

The Tension Among Three Ethics Regimes: Government, House of Commons and Senate¹

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As of 2005, there were independent ethics commissioners, as well as and rules (either legislated or contained in legislative codes of conduct) intended to prevent conflicts of interest in each of Canada's ten provinces, three territories, and the Parliament of Canada.² The first jurisdiction to adopt this approach to promoting legislative ethics was Ontario in 1988, and the last to join this distinctively Canadian ethics regime was the Canadian Parliament. This "Canadian model"³ of promoting high ethical standards amongst members of legislatures is working well in every jurisdiction except the House of Commons, if the number of investigations of allegations of breach of ethics rules conducted by ethics commissioners is any indication. The two hallmarks of the "Canadian model" are the existence of an independent ethics commissioner, and an official set of ethics rules for the legislature (either legislated or included in the standing orders).⁴

Outside of the House of Commons, there are investigations of allegations of breach of the conflict of interest rules that are serious enough to warrant inquiries by ethics commissioners on average about once every two years. From 2005-07, during the tenure of Dr. Bernard Shapiro as the federal Ethics Commissioner, 8 of 19 inquiries by Canadian ethics commissioners were conducted by Dr. Shapiro. During the first two years of Mary Dawson's term as the Conflict of Interest and Ethics Commissioner (July 9 2007 to July 9 2009), she issued four inquiry or examination reports⁵ regarding MPs or cabinet ministers, as well as one report into a staff member in the Prime Minister's office. During the same period, there were 11 inquiries conducted by the other 14 ethics

¹ This paper builds on papers I presented to the Canadian Political Science Association Annual Meeting in Saskatoon, Saskatchewan in May, 2007, and on a paper that I presented to the Third Law and Parliament Conference, Institute of Parliamentary and Political Law, University of Toronto, November 14, 2009.

² From 2002 to 2009, Quebec utilized a "jurisconsult" with investigatory rather than advisory powers. In May of 2009, the Quebec government tabled legislation (Bill 48) that will create legislated conflict of interest rules for MNAs, and that will provide for the appointment of an independent ethics commissioner, similar to the ethics commissioners in the other Canadian jurisdictions. As of May 25, 2010, the bill was still being considered by the National Assembly's Committee on Institutions.

(<http://www.assnat.qc.ca/en/travaux-parlementaires/commissions/ci-39-1/journal-debats/CI-100525.html>)

³ The term "Canadian Model" for describing the uniquely Canadian ethics regimes developed in Canada was coined by Jean T. Fournier, the Senate Ethics Officer. See Jean T. Fournier, "Emergence of a Distinctive Canadian Model of Parliamentary Ethics," Vol. 2 No. 3 *Journal of Parliamentary and Political Law*.

⁴ My own preliminary research has indicated that in nearly every jurisdiction in which the "Canadian model" has been adopted, the incidence of conflict of interest scandals has diminished significantly. The important exception is the House of Commons.

⁵ Investigations under the Conflict of Interest Code for Members of the House of Commons are referred to as "Inquiries;" investigations under the Conflict of Interest Act are referred to as "Examinations."

commissioners.⁶ (See Appendix II) Furthermore, from July 9, 2009 to May 24, 2010, Commissioner Dawson had issued two additional inquiry reports, and three additional examination reports.⁷ Another report may be issued soon as a result of the conflict of interest allegations leveled at former Minister Helena Geurgis.

One of the most important functions of the independent ethics commissioners is to educate elected members about the ethics rules to help them avoid conflicts-of-interest and other ethical breaches. Even considering the fact that the House of Commons is about three times larger than other large legislatures in Canada,⁸ it is generating more than its fair share of investigations by the ethics commissioner. In addition, the Annual Reports of the Conflict of Interest and Ethics Commissioner indicated a greater number of compliance issues than experienced by other jurisdictions.⁹ In contrast, there have been no inquiries that have had to be conducted by the Senate Ethics Officer since its inception in 2005, very few compliance issues, and only one published “opinion”.¹⁰

This paper argues that the challenges faced by the federal House of Commons/Cabinet ethics regime are the result of a) the fact that the federal Ethics Commissioner has been given such an unrealistically large mandate that she is not able to meet personally with all MPs – including cabinet ministers -- to explain the ethics rules and advise personally regarding compliance, and b) the split in federal ethics rules regarding MPs between the House of Commons rules and the cabinet rules, which complicates the ethics landscape for cabinet ministers. This cumbersome ethics regime is a result of the actions taken both by the Liberal government of Paul Martin rapidly to enact effective ethics legislation in response to the sponsorship scandal, and the subsequent legislative changes brought in by the Harper government to try to appear more ethical than its Liberal predecessors.

⁶ See Appendix G from the Annual Report 2008-2009 of the Senate Ethics Officer (Office of the Senate Ethics Officer, Ottawa), reproduced here as Appendix II.

⁷ See web site for the Conflict of Interest and Ethics Commissioner (<http://ceic.gc.ca>), accessed on May 22, 2010. As well, in November of 2007, Democracy Watch requested Commissioner Dawson to investigate an alleged breach of the Conflict of Interest Act by Prime Minister Harper and Justice Minister Nicholson regarding the decision-making process concerning the Mulrone-Schreiber affair. Commissioner Dawson rejected the request, and Democracy Watch applied for a judicial review. In January of 2009, the application was rejected by the Federal Court for lack of jurisdiction. See <http://decisions.fca-caf.gc.ca/en/2009/2009fca15/2009fca15.html>.

⁸ In 2008, there were 1160 members of legislatures in Canada. The House of Commons represents nearly 27% of this total. However, from 2005 to 2008, the House of Commons generated 34% of the inquiries conducted by ethics commissioners (12 out of 35).

⁹ At least a dozen MPs or cabinet ministers were late in filing their disclosure statements with the Commissioner in 2009. As well, in 2009 Defence Minister Peter MacKay was fined for not disclosing a directorship in a Nova Scotia company, and Helena Geurgis was fined in May, 2010 for failing to report a mortgage. In addition, three government aides were fined in 2009 for failing to meet reporting requirements, including the Prime Minister’s communications director, Sandra Buckler. See Glen McGregor, “Ethics commissioner fines Helena Geurgis for failing to disclose mortgage,” The National Post, May 20, 2010, accessed on May 25, 2010 at <http://www.nationalpost.com/news/story.html?id=3052885>.

¹⁰ On December 16, 2009, Senate Ethics Officer Fournier published an “opinion” regarding media allegations of conflict of interest against Senator Housakos, as requested by Senator Housakos. An “opinion” is not an inquiry, but can have some similarities to an inquiry in some situations. This opinion will be reviewed below.

These kinds of clumsy reactions to ethics challenges in Parliament are continuing. In May of 2009, the Conservative government introduced legislation to abolish the position of Senate Ethics Officer, and replace the position with the authority of the federal Ethics Commissioner. The Senate ethics regime has worked very well since 2005 for three major reasons. First, the Senate itself drafted that Code of Conduct for Senators – a code very similar to the Code of Conduct for MPs -- but because of being “bottom up” rather than “top down,” it is more effective than an imposed code would be.¹¹ Second, the Senate Ethics Officer is able to meet personally with all Senators within 120 days (usually much sooner) after their appointment to the Senate, and then at least annually after that, to explain the Code and advise on how to avoid conflicts of interest, given the particular situations of each Senator. In addition, Senators may request “written opinions and advice from the Senate Ethics Officer respecting their obligations under the Code.”¹² Mr. Fournier has written that “In my view, this is the most important part of my mandate. . . . Since my appointment as Senate Ethics Officer, this office has received, on average, between 200 and 300 requests for opinions or advice each year.”¹³ This educative function of the Senate Ethics Officer is central to preventing ethics breaches. Third, the Senate Ethics Officer, Jean Fournier, is a highly competent and well-respected non-partisan former public servant,¹⁴ and accordingly his advice is taken more seriously than might be the case with advice tendered by a more junior official. Because the Senate ethics regime is working well, there have been no occasions since the appointment of the Senate Ethics Officer in 2005 and up to May 25, 2010 for an inquiry or investigation into an allegation of breach of the ethics rules by a Senator.¹⁵ There has been one published opinion which showed that because a new Senator had met with the Ethics Officer shortly after his appointment, and had taken the advice of the Ethics Officer about how to avoid conflicts of interest, there was no breach of the Senate ethics rules. Under the new regime proposed by the Harper government, the face-to-face preventive function of the Senate Ethics Officer would disappear, replaced by optional meetings with more junior officials known as “advisors.” This change, in my opinion, would not only open the door to breaches of the ethics rules by Senators, but would make the cumbersome federal ethics regime even more ungainly.

¹¹ The Senate code and the House of Commons code are very similar. Both have weaknesses, but both legislatures have amended their codes to strengthen them, nearly always on the recommendation of the Officer or the Commissioner. There seems to be a healthy competition between the two houses regarding which has the most effective code.

¹² Annual Report 2008-2009 of the Senate Ethics Officer, *op. cit.*, 8.

¹³ *Ibid.*

¹⁴ According to M. Fournier’s biography on the web page of the Senate Ethics Officer, (<http://sen.parl.gc.ca/seocse/PDF/Biography-e.pdf>, accessed November 11, 2009) “Mr. Fournier joined the Department of Indian and Northern Affairs in 1968 and held a number of positions there. Mr. Fournier also served as an Assistant Deputy Minister in the Department of Communications and, later, as Assistant Deputy Minister in the Department of Finance, as Deputy Minister in the Department of the Secretary of State, as Executive Director of the Royal Commission on Aboriginal Peoples, and as Deputy Solicitor General from 1993 to 2000. In 2000, Mr. Fournier was appointed Canada’s High Commissioner to the Commonwealth of Australia.”

¹⁵ S. 44 of the Conflict of Interest Code for Senators stipulates the procedures for an inquiry or investigation by the Senate Ethics Officer.

