

Monday, July 29, 2019

The Standing Committee on Ethics and Conflict of Interest for Senators has the honour to table its

SIXTH REPORT

Your committee, which has taken into consideration the Senate Ethics Officer's *Inquiry Report under the Ethics and Conflict of Interest Code for Senators concerning former Senator Don Meredith*, dated June 28, 2019, in accordance with section 49(5) of the *Ethics and Conflict of Interest Code for Senators*, herewith tables its report.

Introduction and Background

On July 15, 2015, the Senate Ethics Officer ("SEO") received a request to conduct a preliminary review under the [*Ethics and Conflict of Interest Code for Senators*](#) ("*Code*") regarding the conduct of then Senator Don Meredith based on information contained in a workplace assessment report that had been prepared for the Standing Senate Committee on Internal Economy, Budgets, and Administration ("CIBA"). As stated in subsection 47(1) of the *Code*, "A preliminary review is conducted to decide if an inquiry is warranted to determine whether a Senator has not complied with his or her obligations under the Code".

Senator Meredith was informed by the SEO of the completion of the preliminary review in December 2015. The SEO determined, as a result of the preliminary review, that an inquiry was warranted pursuant to paragraph 48(2)(a) of the *Code*.¹ The SEO then began his inquiry. Under subsection 48(1) of the *Code*, an inquiry "is conducted to determine if a Senator has breached his or her obligations under the Code."

At the same time as both the preliminary review and start of this inquiry, the SEO was conducting a separate inquiry in relation to Senator Meredith. That inquiry was the subject of the [Second Report](#) of the Standing Senate Committee on Ethics and Conflict of Interest for Senators ("committee"), which was presented in the Senate on May 2, 2017.

On May 10, 2017, Mr. Meredith resigned from the Senate and the SEO's inquiry was permanently suspended pursuant to subsection 48(21) of the *Code*.² Under that subsection, the committee may decide that an inquiry should not remain permanently suspended. In its [Third Report](#) – dated June 21, 2017 – the committee directed the SEO to continue this inquiry despite Mr. Meredith's resignation.

¹ "The Senate Ethics Officer shall conduct an inquiry in either of the following circumstances: (a) where the Senate Ethics Officer determines that an inquiry is warranted after conducting the preliminary review [...]"

² "An inquiry in respect of a Senator who ceases to be a Senator is permanently suspended unless the Committee decides otherwise."

Though the inquiry continued as of the committee's [Third Report](#), two important events contributed to delays in its completion. First, the SEO who conducted the preliminary review and subsequently began the inquiry, resigned on June 30, 2017. An interim SEO was subsequently appointed and later appointed to a seven-year term on January 10, 2018. Second, the inquiry was suspended at the request of the Ottawa Police, and in accordance with paragraph 52(1)(b) of the *Code*³, during the period between December 1, 2017 and April 12, 2018.

On June 28, 2019, the SEO provided to the committee an [Inquiry Report](#) entitled *Inquiry Report under the Ethics and Conflict of Interest Code for Senators Concerning former Senator Don Meredith* ("inquiry report"). In accordance with subsection 48(18) of the *Code*, the Chair of the Committee deposited a copy of the inquiry report to the Clerk of the Senate that same day, as the Senate was then adjourned.⁴

Committee Consideration of the Inquiry Report

The committee is required to take an inquiry report into consideration as promptly as circumstances permit pursuant to subsection 49(1) of the *Code*.⁵ Accordingly, the committee was seized with this inquiry report upon its receipt on June 28, 2019.

Consistent with previous deliberations of this committee in respect of former Senator Meredith, the Honourable Senator Dennis Patterson recused himself by way of letter to the chair and committee. This recusal was voluntary and not required under section 12 or subsection 36(5) of the *Code*. In consequence, only the other four members of the committee participated in deliberations regarding this Inquiry Report.

At the time of its receipt by the committee, the inquiry report concerned a former senator. The *Code* provides in subsection 49(5) that:

Consideration of an inquiry report in respect of a Senator who ceases to be a Senator is permanently suspended unless the Committee decides otherwise.

