business activities. Senator Tkachuk's basic response is that because the Senate is located in Ottawa, his office is in Ottawa. He is a busy Senator and it is up to him as to when and for how long he works in the Senate office. He states he has never contrived a trip to Ottawa to deal with private matters.
  4. The Senator advised that the Calian Technologies board met four times a year. Its committees met around the same dates as the board. The meetings on November 8 and 9 were held in Ottawa.
  5. After reviewing the issue with the Auditor General, Senator Tkachuk agreed that "this travel claim should have been shared, since it combined private and public business, and I will reimburse \$1,900.22."
  6. **Disposition:** Senator Tkachuk's response is a candid acknowledgement of the amount of time spent on private business. However, the Senate rules do not contemplate apportionment. Instead, it is necessary to identify the *primary* purpose of the trip. Once the primary purpose is ascertained, the secondary purpose is dealt with on the basis of *incremental* cost not apportionment.



7. **Disposition:** In my view, the *primary* or *dominant* purpose of this trip to Ottawa was private business. The expenses should have been for Calian Technologies. The Senate work was incidental and occasioned no extra expense to the Senator. Accordingly, Senator Tkachuk is not entitled to reimbursement for this trip.

**CATEGORY TWO: ATTENDING A COLLEAGUE’S 50<sup>TH</sup> WEDDING ANNIVERSARY**

| Reference Number | Date of Expense  |                  | Full or Partial (F/P) | Amount in Issue                         | Auditor General’s Position                                      |
|------------------|------------------|------------------|-----------------------|---|---|
|                  | Start            | End              |                       |   |   |
| 18590            | 21 November 2011 | 29 November 2011 | P                     | \$857.95<br><i>Repaid \$858.00</i>      | Personal trip to attend wedding anniversary of Senate colleague |
| 18589            | 25 November 2011 | 25 November 2011 | F                     | \$1,076.09<br><i>Repaid full amount</i> | Wife’s expense for same trip                                    |

8. In November 2011, after completing Senate business in Ottawa, the Senator flew to Vancouver to attend the 50<sup>th</sup> wedding anniversary of his colleague, Senator Gerry St. Germain. His spouse flew in from Saskatoon on the same day to join him. They spent the night in Vancouver and returned to Saskatoon the next day. The incremental cost for the Senator’s travel was \$857.95, and the cost for his spouse’s attendance was \$1,076.09.
9. The Auditor General concluded that these expenses were primarily for personal activities.

10. Senator Tkachuk says that it was the practice for the head of caucus to attend such occasions as a 50<sup>th</sup> wedding anniversary and that this was very much part of his “team building” function as caucus chair.<sup>1</sup>
11. **Disposition:** Senator Tkachuk has already reimbursed the Senate for these claims but he did so “with enormous reservations.”<sup>2</sup>
12. With respect, I think Senator Tkachuk was right to reimburse the Senate. His concern with “team building” is understandable, but the wedding anniversary was not a party or Senate function and Appendix A, item 6 of the 2012 policy, which is said to reflect the prior Senate practice, excludes from funding “*life events*” of *friends and family members: weddings, anniversary celebrations.*” Clearly Senator St. Germain is an important colleague as well as a friend, but the **dominant** purpose of the trip to Vancouver was personal.

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<sup>1</sup> Senator Tkachuk explained the “political aspect” as follows:

As far as the political process was concerned, this was very important to Gerry. Other political people were there. The Prime Minister was there, cabinet ministers from the provincial government, members of Parliament were there. My guess is they all expensed it. That would be my view. And why not? This was a big political event and very important as caucus chair. If I had not been caucus chair, I can’t believe I would have been there.

<sup>2</sup> Senator Tkachuk notes with some irony:

The Auditor General himself was criticized this year for his expenses. He defended those expenses as the promotion of team building. My team is the Conservative Caucus and milestone anniversaries of one of our more prominent members is every bit the team building for us that lunches are for the OAG. Expensing lunches may sound trivial, but the amount of money spent on these team building lunches at the OAG by the various deputy auditors is in the many thousands annually. Far more is spent on them than I spent on my plane ticket and hotel in Vancouver to attend the 50<sup>th</sup> wedding anniversary of an important colleague.