This attempt to abolish the Senate ethics system – which is working well -- is the result of two factors: the extreme partisan nature of the current House of Commons in which the current government is loathe to admit that the previous government might have done anything right, and the present government's attempts to bring about Senate reform in an incremental fashion.

Background

In early 2004, the first Paul Martin government spearheaded legislation that established an overall ethics regime for Parliament. The new system included a process for creating a code of conduct for MPs as well as a code of conduct for cabinet ministers and other senior public office holders; the appointment of an independent¹⁶ Ethics Commissioner for the House of Commons, cabinet and order-in-council appointments;¹⁷ the appointment of an independent Ethics Officer for the Senate; and a process for the Senate to follow to create a code of conduct for the Upper House. This Parliamentary ethics reform was late in coming. The provinces began to establish similar ethics regimes beginning with Ontario in 1988.¹⁸ (See Appendix I for a complete list).

A challenge faced by the Martin government when advancing the “Canadian Model” for preventing conflicts of interest amongst MPs and Senators concerned how to deal with the failure of the Chrétien government in 2003 to secure the enactment of ethics legislation for Parliament. As a reaction to the scandals faced by the Chrétien government during its final years in office, the Chrétien cabinet had introduced legislation that would have created a single code of conduct for the Senate and the House of Commons, and one Parliamentary ethics commissioner to advise MPs, Senators and public office holders (cabinet ministers and senior governor-in-council appointments), and to adjudicate allegations of breach of the Code.¹⁹ During the consideration of this bill, the Senate concluded that because it is a separate legislature that controls its own procedures, it requires its own Ethics Officer and its own conflict of interest code, and so the Chrétien proposal died in the Upper House – even though there was a sizeable Liberal majority in the Senate. The Martin government decided to re-introduce the ethics legislation but amended it to empower the Senate to choose and appoint its own Ethics Officer and to develop its own code of conduct. This time, in early 2004, the legislation passed.²⁰

¹⁶ The Ethics Commissioner can only be removed for cause after a resolution in the House of Commons, and so has this degree of independence. The Commissioner administered two codes – one for the House of Commons, and one for public office holders. There were some restrictions on the ability of the Commissioner to act independently of the Prime Minister regarding the latter role.

¹⁷ The Code applied to 1,250 full-time Public Office Holders, and 2,200 part-time Governor in Council appointees. (Annual Report of the Ethics Commissioner on activities in relation to public office holders for the fiscal year ending March 31, 2005, Office of the Ethics Commissioner, Parliament of Canada.)

¹⁸ For a description of the establishment of independent ethics commissioners in the provinces up to 1997, see Ian Greene and David Shugarman, *Honest Politics: Seeking Integrity in Canadian Public Life* (Toronto: Lorimer, 1997).

¹⁹ See Ian Greene, "The Chrétien Ethics Legacy," Special edition of *Review of Constitutional Studies*, 2004.

²⁰ Bill C-4, *An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence*, received Royal Assent on March 31, 2004. Prior to the

The legislation creating the position of Ethics Commissioner required the Prime Minister to “consult” with the Leader of every recognized party prior to the appointment, and this Prime Minister Martin appears to have done in a cursory way shortly before Bernard Shapiro’s recommended appointment as the first Ethics Commissioner was announced.²¹ It was clear that Opposition Leader Stephen Harper was not pleased with the extent of the consultation.²² When Shapiro’s lack of extensive experience with government ethics regimes led to media criticism of the appointment, the Conservatives were not disposed to disagree. Harper became more critical of Shapiro as time went on, to the point where after becoming Prime Minister, he was reportedly reluctant to cooperate with Shapiro during Shapiro’s first investigation of an alleged breach of ethics rules.²³

establishment of its ethics regime, the Senate had a reputation for tolerating conflicts of interest. See for example Colin Campbell, *The Canadian Senate: a lobby from within* (Toronto: Macmillan, 1978). As well, around the time that the Senate ethics regime was established in 2005, Senator Raymond Lavigne faced allegations that he had misappropriated Senate resources for his personal benefit. A subcommittee of the Senate Standing Committee in Internal Economy, Budgets and Administration was established to investigate which was “adverse” to Lavigne, and Lavigne reimbursed the Senate more than \$23,000 in June of 2006. (First Report of the Standing Committee in Internal Economy, Budgets and Administration, June 8, 2009.) Lavigne also faced criminal charges related to his use of Senate resources, and the trial, which is continuing, began in December of 2009.)

²¹ Bernard Shapiro had had a distinguished career both in the academic world and in the public service prior to his appointment as Canada’s first Ethics Commissioner in 2004. He earned his doctoral degree at Harvard University in 1967, and became a professor and then Associate Dean at the University of Boston. In 1976 he then became Dean of Education, and later Vice-President Academic at the University of Western Ontario. From 1980 to 1986, he was Director of the Ontario Institute for Studies in Education. From 1986 to 1992, he served as Deputy Minister for three Ontario government ministries: Education, Skills Development, and Colleges and Universities; as well, he was Deputy Secretary to the Cabinet, and Deputy Minister and Secretary to the Management Board. (The Liberals formed the Ontario government from 1985 to 1990, and the NDP was in government from 1990 to 1995.) He was a Professor at the University of Toronto for two years prior to becoming Principal and Vice-Chancellor of McGill University, a post he held from 1994 to 2002. He has received honorary degrees from eleven universities around the world. (Paul Axelrod, Ed. *Essays in Honour of Bernard Shapiro*. Montreal: McGill-Queens, 2004.) He was viewed by Conservative Party stalwarts as a Liberal Party sympathizer, partly because of his Deputy Minister experience with the Peterson government in Ontario. More non-partisan observers saw him as an advocate of higher ethical standards in government. He was surprised when Prime Minister Martin asked him whether he would consider becoming the first Ethics Commissioner, and he accepted because he felt he could contribute to the Canadian political system by helping to raise the level of respect that Canadians have for their elected politicians. (Dr. Bernard Shapiro, lecture at York University, March 24, 2005.) In interviews that he gave to the media after his appointment, he admitted that he knew only a little about the ethics regimes that had been developing in the provinces prior to his appointment.

²² The legislation provided that the Prime Minister’s nomination for the position of Ethics Commissioner would need to be approved by the House after consideration by The Standing Committee of the House of Commons on Procedure and House Affairs. The House approved Dr. Shapiro’s appointment on April 29, 2009 in a voice vote, though Hansard reports some dissenting voices. (37th PARLIAMENT, 3rd Session, Edited Hansard Number 044, Thursday, April 29, 2004, 1010.)

²³ Les Whittington, “Federal ethics czar resigns; Shapiro clashed with Harper over probe into Emerson’s switch to Conservatives.” *Toronto Star*, Mar 30, 2007, A6.

Only a few months after the Conservative Party took office in 2006, the Harper government introduced the Federal Accountability Act in order to fulfill its election promise to create higher standards of ethics and accountability in government, and as a reaction to some of the recommendations of the Gomery report.²⁴ The legislation as originally introduced would have abolished the offices of the Ethics Commissioner and the Senate Ethics Officer, and replaced them both with a new parliamentary Conflict of Interest and Ethics Commissioner. The inclusion of this provision the Federal Accountability Act is difficult to understand. It was not recommended by the Gomery commission. In March of 2005, however, Prime Minister Harper, in a conversation with Ed Broadbent, indicated that he would find a way to “get rid” of Shapiro as the Ethics Commissioner,²⁵ and perhaps the Federal Accountability Act was the chosen method. As would be predicted, the Senate objected to the merger of the offices, and in the end the government relented; being in a minority situation, the government agreed to allowing the Senate to retain its separate Ethics Officer in order to get the legislation through Parliament.

The attempt to abolish both of the Martin-era ethics commissioners and replace them with a single commissioner appears to have been more of an attempt by the Harper government to settle scores with the former Martin government than an attempt to institute a carefully thought-out ethics regime. However, both Liberal and Conservative government partisans, and members of the opposition, have been guilty of trying to use the new ethics regime as a weapon in the blood sport of politics rather than as a tool to enhance their credibility and trust with voters. Thus, they missed an important opportunity promote the legitimacy of the Canadian political system through helping to build an effective Parliamentary ethics regime. An independent officer of Parliament ought to be respected by both sides of the House. Instead, the Harper government did its best to undermine the legitimacy of the office of the Ethics Commissioner, leading to the resignation of Dr. Shapiro in March of 2007.

The final version of the Federal Accountability Act, which became law in December of 2006, abolished the office of Ethics Commissioner, replacing it with the office of Conflict of Interest and Ethics Commissioner. The legislation allowed Dr. Shapiro to continue in his position during the transition period, but given the Conservative Party’s criticism of his role, he stayed in office only until March.²⁶ The first Conflict of Interest and Ethics Commissioner appointed under the Federal Accountability Act was Mary Dawson. Ms. Dawson is a lawyer with more than 35 years of experience with the

²⁴ Ian Greene and David Shugarman, “Commission of Inquiry into the Sponsorship Program and Advertising Activities, phase I Report and Phase II Report.” 49 (2) Canadian Public Administration (Summer 2006), 220-232.

²⁵ Peter O’Neill, “PM might be in contempt on probe, Broadbent says,” *The Montreal Gazette*, March 9 2006, A1, Front. [Final Edition]. Retrieved December 1, 2009, from Canadian Newsstand Core. (Document ID: 1001052281).

²⁶ Robert F. Benson, the Deputy Ethics Commissioner under Shapiro, was appointed as Interim Ethics Commissioner on April 2, 2007. However, he left the position at the end of April for a position in the United Nations related to ethics. The Acting Deputy Commissioner filled in until the appointment of Mary Dawson in July of 2007.

Department of Justice. According to her biography,²⁷ “She was the final drafter for the patriation package (Constitution Act, 1982) and until her retirement drafted, and was the principal legal advisor for, all Constitutional amendments, including the Meech Lake Accord and the Charlottetown Accord.”²⁸ She clearly has the credentials to make the new House of Commons/Cabinet ethics regime work as effectively as it can under the circumstances – given the limitations discussed below.