³ "52. (1) When the matter under review or inquiry by the Senate Ethics Officer or study by the Committee is a matter in respect of which an investigation is being conducted by proper authorities to determine if an offence under an Act of Parliament or of the legislature of a province or territory has been committed, the review, inquiry or study may be suspended by the Senate Ethics Officer or the Committee, as the case may be, if: (a) the Senate Ethics Officer or the Committee, as the case may be, believes that the review, inquiry or study could prejudice the investigation of the matter by the proper authorities; or (b) the proper authorities request, in writing, that the review, inquiry or study be suspended".

⁴ "The Chair of the Committee shall cause a true copy of the report received by the Committee under subsection (17) to be tabled in the Senate at the first possible opportunity; if the Senate is not sitting on the day on which the Committee receives the report, or if Parliament is dissolved or prorogued, the Chair shall also cause a true copy of the report to be deposited with the Clerk of the Senate at the first opportunity."

⁵ "The Committee shall take into consideration an inquiry report from the Senate Ethics Officer as promptly as circumstances permit."

The committee, taking into account the inquiry report including the processes followed by the SEO and his findings, deliberated as to whether the committee's consideration of the report should remain permanently suspended under the *Code*.

The committee carefully examined the report and the process by which the SEO conducted his inquiry. As well, it turned its mind to the role and importance of the *Code* in ensuring values and ethics in the Senate, the availability of remedial measures and sanctions in respect of a former senator.

Findings

First, the committee finds that the inquiry report was within the mandate and authority of the SEO and is of the view that the SEO complied with the *Code* in completing his inquiry. In particular, the committee notes that the Senate Ethics Officer, in finding former Senator Meredith breached sections 7.1 and 7.2 of the *Code*⁶ did not apply these sections in relation to conduct that occurred prior to their coming-into-force of June 16, 2014. In that regard, the committee agrees with the SEO's conclusion that "sections 7.1 and 7.2 permit [the SEO] to consider similar conduct predating June 16, 2014 in order to provide context for assessing whether conduct occurring after that date constitutes a breach of the *Code*".

Second, the committee finds no compelling reason to depart from the default rule that the consideration of an inquiry report is permanently suspended when a senator ceases to be a senator. While the committee is required under the *Code* to recommend remedial measures or sanctions to the Senate when the SEO finds that the *Code* has been breached, the permanently suspended nature of the committee's consideration of the inquiry report means that the committee will make no such recommendation in this case. However, your committee takes this opportunity to make certain comments and observations.

Ancillary Issues

The committee, in instructing the SEO to proceed with this inquiry in its [Third Report](#) (2017), invited the SEO to comment on particular matters of concern to the committee. Specifically, that report read in part:

The committee believes that the Senate Ethics Officer's inquiry report could provide guidance respecting the interpretation and application of the general rules of conduct to cases of workplace abuse of authority and harassment, especially in identifying when workplace misbehaviour becomes conduct unbecoming a Senator under the Code (sections 7.1 and 7.2). The Senate Ethics Officer's report could also assist in clarifying the respective roles of the Senate Ethics Officer and

⁶ 7.1 (1) A Senator's conduct shall uphold the highest standards of dignity inherent to the position of Senator. (2) A Senator shall refrain from acting in a way that could reflect adversely on the position of Senator or the institution of the Senate. 7.2 A Senator shall perform his or her parliamentary duties and functions with dignity, honour and integrity."

your committee on one side and the Standing Senate Committee on Internal Economy, Budgets and Administration on the other side.

The inquiry report responds to the committee's invitation to the SEO to address these matters. The committee has studied the SEO's comments in detail and finds the SEO's insights to be of great value. Indeed, the SEO's comments provide the basis for some of the committee's observations in the sections that follow.

Observation 1: Timeliness

Your committee notes the unusually long time from the initial complaint to the SEO through to the completion of the preliminary review and this inquiry. The committee notes that many of the reasons for the considerable duration of this inquiry were beyond the control of the SEO or of this committee.