**CATEGORY THREE: THE “STOPOVER” CLAIMS**

13. On seven occasions, Senator Tkachuk extended his stay in Ottawa or stopped in Toronto while travelling to Ottawa or elsewhere. Parliamentary business took place in Ottawa on each of these trips.

| Reference Number | Date of Expense  |                  | Full or Partial (F/P) | Amount in Issue                               | Auditor General's Position   |
|------------------|------------------|------------------|-----------------------|---|--|
|                  | Start            | End              |                       |   |  |
| 18617            | 9 May 2011       | 11 May 2011      | P                     | \$243.07                                      | Private business activities or personal interests.   |
| 18580            | 8 August 2011    | 10 August 2011   | P                     | \$306.87<br><i>Repaid \$86.35<sup>3</sup></i> | Private business activities or personal interests.   |
| 18582 & 18581    | 5 September 2011 | 9 September 2011 | P                     | \$530.57                                      | Private business activities or personal interests.   |
| 18585            | 23 October 2011  | 27 October 2011  | P                     | \$29.95                                       | Private business activities or personal interests.   |
| 18599            | 26 February 2012 | 8 March 2012     | P                     | \$320.94                                      | The Auditor General concluded that the stopovers were for private business activities or personal interests. |
| 21528            | 23 April 2012    | 25 April 2012    | P                     | \$55.70                                       | Private business activities or personal  |

<sup>3</sup> Since the ruling was in favour of Senator Tkachuk for the full amount in issue, the \$86.35 that he already repaid will be reimbursed back to the Senator.

|                               |               |              |   |                   |  |
|-------------------------------|---------------|--------------|---|-------------------|--|
|                               |               |              |   |                   | interests.   |
| 21563                         | 25 March 2013 | 1 April 2013 | P | \$168.37          | Private business activities or personal interests. |
| <b>TOTAL STOPOVER CLAIMS:</b> |               |              |   | <b>\$1,655.47</b> |  |

14. Senator Tkachuk explains that due to airline schedules stopovers in Toronto are frequently necessary. He points out, with justice, that he should not have to give up Sunday with his family and take a flight earlier in the day “to satisfy the Auditor General.” On occasion, a stopover in Toronto permitted incidental private business or a medical appointment, but these were worked into his schedule and did not add to the cost to the Senate.
15. **Disposition:** The Senator is correct. The Toronto stopovers were quite reasonable. As to “extended stays” in Ottawa, the Senator says on each occasion it was necessitated by Senate business and there is no reason to doubt his recollection in this regard.
16. The Senator was entitled to reimbursement for the \$1,655.47 in this category.
17. Accordingly, Senator Tkachuk should repay the Senate:

| <u>Categories</u> | <u>Claim Number</u> | <u>Amount in Issue</u> | <u>Amount Justified</u>                           | <u>Balance Owing to Senate</u> |
|-------------------|---------------------|------------------------|---|--------------------------------|
| <b>Category 1</b> | 18588               | \$ 3,800.44            | \$ -  | (\$1,900.22 already repaid)    |
| <b>Category 2</b> | 18590               | \$ 857.95              | \$ -  | (\$857.95 already repaid)      |
|                   | 18589               | \$ 1,076.09            | \$ -  | (\$1,076.09 already repaid)    |
| <b>Category 3</b> | 18617               | \$ 243.07              | \$ 243.07   | \$ -                           |
|                   | 18580               | \$ 306.87              | \$ 306.87 (\$86.35 already repaid-See footnote 3) | \$ -                           |
|                   | 18582               | \$ 444.22              | \$ 444.22   | \$ -                           |
|                   | 18581               | \$ 86.35               | \$ 86.35  | \$ -                           |
|                   | 18585               | \$ 29.95               | \$ 29.95  | \$ -                           |
|                   | 18599               | \$ 320.94              | \$ 320.94   | \$ -                           |
|                   | 21528               | \$ 55.70               | \$ 55.70  | \$ -                           |
|                   | 21563               | \$ 168.37              | \$ 168.37   | \$ -                           |
| <b>TOTAL</b>      |                     | \$ 7,389.95            | \$ 1,655.47                                       | \$ 1,900.22                    |