The benefits of the separate ethics system for the Senate outweigh its deficiencies. Ethics rules only work if there is broad participation in their drafting, and because the Senate has its own Code and its own independent commissioner, the rules have more credibility in the Senate than might otherwise be the case. In addition, because the Senate has its own ethics commissioner, the commissioner is more likely to be successful in his educational role than would be the case if just one commissioner was in place for both the Senate and House of Commons. The educational role of the Commissioner is completely ignored in the government’s defence of its 2009 Bill to abolish the Senate Ethics Officer. What is emphasized, rather, is the government’s agenda for Senate reform – a piecemeal, gradual set of changes to the Senate to introduce term limits for Senators, and elections for Senate seats, in a way that avoids a formal constitutional amendment.²⁹ There is no explanation as to why reforms to the Senate ethics regime are required to achieve this objective – only an assumption that they are a necessary part of the package.³⁰

The paper will begin by examining the establishment of the office of the Ethics Commissioner, and then will review the major inquiries conducted by Dr. Shapiro prior to his resignation, as well as the investigations conducted by Commissioner Dawson and the one opinion released by Senate Ethics Officer Fournier. It will conclude by reviewing the challenges encountered by the ethics regime for the House of Commons, the cabinet, and other public office holders.

Canada’s First Ethics Commissioner

Dr. Shapiro was faced with a Herculean task as the first ethics commissioner. Ethics commissioners in the Canadian provinces are expected to meet with all elected legislators, and in particular with cabinet ministers, to explain the rules, review personal disclosure statements, and decide on items that were required to be publicly disclosed.

²⁷ “About the Commissioner” link to the web page of the Conflict of Interest and Ethics Commissioner, <http://ciec-ccie.gc.ca/Default.aspx?pid=3&lang=en>, accessed November 11, 2009.

²⁸ The Federal Accountability Act specifies that the Commissioner must be “a former judge, or a member of another board, commission or tribunal who has demonstrated expertise in conflicts of interest, financial arrangements, professional discipline or ethics.” Ms. Dawson was “Chair of the Statute Revision Commission through most of the 1980s.” (<http://ciec-ccie.gc.ca/Default.aspx?pid=3&lang=en>, accessed Nov. 11, 2009). This is possibly the source of her eligibility for appointment.

²⁹ Debates on Bill S-7, An Act to amend the Constitution Act, 1867 (Senate term limits) <http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?Language=E&Chamber=N&StartList=A&EndList=Z&Session=22&Type=0&Scope=I&query=5841&List=toc-2>, accessed Nov. 11, 2009.

³⁰ Legislative summary for Bill C-30 (<http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?List=ls&Query=5819&Session=22&Language=e>, accessed November 11, 2009), and address to House of Commons by Hon. Steven Fletcher, Minister of State for Democratic Reform, Hansard, May 7, 2009, 1 p.m.

Shapiro was not only faced with setting up the bureaucracy for the new office of the ethics commissioner, but also with deciding how to advise three times as many elected members as any provincial ethics commissioner would have to advise.³¹ In addition, Shapiro's office had jurisdiction over 1,250 full-time order-in-council appointments and 2,200 part-time appointments³² – a responsibility not conferred on the provincial ethics commissioners to this extent.

In addition to their advisory and educative roles, Ethics Commissioners also investigate allegations of breach of the ethics rules. To make Shapiro's challenges even more daunting, several of the allegations that Shapiro was called on to investigate in the early days of his office were extremely complex. To complicate matters, his wife, Phyllis, passed away in November of 2004 after a brief battle with cancer.

In order to illustrate the both the challenges faced by Shapiro when investigating breaches of the ethics rules, and the toxic atmosphere during this time, the inquiries are briefly summarized below.

Inquiries conducted by Bernard Shapiro

During his three years in office, Shapiro conducted one inquiry under the Prime Minister's Conflict of Interest and Post-Employment Code for Public Office Holders – regarding Citizenship and Immigration Minister Judy Sgro – and seven inquiries under the Conflict of Interest Code for Members of the House of Commons.³³

The Sgro Inquiry: In November of 2004, Dr. Shapiro received a request from Conservative MP Diane Ablonczy to conduct an inquiry regarding allegations that Judy Sgro, the Liberal Minister of Citizenship and Immigration, had used her public office to assist Alina Balaican, a volunteer in her office, to obtain a temporary work permit. In addition to volunteering in Ms. Sgro's campaign office, Ms. Balaican worked as an exotic

³¹ There are two kinds of advising conducted by ethics commissioners. There is the advice tendered as soon as possible after election, and general advising as called on by elected members. In Ontario, the Integrity Commissioner receives about 400 to 500 inquiries per year. Because the House of Commons has three times as many members, it would be expected that the Ethics Commissioner would receive in the neighborhood of 1200 to 1500 inquiries annually. However, the number of inquiries is far less than this. According to the Annual Report of the Conflict of Interest and Ethics Commissioner for Members of the House of Commons, 2008-09, "During the year, we responded to several hundred phone calls and emails from Members." (6) The Senate, which is a third as large as the House, appears to generate about the same number of inquiries for advice and opinions from the Ethics Officer on an annual basis. (Annual Report, 2008-09, Senate Ethics Office, 8.) This is another indication that the preventive role of the preventive role of the Commissioner's office is not as effective as the preventive role of the Commissioners in the Senate, provinces and territories.

³² Office of the Ethics Commissioner, Annual Report of the Ethics Commissioner for Year Ending March 31, 2005 (Ottawa: Office of the Ethics Commissioner, June 30, 2005), 6.

³³ In addition to these inquiries, up to March 31, 2006, the Commissioner rejected seven requests for inquiries because he determined that they were outside his jurisdiction, and/or there were not reasonable grounds to conduct an inquiry. *Annual Report of the Ethics Commissioner on activities in relation to Members of the House of Commons for the Fiscal Year Ending March 31, 2006* (Ottawa: Office of the Ethics Commissioner, 2006), 8.

dancer, and had been in Canada on a temporary work visa to work in strip clubs. Ms. Ablonczy also alleged that Ms. Sgro's campaign office had improperly assisted Mr. Harjit Singh, who was dodging a deportation order, and had regularly delivered pizza to the campaign office. Third, Ms. Ablonczy alleged that Song Dae Ri, a North Korean defector, had been active in Ms. Sgro's campaign office, hoping to use the connection to seek landed immigrant status. In January of 2005, Ms. Sgro resigned as Minister, pending the outcome of Dr. Shapiro's inquiry.

Dr. Shapiro's report on the Sgro inquiry, issued in June of 2005, indicated that because the office of the Ethics Commissioner was still in the process of being established, it lacked adequate resources to investigate the complex allegations of Ms. Ablonczy. Shapiro contracted with David Scott and Lisa Micucci, lawyers with the firm Borden Ladner Gervais, to investigate the facts.³⁴ Borden Ladner Gervais interviewed forty persons under oath.

Dr. Shapiro concluded that Ms. Sgro took no action with regard to the attempts of Harjit Singh and Song Dae Ri to obtain her assistance in obtaining immigration status in Canada. Ms. Sgro did grant a Temporary Residence Permit to Alina Balaican "on grounds well within the Minister's legislative discretion and entirely consistent with the Minister's ongoing criteria as reflected in her previous discretionary decisions."³⁵ Shapiro also concluded that Sgro did not know that Balaican had been volunteering in her campaign office, but "members of her staff certainly did know [and therefore] her staff placed her in a conflict of interest both by allowing Ms Balaican to serve as a volunteer in the first instance and then by not fully and explicitly informing the Minister when the case was brought to her for a decision." In addition, Shapiro found that similar conflicts of interest existed "not to donors or individuals listed as volunteers directly but to the relatives and associates of those who were assisting the re-election campaign. This was in clear violation of Principle 7 of the Conflict of Interest Code for Public Office Holders...."³⁶ With regard to sanctions, Shapiro observed that "The Minister has already resigned, and without comment on that decision, I have no further recommendation to make."³⁷

Democracy Watch has alleged that the fact that Shapiro provided Sgro with "confidential advice" in the midst of his inquiry – advice that was subsequently made public by Sgro – caused Shapiro to appear biased.³⁸

The Grewal Inquiry: Joe Volpe, the new Liberal Minister of Citizenship and Immigration and the successor to Judy Sgro, in April of 2005 requested Dr. Shapiro to investigate allegations that Conservative MP Gurmant Grewal had requested personal bonds from

³⁴ The total additional cost for the inquiry, above and beyond the resources of the Office, was \$170,747, including \$120,500 for Borden Ladner Gervais for fact-finding, \$5,040 to RDM Consulting, and \$37,285 to three additional legal firms (including \$11,660 to Borden Ladner Gervais) for legal interpretations. The Sgro Inquiry, Appendix VI.

³⁵ The Sgro Inquiry, 22.

³⁶ Ibid., 23.

³⁷ Ibid., 24.

³⁸ Democracy Watch web page, <http://www.dwatch.ca>, accessed November 11, 2009.

some of those seeking his support on immigration matters. Dr. Shapiro issued his report on the matter in June of 2005, concluding that Mr. Grewal “has not fully complied with an obligation under the Code, but ... that his actions were an error in judgment made in good faith. It is my recommendation that given that his intentions, however misguided, were reasonable and that the practice has now ceased, no sanction be imposed.”³⁹

What the investigation showed was that Mr. Grewal had developed his own procedure for handling the numerous requests that he received, as an MP, for assistance from his constituents and others in obtaining visitor visas. Grewal decided that those wanting to receive his assistance had to pledge to post a bond,⁴⁰ which would be forfeited if the visitor did not return to his or her home country by the date of the expiry of the visitor visa. No money actually exchanged hands, and no fee was charged for the service, although several of those posting bonds were worried about how their financial situation would be affected if their visitor did not return as promised. Grewal was open about this procedure (the forms his office used to process applications are included in the Report), and had even introduced private member’s legislation to make a similar process universal.⁴¹ The essential problem, of course, was that the process that Grewal had developed was outside the law. In addition, it was not clear what would happen to funds that might be obtained from a forfeited bond.