For example, the initial complaint to the SEO relied on a report to CIBA that remains subject to a claim of parliamentary privilege by that committee. Accordingly, the SEO – although provided with the document – could not quote from it to persons with whom it had not been shared. As such, the SEO was required to interview those witnesses who had already participated in the process leading to the CIBA report for the purposes of the inquiry, thereby occasioning delay and duplication.

It should be recalled that subsection 48(7) of the *Code* requires that “[s]enators shall cooperate without delay with the Senate Ethics Officer in respect of any inquiry”. All senators, in all roles, must cooperate expeditiously with the SEO – this includes senators serving on other committees who must, even in the discharge of their committee obligations, cooperate with the SEO.

The SEO was delayed in part by the lack of prompt responses to his requests for information from senators and from some Senate committees. The *Code* requires that senators make themselves available to the SEO for the purpose of an inquiry as needed. Again, this is an obligation that applies at all times, including when a senator is serving on a committee seized of a request from the SEO.

The overall question of timeliness for the completion of inquiries under the *Code* is one that the committee will address in more detail in its forthcoming report regarding its review of the *Code*.

Observation 2: Access to Records

Prior to the completion of the inquiry report, a question of privilege was raised in the Senate regarding the SEO's access to senators' e-mails and whether senators should know in advance what is requested or shared.⁷ Notably, it was raised by a senator who was not the subject of this Inquiry Report but who did participate in the inquiry process.

⁷ See Debates of the Senate, [June 17, 2019](#).

As indicated in the Senate by the chair of this committee, on behalf of the committee:

The committee is of the view that any privileges that senators may have with respect to their e-mails may be limited by the *Code*. The interest of a senator in knowing that their records are shared must be weighed against the obligation of the SEO to conduct an inquiry promptly and confidentially and the need to protect the senator who is the subject of an inquiry.

Upon the completion of the next inquiry report of the Senate Ethics Officer, the committee will be able to examine the particulars of any procedural matters.⁸

CIBA has the authority to administer and manage the provision of records requested in respect of senators that are in the possession of the Senate Administration. Specifically, Division 2:00, Chapter 2.06, subsection 9(1) of the [Senate Administrative Rules](#) state that “The Senate Administration shall refer to the Steering Committee any request for access to unpublished records or unpublished information (a) about the Senate, a Senator or a former Senator; or (b) in which a Senator or former Senator is identifiable.” This process is not administered by the SEO or this committee; however, this process is the one CIBA uses to respond to the SEO’s requests for records. This committee will not comment on CIBA’s exercise of its authority.

Given the debate that occurred on this question of privilege, it appears that some senators may be unaware of the right of the SEO to request certain information from CIBA or of the existence of a process within CIBA to address such requests. As noted by the Speaker in his ruling on this question of privilege, any concerns senators may have about this process may be raised with CIBA directly.⁹

Observation 3: Confidentiality

Confidentiality is a cornerstone of the *Code* process, binding all participants in any inquiry in order to maintain its integrity. Your committee is concerned that the confidentiality of the inquiry process – as required by subsection 48(8) of the *Code*¹⁰ – was not maintained in this case. It is unfortunate that this breach impacted the SEO’s work, as indicated in the Inquiry Report.

In particular, all persons with knowledge of the SEO’s request to CIBA and CIBA’s disposition of it were obliged to keep these matters confidential. Any person who informed the senator who raised the question of privilege that certain records had been provided to the SEO breached the confidentiality requirement of the *Code*. Similarly, the confidentiality requirement was not respected by any senator who reveals their participation in an inquiry process before the SEO completes the relevant inquiry report.

⁸ See Debates of the Senate, [June 19, 2019](#).

⁹ See Debates of the Senate, [June 20, 2019](#).

¹⁰ “Any person participating in the inquiry process is expected to respect its confidential nature and to cooperate with the Senate Ethics Officer.”

CIBA's deliberations on these matters are understood to have occurred *in camera*. Any person with knowledge of a committee's *in camera* work is required to keep the committee's deliberations confidential as a matter of parliamentary privilege. [Appendix IV](#) of the *Rules of the Senate* is entitled "Procedure for Dealing with Unauthorized Disclosure of Confidential Committee Reports and Other Documents or Proceedings" and outlines the Senate's procedure for addressing leaks of committee proceedings. In accordance with the procedure provided for in that Appendix, CIBA may investigate the breach of confidentiality in respect of its proceedings as it considers appropriate (including delegating the investigation to the Steering Committee).

Breaches of the confidentiality requirements of the *Code* and preserving the integrity of *in camera* proceedings are both serious matters. Parliamentarians cannot effectively discharge their obligations if the confidential nature of *in camera* meetings is not respected. Parallels may be drawn regarding how the SEO's conduct of his inquiry may be impaired if matters are not kept confidential.

The committee is hopeful that all senators and any person working with or for any committee addressing any matter related to the *Code* will carefully examine their obligations under the *Code* and abide by them in every particular as well as any obligations they may have under the Rules in respect of a committee's *in camera* work.

Observation 4: Parliamentary Privilege

Subsection 48(4) of the *Code* empowers the Senate Ethics Officer "to send for persons, papers, and records". As well, as previously noted, the SEO has the right to request certain records of senators through a process maintained and administered by CIBA. It may appear that this right to request information is at odds with parliamentary privilege – that is, the legal protection that ensures parliamentarians can discharge certain functions free from interference; however, it must be recalled that the SEO is also granted parliamentary privilege. Specifically, subsection 20.5(2) of the [Parliament of Canada Act](#) states in part that "The Senate Ethics Officer enjoys the privileges and immunities of the Senate and its members when carrying out those duties and functions." It should be recognized that senators' parliamentary privileges are not to the exclusion of the SEO but rather are shared with the SEO in the carrying out of his responsibilities.

The SEO noted in his inquiry report that he "requested the attendance of certain Senators, both former members of the CIBA and members of its Steering Committee during the relevant time period" but "could not interview them as part of this inquiry due to claims of parliamentary privilege". As well, the SEO expressed the view that "If a matter is properly referred to the Senate Ethics Officer for an inquiry, parliamentary privilege should be invoked as minimally as possible in relation to the documents, witnesses and information that are relevant to the inquiry and should be waived by the Senate in certain instances in order to facilitate the work of the Senate Ethics Officer in conducting inquiries."

The committee is of the view that parliamentary privilege should not be invoked solely as an attempt to prevent the SEO from completing an investigation or to otherwise delay his work. Parliamentary privilege protects matters related to the constitutional role and function of senators; it does not shield everything they do, and it should not be raised without careful consideration of whether the matter at issue is truly protected by parliamentary privilege as a matter of law.

The committee reminds all senators of the limits that exist with respect to claims of parliamentary privilege and is concerned that misperceptions about the nature of parliamentary privilege may lead to its improper invocation, particularly in relation to a request from the SEO. The committee notes that there exists a distinction to be drawn between the privilege held by the Senate as an institution and the privileges held by individual senators. The individual privileges of senators do not override those of the institution, nor are they to be asserted to undermine those of the institution. The relationship between these privileges as they apply in the context of the *Code* are a matter for the Senate to examine more carefully, particularly when amendments to the *Code* are taken into consideration.

Observation 5: Roles and Responsibilities

This committee derives its authority within the Senate from [Rule 12-7\(16\)](#) of the *Rules of the Senate*, which allow the committee:

- (a) to exercise general direction over the Senate Ethics Officer, and
- (b) to be responsible, on its own initiative, for all matters relating to the *Ethics and Conflict of Interest Code for Senators*, including all forms involving Senators that are used in its administration, subject to the general jurisdiction of the Senate.

In accordance with its authorization under the Rules, along with its specific powers under the *Code*, the committee directed the SEO to continue the inquiry that gave rise to this Inquiry Report, indicating in its [Third Report](#) as follows:

The committee believes that allegations of sexual harassment, harassment and abuse of authority in the workplace should be fully investigated for the fairness of the employees involved and former Senator Meredith. This forms part of the Senate's responsibility as an institution and as an employer. The completion of the process is also important to "maintain and enhance public confidence and trust in the integrity of Senators and the Senate" (*Code*, paragraph 1(a)) as a "breach of the Code by any one Senator affects all Senators and the ability of the Senate to carry out its functions" (*Code*, subsection 44(1)). The committee believes that the completion of the inquiry by the Senate Ethics Officer is the most effective process to address the allegations raised by the complaint and to have a determination in their regard. [...]