The Obhrai Inquiry: In May of 2005, Citizenship and Immigration Minister Joe Volpe requested Dr. Shapiro to investigate what he considered to be another alleged violation of the Code, this time by Conservative Mr. Deepak Obhrai. Mr. Volpe alleged that Mr. Obhrai may have “i) entered into agreements in which he had been remunerated for assisting his sister-in-law and her family to immigrate to Canada; ii) had subsequently coerced his sister-in-law’s husband (Mr. Anand) to return to India; and iii) had accepted gifts in return for assisting other persons with immigration matters.”⁴² The allegations were supported by two affidavits that had been signed by Mr. Anand in India. Mr. Volpe forwarded the affidavits to the RCMP at the same time that he forwarded them to Dr. Shapiro. This inquiry took nearly two years to complete, as it was suspended during the time of an RCMP criminal investigation that took place between October of 2005, and January of 2007. The final report was issued on the day of Dr. Shapiro’s resignation – March 30, 2007.

Like the Sgro inquiry, the Obhrai inquiry proved to be unusually complex. Mr. Obhrai, the MP for Calgary East, had assisted his sister-in-law, Mrs. Laxmi Anand, and her husband, Mr. Aman Anand, in obtaining permission to move to Canada with their two sons in 2003. In 2004, the family split up, with Mr. Anand returning to India with one of their sons. Mr. Anand’s relationship with Mr. Obhrai had become strained. Mr. Anand wanted his wife and his other son to return to India, while Mrs. Anand preferred to stay in

³⁹ Bernard J. Shapiro, *The Grewal Inquiry* (Ottawa: Office of the Ethics Commissioner, June 22, 2005), 6.

⁴⁰ The pledges were for \$1,000 to \$250,000, with \$50,000 the “typical amount” pledged. *The Grewal Inquiry*, 4.

⁴¹ Bill C-283, which received first reading on November 15, 2004.

⁴² Bernard J. Shapiro, *The Obhrai Inquiry* (Ottawa: Office of the Ethics Commissioner, March 30, 2007), 3.

Canada. Mr. Anand alleged that he had paid Mr. Obhrai for immigration assistance – an allegation denied by Mr. Obhrai – but Mr. Anand “appeared willing to retract all the allegations in exchange for the return of his wife and youngest child to India.”⁴³

Dr. Shapiro’s office arranged to have an interview conducted with Mr. Anand in India. Dr. Shapiro’s conclusion after studying the results of the interview was that Anand proved to be a “contradictory and unreliable” witness.⁴⁴ As well, it was discovered that the person who had claimed to have notarized the affidavits signed by Mr. Anand in India was not on the registry of notaries. On the other hand, Mr. Obhrai and Mrs. Anand stopped cooperating with the Commissioner’s office once it had been decided that the Office would hire a lawyer to interview Mr. Anand in India.

On September 15, 2005, Dr. Shapiro gave an interview to the Ottawa Citizen about the role of the ethics commissioner. The reporter had learned that Shapiro was investigating Obhrai, and questioned Shapiro about it. Shapiro was quoted as saying, “I have some material that suggests something inappropriate was happening. If true, it seemed worth looking into. If untrue, it will turn out not to be.” Mr. Obhrai considered that these remarks constituted a breach of the privacy stipulations in the Conflict of Interest Code for Members of the House of Commons, and he therefore brought his complaint to the Standing Committee on Procedure and House Affairs. He also complained that Shapiro had not given him proper notice that he had initiated a formal inquiry. The Committee met in October and November, and heard both from Mr. Obhrai and Dr. Shapiro. The committee concluded “that the Ethics Commissioner was in contempt of the House of Commons. In the circumstances, however, it does not recommend any sanctions or penalty.”⁴⁵ With regard to formal notice, Dr. Shapiro maintained that he had been in discussion with Mr. Obhrai two days after Mr. Volpe sent the allegations to Dr. Shapiro, and that Obhrai was fully aware of the nature of the allegations. Mr. Obhrai claimed, however, that he was not aware that Dr. Shapiro had decided to conduct a formal inquiry, rather than a preliminary inquiry. With regard to the interview with the Ottawa Citizen, Dr. Shapiro admitted, in his March 30 report, that “In hindsight, however, I understand that my comments were somewhat ambiguous and open to misinterpretation. In the future, therefore, I will limit my media comments in relation to any inquiry to a simple and clear confirmation that an inquiry is proceeding and nothing else.”⁴⁶

The Grewal-Dosanjh Report: In June of 2005, NDP MP Yvon Godin, requested Dr. Shapiro to conduct an inquiry into the circumstances regarding the surreptitious audio taping of conversations that Mr. Grewal had with Ujjal Dosanjh, Minister of Health in the Paul Martin government, and Tim Murphy, Chief of Staff to Prime Minister Martin.

⁴³ Ibid, 4.

⁴⁴ Ibid, 6.

⁴⁵ Standing Committee on Procedure and House Affairs, 51st Report, November, 2005, chaired by Don Boudria. Although a Liberal, Boudria had been consistently opposed to the idea of creating an independent ethics commissioner for the Parliament.

⁴⁶ Ibid, 6.

The situation in question occurred during the raucous days leading up to the non-confidence vote on the Liberal government's budget on May 19, 2005. The Liberals were expected to lose the vote unless one or two Conservatives or independents voted with the government. Vancouver Conservative MP Gurmant Grewal had been in contact with two prominent Liberals – Ujjal Dosanjh and Tim Murphy – with a suggestion that perhaps he and his wife (also a Conservative MP in Vancouver) might join the Liberals. Mr. Grewal secretly recorded some of these conversations. It was not clear whether Mr. Grewal may have been offering to switch sides in return for a personal or family benefit (for example, a United Nations position or a Senate appointment for he and/or his wife), or whether he was attempting to prove that leading Liberals were willing to bribe members of the opposition to switch sides in return for a public office favour.

Mr. Godin's request asked Dr. Shapiro to investigate whether Mr. Grewal "sought inducements from Minister Dosanjh and/or Mr. Tim Murphy; or Minister Dosanjh or Mr. Murphy offered inducements to Mr. Grewal to change his vote(s) on matter before the House of Commons of Canada; [whether] Mr. Grewal surreptitiously audio taped conversations with Minister Dosanjh and/or others; and [whether] Mr. Grewal attempted to entrap Minister Dosanjh into improper conduct."

Again, this was an extremely complex case. The Conservative Party had already released excerpts of the recording made by Mr. Grewal, claiming that this was proof that the Liberals were willing to bribe opposition members to cross the floor. On May 18, Conservative MP Belinda Stronach crossed the floor to join the Liberals, citing a disaffection with Conservative policies, and particularly with the leadership style of Stephen Harper. She was immediately given a position in the Liberal cabinet as Minister of Human Resources and Skills Development. Her defection was essential to the Liberal government's survival in the May 19 vote of non-confidence.

Between August and November of 2005, Shapiro's office "made numerous attempts" to schedule an interview with Stephen Harper as part of his investigation, but office staff were "informed Mr. Harper's schedule did not permit an interview."⁴⁷ Shapiro concluded from the evidence that Paul Martin had been clear that the Grewals were welcome to cross the floor, but that no deals could be struck and no promises given. He was critical of Dosanjh and Murphy for continuing discussions with Grewal even though it was clear from Martin that no "deal" could be struck. He was much more critical of Mr. Grewal: either he had tried to entrap leading members of the Liberal party by getting them to agree to a "deal" in which he and his wife would cross the floor in return for a public office benefit, or he was attempting to secure benefits for himself and his wife in return for crossing the floor.⁴⁸ Either alternative would have resulted in Mr. Grewal breaching Sections 8 and 11 of the Code.⁴⁹ Grewal did not run in the 2006 election. His wife was re-elected as a Conservative MP.**

⁴⁷ Bernard J. Shapiro, *The Grewal-Dosanjh Inquiry* (Ottawa: Office of the Ethics Commissioner, January, 2006), 6.

⁴⁸ *Ibid.*, 7.

⁴⁹ *Ibid.*, 4.

The Smith Report: In October of 2005, Liberal MP David Smith requested Dr. Shapiro to investigate allegations about whether he had complied with the Code, and to provide a confidential opinion. In November, Conservative MP Pierre Poilievre sent a request to Dr. Shapiro to investigate similar allegations. Dr. Shapiro reported in December that Mr. Smith and his family had complied fully with the provisions of the Code. The allegations against Mr. Smith by Mr. Poilievre may have resulted from some confusion about when he relinquished his duties with a corporation, and when the provisions of the Code took effect.

The Gallant Inquiry: In February of 2006 (shortly after the Conservative government took office), Liberal MP Mauril Belanger requested an inquiry into whether Conservative MP Cheryl Gallant had “inappropriately retained and used personal information provided to her by two constituents.”⁵⁰ The “personal information” in question was information pertaining to passport applications for the two constituents, which it was alleged was used to produce Christmas cards sent to them. The investigation concluded that there was no breach of privacy.

The Harper-Emerson Inquiry: On March 2, of 2006, three members of the House of Commons⁵¹ requested an inquiry into whether Liberal MP David Emerson’s crossing of the floor to join the Conservative Cabinet following the 2006 election, and prior to the opening of Parliament, constituted a breach of the Code in that he may have been induced to cross the floor by the offer of a cabinet appointment. The Martin government had been defeated in a non-confidence vote on November 28, 2005, and the 38th Parliament was dissolved on November 29, 2005. The 39th Parliament, which resulted in a Conservative minority government, did not meet until April 3, 2006. However, the names of the newly-elected MPs were published in the Canada Gazette on February 6, and Shapiro determined that those whose names were published on February 6 had a right to request an inquiry. Nevertheless, to remove any doubt, Shapiro used provisions of the Code to “self-initiate” a preliminary inquiry. Polls indicated that the great majority of Canadians were angry about Emerson’s defection so soon after the January 23 election and prior to the recall of Parliament, and passionate demonstrations were organized to protest against Emerson’s move by constituents in Vancouver-Kingsway, Emerson’s constituency.⁵²

When Shapiro announced on March 2 that he would initiate a preliminary inquiry into the situation, Mr. Harper's communications director, Sandra Buckler, announced that Mr. Harper was "loath to co-operate" with Shapiro. Harper telephoned Shapiro about the inquiry on March 2, and later that day Harper told reporters “that he had indicated to Mr. Shapiro that he has no jurisdiction because it is a prime minister's right to appoint cabinet ministers.” Two days later, Buckler attacked Shapiro's credibility, referring to him as a "Liberal appointee. We're not going to co-operate," she said. "This is a partisan attack."⁵³

⁵⁰ Bernard J. Shapiro, *The Gallant Inquiry* (Ottawa: Office of the Ethics Commissioner, April, 2006, 1.

⁵¹ The inquiry was requested by Liberal MP Byron Wilfert, Liberal MP Wayne Easter, and NDP MP Peter Julian.

⁵² Some members of the Conservative Party were critical that Shapiro had not investigated the crossing of the floor of Belinda Stronach. However, there is no evidence that anyone requested Shapiro to investigate.

⁵³ Peter O'Neill, “PM might be in contempt on probe, Broadbent says,” *The Montreal Gazette*, March 9 2005.

She also referred to the censure of Dr. Shapiro by the House of Commons Standing Committee on Procedure and House Affairs the previous November. However, MP Ed Broadbent and other members of the opposition then stated that if Harper refused to cooperate, he could be in contempt of Parliament, and the NDP caucus considered introducing a motion of contempt when the new Parliament convened.⁵⁴ Broadbent had been critical of what he considered to be “numerous poor decisions” made by Shapiro since becoming Ethics Commissioner. Harper had even indicated to Broadbent that he intended to find a way to fire Shapiro, and asked Broadbent if he would consider being nominated to the post of Ethics Commissioner. Broadbent refused. He observed that Shapiro’s mistakes since 2004 didn’t “justify Harper’s snub.” Referring to Harper’s apparent refusal to cooperate with Shapiro on March 2, Broadbent said, “That’s a serious situation – a commissioner has very high status in the parliamentary system. Slipping into highly partisan language can totally undermine the office.”⁵⁵

Shapiro released his report on the Emerson situation on March 20.⁵⁶ He made no mention of Harper’s public testiness on and after March 2, but merely indicated that he had spoken with the Prime Minister on March 2, and that both Harper and Emerson had responded in writing to the allegations on March 6. Shapiro concluded that Stephen Harper had contacted Mr. Emerson to ask him to cross the floor, and to offer him a cabinet position. Mr. Emerson decided to accept the offer as “a way to better serve his city, his province and his country.”⁵⁷ Shapiro concluded that there was no evidence of breach of the Code as it was currently written, and so he exonerated Emerson and Harper and did not move into a full inquiry. However, Shapiro noted that this particular crossing of the floor was unusual in that it occurred immediately after an election, and prior to the convening of Parliament. As well, he expressed “disquiet” because of the “large gap between the values underlying the Preamble to the Members’ Code and the detailed conflict of interest rules within the Code itself.” The preamble expects members “to fulfill their public duties with honesty and uphold the highest standards so as to avoid real or apparent conflicts of interests, **and maintain and enhance public confidence and trust in the integrity of each Member and in the House of Commons.**” (emphasis added by Shapiro’s report) He recommended that Parliament consider this issue and find a solution acceptable to the majority of Canadians – a recommended that has unfortunately not been addressed.

The Vellacott Inquiry: In March of 2006, Liberal MP Borys Wrzesnewskyi requested an inquiry into whether Conservative MP Maurice Vellacott had contravened the Code by accepting financial assistance to travel to Sudan from a group known as the Canadian Friends of Sudan, and not disclosing the financial assistance. Shapiro reported in June that although Vellacott had paid for his own personal travel expenses, he had received funds to cover the travel costs of “the individual who accompanied him during his

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Bernard J. Shapiro, *The Harper-Emerson Inquiry* (Ottawa: Office of the Ethics Commissioner, March 20, 2006), 1.

⁵⁷ Ibid., 8. The January 23, 2006 election results for Vancouver-Kingsway, Emerson’s riding, showed that Emerson won as a Liberal with 43.5% of the votes cast. Ian Waddell of the NDP was second with 33.5% of the votes, and the Conservative candidate was third with 18.8% of the votes.

travels” without whose services he “could not have undertaken the trip.”⁵⁸ He had not properly reported these funds. Shapiro concluded that there had been a technical contravention of the Code that “occurred through inadvertence or an error in judgment made in good faith,” and so he did not recommend any sanction.⁵⁹

Dr. Shapiro, a brilliant and honest individual whose chief desire in accepting the position of Ethics Commissioner was to serve his country and enhance the credibility of politicians of all stripes, did his best under incredibly strained circumstances. No ethics commissioner in Canada has faced so many complex cases – Sgro, Grewal-Dosanjh, Obhrai, and Emerson-Harper – during his first two years in office, and also during a period when he was setting up an office that covered an unprecedented number of public office holders, and while his spouse was terminally ill. His decisions were balanced, if at times somewhat obscure. The criticisms he faced were often unfair and unstatesmanlike, although he readily admitted mistakes he made that were a result of his lack of familiarity with the emerging “Canadian model” of ethics regimes for members of legislatures.

The Reports of Mary Dawson

To date, Ms. Dawson has released nine inquiry or examination reports regarding MPs or cabinet ministers, as well as one report into a staff member in the Prime Minister’s office. This astonishing number of investigations is in spite of Commissioner Dawson’s high threshold for accepting requests to investigate alleged violations of the Code or the Act.⁶⁰ The findings are summarized below.

The Thibault Inquiry

In the fall of 2007, the House Standing Committee on Access to Information, Privacy and Ethics was conducting examining the Mulroney Airbus Settlement. Robert Thibault, a Liberal MP from Nova Scotia, was a member of the Committee. On November 8, 2007, Brian Mulroney filed a lawsuit against Mr. Thibault, seeking \$2 million in damages for allegedly making libelous comments on the October 31 on the television program, *Mike Duffy Live*. Service of the lawsuit was not completed, however, until January 31, 2008. On November 22, 2007, Conservative MP David Tilson, also a member of the Standing Committee, stated that Thibault should recuse himself from the Committee because the lawsuit had created a conflict of interest for him. Thibault refused, and continued to participate in committee proceedings, including when the committee heard testimony from Brian Mulroney and Karlheinz Schreiber.

On November 27, Tilson requested the Conflict of Interest and Ethics Commissioner to inquire into whether Thibault had breached the Code. Ms. Dawson decided to launch and inquiry and issued her report on May 7, 2008. She concluded that by November 21,

⁵⁸ Bernard J. Shapiro, *The Vellacott Inquiry* (Ottawa: Office of the Ethics Commissioner, June, 2006), 2.

⁵⁹ *Ibid.*

⁶⁰ It is not unusual for Commissioner Dawson to initially decline to investigate allegations of breach of the Code or Act, and then to begin an investigation once those requesting investigations have presented more substantive evidence, as was the case with the Findlay, Cheques and Raitt reports.

2007, Mr. Thibault had become sufficiently aware of Mr. Mulroney's intention to sue him that he should have recused himself from the proceedings of the Committee, given the wording of the Code. Given the ambiguity of the Code in a situation like this prior to her ruling, the Commissioner did not recommend any sanctions. Thibault's position had been that to interpret a lawsuit of this nature as creating a conflict of interest would be to stifle freedom of speech, and would encourage numerous lawsuits with ulterior motives. In her decision, Ms. Dawson stated that MPs may wish to consider whether the wording of the Code is appropriate, taking into consideration concerns about its possible impact on freedom of expression.⁶¹

Inquiry Report in response to motion for further consideration of Thibault Inquiry Report

MPs did, in fact, consider amendments to the Code, and on June 5 the Code was amended by the House to exempt "being a party to a legal action relating to actions of the Member as a Member of Parliament" from being considered a private interest that could cause a conflict of interest. As well, the House moved to refer the Thibault Inquiry Report back to the Commissioner for reconsideration in the light of the amendment.⁶² Ms. Dawson issued a report on June 17 in which she concluded that had the June 5 amendment been in place in the fall of 2007, Mr. Thibault would not have been in breach of the Code by refusing to recuse himself.⁶³

The Soudas Examination

In January and February of 2008, Dimitri Soudas and three MPs requested Ms. Dawson to investigate whether Mr. Soudas may have violated the 2006 Code for public office holders by allegedly intervening to further the interests of the Rosdev development group. Mr. Soudas was then Deputy Press Secretary and Senior Advisor (Quebec) in the Office of the Prime Minister.

Ms. Dawson issued her report in early June. She stated that the Resdev Group, which owned office buildings in which space was rented by the federal government, had been in multi-million dollar litigation with the federal government for about a decade. In July of 2006 Mr. Soudas was informed about the litigation by a former Montreal city councilor. Soudas raised the issue with Ian Brodie, then Chief of Staff to the Prime Minister, and Mr. Brodie advised him to collect more information. In the course of collecting the information, Mr. Soudas met with officials in the office of the Minister of Public Works, as well as public servants in the department. According to Ms. Dawson, "My general impression is that Mr. Soudas is an ambitious, strongly assertive individual who does not hesitate to pursue any matter until he is personally satisfied with its resolution. While Mr.

⁶¹ The Thibault Inquiry, May 7, 2008, accessed from the web page of the Conflict of Interest and Ethics Commissioner on November 11, 2009, at <http://ciec-ccie.gc.ca/resources/Files/English/Public%20Reports/Inquiry%20Reports/The%20Thibault%20Inquiry.pdf>.