The committee believes that the Senate Ethics Officer's inquiry report could provide guidance respecting the interpretation and application of the general rules

of conduct to cases of workplace abuse of authority and harassment, especially in identifying when workplace misbehaviour becomes conduct unbecoming a Senator under the *Code* (sections 7.1 and 7.2). The Senate Ethics Officer's report could also assist in clarifying the respective roles of the Senate Ethics Officer and your committee on one side and the Standing Senate Committee on Internal Economy, Budgets and Administration on the other side. The Senate Ethics Officer's recommendations arising from this matter would also be relevant to all Senate authorities in the consideration of best practices respecting workplace harassment.

Therefore, the committee has decided that this inquiry is to continue.

The SEO, in applying the *Code*, found that former Senator Meredith's conduct in the workplace was such unacceptable behaviour that it breached the Senator's obligations under sections 7.1 and 7.2 of the *Code*. The SEO observed, however, that "not all workplace misbehavior will necessarily constitute a breach of sections 7.1 and 7.2."

The committee's responsibility is to determine the appropriate remedial measures or sanctions for a senator in response to a finding by the SEO that the senator has breached his or her obligations under the *Code*. The committee has concluded that the consideration of this inquiry report should remain permanently suspended. The committee's authority does not extend to making recommendations in respect of any other person who may be affected by a breach of the *Code*, including, in this case, a person impacted by the former senator's conduct in the workplace that was found to be in breach of the *Code*.

Under section 19.3 of the [*Parliament of Canada Act*](#), CIBA "may act on all financial and administrative matters respecting [...] the Senate, its premises, its services and its staff". Accordingly, it is this committee's view that CIBA is the authority within the Senate responsible for workplace employment matters and therefore may address issues relating to employees, both past and present, as it considers appropriate. It is beyond the mandate of this committee to direct another committee in this regard. For its part, this committee will nonetheless look at reviewing the *Code* and will take into account the SEO's remarks in the Inquiry Report as well as other submissions it has received.

The committee also takes note of the recent report of CIBA entitled "[*Modernizing the Senate's Anti-Harassment Policy: Together let's protect our healthy worklife*](#)", tabled in the Senate in March 2019. It provides the principles underpinning the forthcoming revision of the Senate's policy on the prevention and resolution of harassment in the workplace. The committee further notes CIBA's many efforts over the years to ensure that an effective policy is developed and implemented and looks forward to its final report in this regard. It is hoped that the modernized anti-harassment policy will soon be in effect that may, in the future, effectively and expediently address events similar to those giving rise to this Inquiry Report.

Conclusion

The committee's consideration of the Inquiry Report will remain permanently suspended under subsection 49(5) of the *Code*. However, the committee has taken into account the report and concludes that the SEO acted within his authority and mandate in a professional manner, and in accordance with the *Code*.

The Inquiry Report provides detailed explanations of the administration and application of the *Code* – as well as the role and function of the SEO – in relation to harassment complaints. It is therefore recommended that all senators better inform themselves of the interpretation and operation of the *Code* in respect of these matters.

Though the committee notes the lengthy time of completion of this Inquiry Report, it is hopeful that all senators will commit themselves – as required under the *Code* – to prompt cooperation with the SEO in respect of any future inquiries. Further, the committee is hopeful that CIBA's modernized anti-harassment policy will effectively address issues such as those giving rise to this inquiry report going forward.

The committee again reiterates the importance of all senators understanding the *Code* and abiding by it and stresses the importance and seriousness of the *Code*'s confidentiality requirements, which apply also to the Senate Administration and senators' staff when in receipt of a request from the SEO in relation to an inquiry. Collectively, ensuring that the *Code* is respected in every circumstance allows the Senate, and its members, to exemplify the highest possible ethical standards.

Respectfully submitted,



A. RAYNELL ANDREYCHUK

Chair