⁶² The motion also stated that the House affirmed "its confidence in the Conflict of Interest and Ethics Commissioner." (Response to the motion adopted by the House of Commons on June 5, 2008 for further consideration of the Thibault Inquiry Report - June 17, 2008, accessed on November 12, 2009 at <http://ciec-ccie.gc.ca/Default.aspx?pid=23&lang=en>.)

⁶³ Ibid.

Soudas may have appeared over-zealous, there is no evidence that the public servants and the ministerial officials who had carriage of the file were pressured to change their position.”⁶⁴

The First Flaherty Report

In April of 2008, John McCallum, Liberal MP for Markham-Unionville, requested the Commissioner to investigate whether Jim Flaherty had contravened the conflict of interest rules by participating in a decision-making process that resulted in tax exemptions for “scholarship, fellowship and bursary income to elementary and secondary school students” which, it was alleged, benefited he and his wife because of a mortgage they held on a private school.⁶⁵ Ms. Dawson’s investigation revealed that the private school that Mr. Flaherty and his wife had loaned \$250,000 to did not provide scholarships, bursaries or fellowships, and therefore there had been no need for Mr. Flaherty to recuse himself from the decision-making process regarding the tax exemptions.⁶⁶

The Second Flaherty Report

In February of 2008, Thomas Mulcair, NDP MP for Outrement, requested the Commissioner to investigate whether Finance Minister Jim Flaherty had violated the conflict of interest rules by awarding contracts to the firm MacPhie & Company Inc. The Commissioner investigated and issued her report on December 18, 2008.

Hugh MacPhie’s company is a strategic marketing and communications consulting firm. He had worked in the Premier’s Office in Ontario during the time of the Harris government, and it was during that time that he met Mr. Flaherty. When Flaherty ran for the leadership of the Ontario Progressive Conservative Party, MacPhie was a volunteer in the campaign.

Mr. MacPhie’s company was awarded two contracts with the Department of Finance in the fall of 2006. Ms. Dawson concluded that the first contract was handled at arm’s length from the Minister’s office. Regarding the second contract, “Mr. Flaherty and his staff consulted Mr. MacPhie and then engaged his firm to assist them in making revisions”⁶⁷ to the Advantage Canada economic plan. “Mr. MacPhie’s name came from staff in Mr. Flaherty’s office who had worked with Mr. MacPhie in the Ontario government, and not from Mr. Flaherty himself.”⁶⁸ Also in the fall of 2006, Mr. Flaherty’s office began to prepare for the presentation of the 2007 budget. As a result of Mr. MacPhie’s work in the Advantage Canada economic plan, he was engaged by Mr.

⁶⁴ The Soudas Examination, June 4, 2008, accessed on November 12, 2009 at <http://ciec-ccie.gc.ca/Default.aspx?pid=23&lang=en>.

⁶⁵ The Flaherty Report, July 16, 2008, accessed on the web page of the Conflict of Interest and Ethics Commissioner, November 12, 2009, at <http://ciec-ccie.gc.ca/Default.aspx?pid=23&lang=en>.

⁶⁶ Ibid.

⁶⁷ The Flaherty Report, December 18, 2008, accessed on the web page of the Conflict of Interest and Ethics Commissioner, November 12, 2009, at <http://ciec-ccie.gc.ca/Default.aspx?pid=23&lang=en>.

⁶⁸ Ibid.

Flaherty's office staff to assist with the work in the 2007 budget. There was a verbal agreement to hire Mr. MacPhie's firm on January of 2007, but the contract was not put into writing until March. "On March 29, 2007, MacPhie & Company invoiced for \$122,430 (\$115,500 plus GST)."⁶⁹

Ms. Dawson pointed out that the applicable ethics rules in late 2006 and early 2007 were contained in the 2006 *Conflict of Interest and Post-Employment Code for Public Office Holders*. (This Code was not replaced by the Federal Accountability Act until July 9, 2007.) After her office conducted interviews with ten persons, Ms. Dawson concluded that Mr. Flaherty had not violated the 2006 Code. However, "Several witnesses, including Mr. Flaherty, expressed concern about the contracting process followed by his office. A lack of rigour in this regard left Mr. Flaherty vulnerable to concerns that preferential treatment had been improperly extended to Mr. MacPhie. Mr. Flaherty has assured me that steps have been taken to prevent this type of situation from recurring."⁷⁰

Discontinuance Report relating to allegations of partisan advertising by the Prime Minister, and some cabinet ministers and parliamentary secretaries

In late October of 2009, Martha Hall Findlay, an Ontario Liberal MP and former leadership candidate for the Liberal Party, sent a request to Ms. Dawson to investigate allegations that Prime Minister Harper, and eight cabinet ministers and their parliamentary secretaries had violated the Conflict of Interest Act through participating in the Conservative party's advertising and communications campaign surrounding the Economic Action Plan. This campaign included the production of large "novelty cheques" containing symbols, colours or slogans associated with the Conservative party that were presented by ministers to organizations receiving government grants. The allegation was that the ministers were using their public office positions to further the private interests of the Conservative party.

In the analysis section of the report, Ms. Dawson wrote that "A threshold issue is whether the Conservative Party of Canada is a "person" for the purposes of these provisions.... Our research has found that the Conservative Party of Canada is not a corporation but rather an unincorporated association." As a result, Ms. Dawson concluded in her mid-January, 2010 report that the conflict of interest provisions of the Act do not apply to a political party.⁷¹ However, S. 7 of the Act, which deals with preferential treatment, is worded more broadly: "*No public office holder shall, in the exercise of an official power, duty or function, give preferential treatment to any person or organization based on the identity of the person or organization that represents the first-mentioned person or organization.*" Ms. Dawson concluded that although political parties do come under the

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Office of the Conflict of Interest and Ethics Commissioner, "Discontinuance Report relating to an examination of allegations of partisan advertising of government initiatives by the Prime Minister, certain ministers and their respective parliamentary secretaries", accessed on May 24, 2010 at <http://ciec-ccie.gc.ca/resources/Files/English/Public%20Reports/Examination%20Reports/The%20Discontinuance%20Report.pdf>. The Report notes that in some federal statutes, political parties are deemed to be persons, but there is no such deeming clause in the Conflict of Interest Act.

category “organization” in Section 7, because there was no allegation of providing preferential treatment to a person or organization representing the Conservative party, there were no grounds to continue her investigation.

The Cheques Report (Conflict of Interest Act)

In addition to receiving the request for an investigation under the Act from MP Martha Hall Findlay with regard to the Conservative party’s advertising and communications campaign surrounding the Economic Action Plan, Ms. Dawson also received 63 similar requests concerning 60 MPs, 25 of whom were cabinet ministers or parliamentary secretaries, from four MPs in October and November of 2009.⁷² Fifty-nine of the complaints were filed by Liberal MP Wayne Easter, and the remaining complaints were filed by Liberal MP Geoff Regan, NDP MP Peter Stoffer, or NDP MP Yvon Godin. Ms. Dawson wrote in her report issued on April 29, 2010, that she would deal with all of these complaints by issuing one Inquiry report (under the MP’s Code) and one Examination report (under the Conflict of Interest Act), rather than issuing separate reports concerning the individual allegations.

The major difference between the Findlay complaint and the allegations dealt with in this report is that the Findlay allegations alleged violations only of the Conflict of Interest Act, whereas the other similar allegations alleged violations both of the MP’s Code and the Conflict of Interest Act in the case of cabinet ministers. For the same reasons that were provided in the Discontinuance Report, Commissioner Dawson found no violation of the Act. However, the Commissioner made a number of observations about the impropriety of associating government funding announcements with partisan political activities, and she recommended that both the government and the House of Commons should consider tightening the rules so as to put appropriate limits on these practices. She wrote that “the practice of using partisan or personal identifiers in announcing government initiatives goes too far and has the potential to diminish public confidence in the integrity of elected public officials and the governing institutions they represent. I recognize that Members have political interests and these interests are important to them and their parties. It is to be expected that Members will look for occasions to enhance their images with constituents. However, public spending announcements are government activities, not partisan political activities, and it is not appropriate to brand them with partisan or personal identifiers. One of the purposes of the Code is to maintain and enhance public confidence and trust in the integrity of Members and the House of Commons. It is also one of the rationales underlying the Act in relation to public office holders, including Ministers, Ministers of State and Parliamentary Secretaries.”⁷³

The Cheques Report (Code for Members of the House of Commons)

⁷² Office of the Conflict of Interest and Ethics Commissioner, “The Cheques Report: The use of partisan or personal identifiers on ceremonial cheques or other props for federal funding announcements,” accessed on May 24, 2010 at <http://ciec-ccie.gc.ca/resources/Files/English/Public%20Reports/Examination%20Reports/The%20Cheques%20Report%20-%20Act.pdf>, released April 29, 2010.

⁷³ Ibid.

Commissioner Dawson noted that the two Cheques reports are “virtually identical except for the Analysis sections.”⁷⁴ She noted that the relevant provisions of the Code relate to the prohibition of Members using their public office to further their “private” interests. She concluded that these private interests referred to in the Code relate to pecuniary interests, not partisan political interests. Three Sections of the Code prohibit Members from using their office to further the private interests of “entities,”⁷⁵ and Dawson concluded that political parties constitute “entities.” However, she also concluded that the private interests of entities should be interpreted narrowly as purely pecuniary interests. Her observations in the Cheques report under the Act about the failure of the existing rules to address the use of partisan identifiers when announcing government funding programs, and her recommendation that Members address this issue, are repeated verbatim in the Cheques report under the Code.

The Raitt Report (made under the Conflict of Interest Act)

In October of 2009, NDP MP Olivia Chow requested Ms. Dawson to investigate alleged violations of the Conflict of Interest Act by then Natural Resources Minister Lisa Raitt, the MP for Halton. At around the same time, Liberal MP Paul Szabo requested Ms. Dawson to investigate the same allegations, but under both the Act and the Code. The allegations were that Mr. Michael McSweeney, a registered lobbyist for the Cement Association of Canada who had lobbied Ms. Raitt’s department, had organized a fundraiser for Ms. Raitt on September 24, 2009. As well, it was alleged that Mr. McSweeney received assistance in organizing the fundraiser from the Toronto Port Authority at the request of Ms. Raitt. “Ms. Raitt was President and CEO of the Toronto Port Authority until she ran successfully in the 2008 federal election.”⁷⁶ Commissioner Dawson issued her reports, one under the Act and one under the Code, on May 13, 2010. Like the Cheque reports, both reports were identical except for the analysis sections.

Initially, Ms. Dawson decided not to conduct an investigation, but was at the same time concerned that Mr. McSweeney’s involvement in the fundraiser might place Ms. Raitt in a conflict of interest situation in the future. “After discussing the allegations with me, Ms. Raitt agreed, on October 9, 2009, to put in place an interim conflict of interest screen as a compliance measure pursuant to section 29 and paragraph 51(1)(e) of the Act with respect to the Cement Association of Canada in order to prevent any potential conflicts of interest from arising in relation to the Association, more particularly any appearance of preferential

⁷⁴ Office of the Conflict of Interest and Ethics Commissioner, “The Cheques Report: The use of partisan or personal identifiers on ceremonial cheques or other props for federal funding announcements made under the *Conflict of Interest Code for Members of the House of Commons*,” accessed on May 24, 2010 at <http://ciec-ccie.gc.ca/%5Cresources%5CFiles%5CEnglish%5CPublic%20Reports%5CInquiry%20Reports%5CThe%20Cheques%20Report%20-%20Code.pdf>.

⁷⁵ Sections 8, 9 and 10 of the Conflict of Interest Code for Members of the House of Commons, accessed on May 24, 2010 at <http://www.parl.gc.ca/information/about/process/house/standingorders/appal-e.htm>

⁷⁶ Office of the Conflict of Interest and Ethics Commissioner, “The Raitt Report made under the Conflict of Interest Act,” accessed on May 24, 2010 at <http://ciec-ccie.gc.ca/%5Cresources%5CFiles%5CEnglish%5CPublic%20Reports%5CExamination%20Reports%5CThe%20Raitt%20Report%20-%20Act.pdf>

treatment to the Cement Association of Canada.”⁷⁷ However, after having received additional information from MPs Chow and Szabo, Ms. Dawson initiated an investigation⁷⁸ which turned out to be surprisingly complex. Ms. Dawson’s office interviewed thirteen witnesses and asked an additional nine to provide written statements.⁷⁹

In her Report, the Commissioner first pointed out that election financing (including fundraisers) is regulated primarily by the Canada Elections Act. She then noted that “The only provision in the *Conflict of Interest Act* that specifically addresses fundraising is section 16, which prohibits public office holders from personally soliciting funds if it would place them in a conflict of interest. There is no equivalent rule in the Code. There are other more general rules of conduct in both the Act and the Code that may apply.” These include the provisions in the Act and Code prohibiting acceptance of gifts that could influence public office decision-making (S. 11 of the Act and S. 14 of the Code), and the Act’s prohibition against preferential decision-making (S. 7).⁸⁰

The investigation by the Commissioner’s office discovered that 41 tickets for the fundraiser on September 24 were sold (minimum purchase price of \$250), and 30-40 people actually attended, including Ms. Raitt. “[T]hose attending the event included stakeholders of the Department of Natural Resources, lobbyists, board members of the Halton Conservative Association, Halton Constituency Office staff and friends of Ms. Raitt.”⁸¹

The investigation hinted at errors in judgment by several people, but no breach of the rules was identified under either the Act or the Code by Ms. Raitt. Raitt was unaware of the potential for putting herself into a conflict of interest at the Sept 24 event by chatting with lobbyist Michael McSweeney and other lobbyists who had helped with the event and who also had an interest in doing business with her department. She was unaware that McSweeney had helped to sell tickets for the event. It was unwise for McSweeney to have used his Canada Cement Association email to solicit tickets for the fundraiser. Although there was no hard evidence that Raitt had requested a staffer at the Toronto Harbour Commission who was a friend of hers to sell tickets, the staffer was unwise to use an email address at the Commission to send invitations to persons Ms. Raitt knew through her former position with the Commission. (Dawson noted that both the Canada Cement Association and the Toronto Harbour Commission had issued directives to prevent future improper use of official email accounts.)

⁷⁷ Ibid. In the compliance agreement, Ms. Raitt agreed that as Minister of Natural Resources she would “not to participate in matters involving the Cement Association of Canada (CAC), or Mr. Michael McSweeney acting on behalf of the CAC,” but such matters would be handled by the Deputy Minister or designate. At this point, both MP Chow and MP Szabo had had their initial requests for investigations rejected by the Commissioner on the grounds that they had not presented the requisite information according to the Act or the Code. Both MPs subsequently wrote to the Commissioner with what she considered enough information to begin an investigation.

⁷⁸ Ibid.

⁷⁹ Ibid., 6.

⁸⁰ Ibid.

⁸¹ Ibid., 8.

The Conservative Party and the Halton riding association decided to refund 22 of the 41 tickets that had been sold because of their concerns about how the fundraiser was organized. Ms. Dawson wrote that “Mr. Arthur Hamilton, counsel for the Conservative Party of Canada and, at that time, for the Halton Conservative Association, sent me a letter dated October 29, 2009 advising me that, as of October 7, the Halton Conservative Association had been in the process of refunding money paid for tickets sold by lobbyist Michael McSweeney and lobbyist Will Stewart, and generally for all tickets sold to stakeholders of the Department of Natural Resources and to employees of those stakeholders, including individuals registered to lobby the department.”⁸² As well, the Halton Conservative riding association very quickly established new guidelines for fundraising.⁸³

In Ms. Raitt’s response to the Commissioner about the allegations, she requested the Commissioner to find that the allegations were “frivolous or vexatious or made in bad faith” according to S. 44(3) of the Act. Ms. Dawson rejected this request. However, she was clearly not pleased that MPs Chow and Szabo had publicly revealed that they had requested the Commissioner to investigate, when the Commissioner is prohibited from commenting on whether she is conducting an investigation until she issues her report. “While partisan jockeying is an inevitable fact of political life, it can become problematic in some cases. If it misrepresents what my Office is doing in relation to a request, this can be very prejudicial to the individual who is the subject of the request. I am restricted in what comments I can make with respect to examinations or inquiries as I must keep information confidential until a report is made public. There is little I can do to clarify, counter or balance statements that are made by Members that are not accurate or fair.”⁸⁴

With regard to allegations of conflict of interest against Ms. Raitt, Commissioner Dawson concluded that “The evidence, however, showed that Ms. Raitt was unaware of the details relating to the organization of the event and did not get involved in the recruitment of

⁸² Ibid., 15.

⁸³ The guidelines stipulate that those involved in fundraising should not use their business email addresses to solicit funds or sell tickets. In addition, “Another guideline provides that a “no attendance” list from their Member should be prepared setting out which industries or organizations may not be canvassed, and that the list should be confirmed with the Member or senior staff of the Member. The Member and the Member’s staff should not be involved in organizing fundraisers, except for consultations on the “no attendance” list, scheduling and other logistical matters. The Member may be kept informed about fundraisers, but should not be provided with details of donations made by attendees.” Ibid. Although the Royal Commission on Electoral Reform and Party Financing recommended in 1991 and 1992 that political parties should develop their own internal codes of ethics, no party has taken serious action to address this recommendation up to now. The guidelines developed by the Halton’s Conservative riding association might be considered a first step in this direction. See Report of the Royal Commission on Electoral Reform and Party Financing, 1992. Toronto: Dundurn Press in cooperation with the Royal Commission on Electoral Reform and Party Financing, 1992.

⁸⁴ Ibid., 20. Similarly, there was evident frustration from the Office of the Ethics Commissioner when the Prime Minister’s Officer requested Dawson to investigate alleged breaches of the Act and/or the Code by Helena Geurgis, former Minister for the Status of Women. According to Dawson, she received a request to investigate Geurgis from the Prime Minister’s Office with no substantiating evidence and no indication of what part of the Act or Code was alleged to have been violated.

<http://www.cbc.ca/politics/insidepolitics/2010/05/geurgisjafferwatch-leave-guy-giorno-alone.html>

volunteers or in the solicitation of funds.”⁸⁵ As well, she concluded that Ms. Raitt was not personally involved in fundraising for the event. “There was no evidence that Ms. Raitt asked anyone to buy tickets for the event, either directly or by asking someone else to do so at any time. Every witness questioned on this issue confirmed this. Ms. Raitt was aware that an event was being organized and she planned to attend the event, but that was the extent of her involvement.”⁸⁶ However, the Commissioner noted that the Act might be improved by creating clearer rules regarding the relation between conflicts of interest and fundraising. For example, the Act could provide additional rules of conduct to deal with political fundraising.”⁸⁷

Commissioner Dawson’s report also noted that on April 20, 2010, Prime Minister Harper forwarded to her a copy of “a guidance document entitled *Fundraising and Dealing with Lobbyists: Best Practices for Ministers and Parliamentary Secretaries* which he advised had been issued to all Ministers and Parliamentary Secretaries.”⁸⁸ She quotes the general principles set out in this document as follows:

- *Ministers and Parliamentary Secretaries must ensure that fundraising does not affect, or appear to affect, access to government.*
- *People who make financial contributions to politicians or political parties must not receive, or be seen to receive, preferential access.*
- *People who have dealings with Ministers and Parliamentary Secretaries, or with the staffs or departments of Ministers and Parliamentary Secretaries, must not be singled out, or be perceived to be singled out, as the targets of partisan fundraising.*

She indicated that the remainder of the document dealt with “best practices” in implementing these principles. She also noted that the Prime Minister might consider making this document public, and incorporating it into a corresponding guidance document issued by the Privy Council Office entitled *Accountable Government – A Guide for Ministers and Ministers of State*.⁸⁹ She also discussed several possible loopholes in the Prime Minister’s guidelines, and made recommendations about how these could be addressed.⁹⁰

The Raitt Report (made under the Members’ Code)⁹¹

⁸⁵ Ibid., 22.

⁸⁶ Ibid., 23.

⁸⁷ Ibid., 29. It should be noted that in the Sgro Report, Dr. Shapiro found that members of Ms. Sgro’s staff had inadvertently placed her in a conflict of interest situation by not telling her the details of outcomes that some volunteers were seeking from her department or office. Ms. Dawson made no similar findings that her constituency office staff and constituency executive who helped organize the Raitt fundraiser had inadvertently put Ms. Raitt into a conflict of interest situation by failing to inform her about the details of what Mr. McSweeney was lobbying her department for, and his coincidental role in organizing the fundraiser.

⁸⁸ Ibid., 27. This document can be accessed at

⁸⁹ Ibid., 29. This document can be located at <http://www.pm.gc.ca/eng/media.asp?id=687>, accessed on May 24, 2010. The document was first issued in 2004, and updated in 2008.

⁹⁰ Ibid., 28-29.

⁹¹ Office of the Conflict of Interest and Ethics Commissioner, “The Raitt Report made under the *Conflict of Interest Code for Members of the House of Commons*, issued May 13, 2010, accessed on May 24, 2010 at

As noted above, the Raitt Report made under the Members' Code is identical to the Raitt Report made under the Conflict of Interest Act, with the exception of the analysis section.

In the analysis section of the report made under the Code, Commissioner Dawson noted that Minister Raitt was lobbied by some of those attending the fundraising event in question as a Minister, not as a Member of Parliament. However, the fundraising event was to support Ms. Raitt as a Member of Parliament rather than as a Minister. This underlines the fact the Canadian political system is still challenged with the issue of sorting out the sometimes conflicting obligations (democratic and ethical) of being a Member of Parliament, and at the same time being a cabinet minister.⁹²

Under the regulations of the Code, a Member of Parliament may not accept a gift or benefit that might result in a conflict of interest. Several lobbyists helped to organize the September 24 fundraising event, and so the question was whether their contributions constituted a gift or benefit prohibited by the Code. "In any event, the evidence showed that Ms. Raitt was unaware of the details relating to the organization of the event and did not get involved in the recruitment of volunteers or in the solicitation of funds. In order for her to have accepted these services or funds as contemplated by section 14, she would have had to be aware of them being offered to her, and have had an opportunity to decline them. This was not the case."⁹³

Similar to her approach to the loopholes she noted in the Conflict of Interest Act, Dawson recommended that the possibility of loopholes in the Code should be addressed by the House of Commons: "With respect to Members, the *Conflict of Interest Code for Members of the House of Commons* does not include any provision dealing with political fundraising. Consideration could be given to amending the Code in this regard, perhaps to include prohibitions against solicitation of funds and preferential treatment, broader recusal obligations and provision for the establishment of conflict of interest screens."

Clearly, the investigations conducted by Ms. Dawson were impartial and balanced, if perhaps sometimes too narrowly legalistic. The Thibault situation illustrated how a flaw in the ethics rules could be exploited for partisan political purposes, and the first Flaherty inquiry indicated how the very cursory information on Ministers' public declarations can sometimes lead to misinformed speculation about potential conflicts of interest. The second Flaherty inquiry, the Soudas inquiry and the Raitt inquiries all demonstrate that although there were no breaches of the ethics rules, a better understanding of the ethics rules through a more extensive educative process in ministers' offices might have prevented situations from arising leading to conflict of interest allegations. The Discontinuance Report and the two Cheques reports show that there is not enough

<http://ciec-ccie.gc.ca/%5Cresources%5CFiles%5CEnglish%5CPublic%20Reports%5CInquiry%20Reports%5CThe%20Raitt%20Report%20-%20Code.pdf>

⁹² See Ian Greene and David Shugarman, *Honest Politics* (Toronto: Lorimer, 1997), Ch. 3.

⁹³ The Raitt Report made under the *Conflict of Interest Code*, op. cit., 21. In the Sgro Report, Bernard Shapiro took a different approach: poor judgment by a Minister's staff could place the Minister in a conflict of interest situation.

thinking by cabinet ministers and ordinary MPs involved in this episode about the basic principles of the ethics rules and responsible government, and how these principles ought to be applied to the comportment of MPs and cabinet ministers. The two Cheques reports and the two Raitt reports contained a number of recommendations for closing loopholes in the Act and the Code, and indicated that the Ethics Commissioner is perhaps intending to take a more proactive approach to promoting higher ethical standards in the House.

The Senate Ethics Officer

The Senate ethics regime, like any other ethics regime, is not perfect – it is always a work in progress. In his first three Annual Reports the Senate Ethics Officer recommended changes to the Senate ethics code or procedures, many of which were subsequently adopted by the Senate. In his fourth Annual Report (2008-09), the Officer recommended three key amendments. First, although he has not had an occasion to conduct an inquiry into allegations of breach of the rules, he recommended that like other Canadian ethics commissioners, he be given the direction to table inquiry reports and make them available to the public following tabling in the Senate. Second, he recommended that he be empowered to self-initiate an inquiry, as is the case with the Conflict of Interest and Ethics Commissioner, and most Canadian ethics commissioners. Third, he recommended that outside activities of the family members of Senators should be disclosed to the Officer, as they are disclosed in many other jurisdictions with disclosure rules for members of legislatures.⁹⁴

When moving second reading of Bill C-30 on May 28, 2009, (the act to abolish the position of Senate Ethics Officer), Steven Fletcher, the Minister of State for Democratic Reform, criticized the Senate ethics regime for not having already implemented the reforms recommended by the Senate Ethics Officer. On the other hand, he said that the legislation to abolish the Senate Ethics Officer would allow the Senate to retain and govern future changes to its own Code of Conduct. As well, he stated that the legislation would give the Senate a role in choosing future Conflict of Interest and Ethics Commissioners. His major criticism of the current Senate ethics regime is that it allowed for different interpretations of similar codes of conduct. Of course this is a very hypothetical issue, given that there have been no inquiries about allegations of breach of the Senate Code by the Senate Ethics Officer. In recent Annual Reports, the Conflict of Interest and Ethics Commissioner, and the Senate Ethics Officer have mentioned their participation in CCOIN (the Canadian Conflict of Interest Network) that includes all the Canadian conflict of interest commissioners. One benefit of these meetings is that the Commissioners attempt to develop similar interpretations of similar provisions in the codes they administer. It is highly unlikely that differing interpretations of similar provisions of the three distinct Parliamentary conflict of interest rules will become problematic.⁹⁵ Minister Fletcher also pointed out that the legislation would establish a joint Senate-House of Commons Committee to provide “general direction” to the

⁹⁴ Annual Report, 2008-09, Senate Ethics Office, 17.

⁹⁵ Given that if the office of Senate Ethics Officer is abolished, Senators would be receiving advice from a variety of advisors in the Office of the Conflict of Interest and Ethics Commissioner, the chances of receiving different advice from different junior officers would be even greater than the present situation.

Commissioner. (At present, both the Senate and the House of Commons have such committees in regard to their respective Commissioners.)⁹⁶

Opinion of Ethics Commissioner Jean Fournier regarding Senator Housakos

Leo Housakos was appointed to the Senate by Prime Minister Harper on January 8, 2009 and sworn in on January 26. Just prior to this, he had been discussions with top executives of a large Quebec engineering firm, BPR, about assuming a senior position either with the firm or one of its subsidiaries, or both. On February 4, Senate Ethics Officer Fournier had his first meeting with Senator Housakos to discuss his obligations under the Senate ethics code. “At that time, the Senator explained that he was on the boards of directors of BPR and Terreau Inc. [a subsidiary]. He inquired as to whether he could continue to do so. I advised him that the Code authorizes Senators who are not Ministers of the Crown to participate in outside activities, including engaging in employment, and being a director or officer in a corporation, or a partner in a partnership, as long as they are able to fulfill their obligations under the Code (section 5). However, I cautioned him about section 9 of the Code, which pertains to the use of influence.”⁹⁷

During late May of 2009, the federal agency responsible for the Champlain Bridge in Montreal, Jacques Cartier and Champlain Bridges Corporation (JCCBI), a subsidiary of the Federal Bridges Corporation Limited (FBCL) (a federal Crown corporation) together with the cooperation of Transport Québec, issued a tender for a prefeasibility study for replacement of the Champlain Bridge. On September 21, it was announced that the \$1.4 million contract for the pre-feasibility study went to a consortium that included BPR. In the media, Senator Housakos was accused of using his influence as a Senator on the Transport Committee to assist the consortium to win the contract. On October 20, Senator Housakos requested Fournier for a written opinion under subsection 42(1) of the *Conflict of Interest Code for Senators* with regard to these allegations.

Fournier conducted an exhaustive review in which he interviewed eight persons and reviewed a number of documents. He concluded that the tendering process was “fair, rigorous and transparent,” and that following Fournier’s advice about avoiding the actuality or appearance of inappropriate influence, “the Senator did not discuss the contract in question with [anyone involved in the tendering process] and that he did not in any way attempt to influence any of the parties involved in the awarding of the

⁹⁶ Debates on Bill C-30, An Act to amend the Constitution Act, 1867 (May 28, 2009, Senate Committee on Procedure and House Affairs, Accessed Dec. 29, 2009 at: <http://www2.parl.gc.ca/housechamberbusiness/ChamberPublicationIndexSearch.aspx?arpist=s&arpit=c-30&arpidf=2009%2f01%2f26&arpidt=&arpid=True&arpj=False&arpice=False&arpicl=&ps=Parl40Ses2&arpisb=Publication&arpirpp=10&arpibs=False&Language=E&Mode=1&Parl=40&Ses=2&arpicpd=3931160#Para1506585>.

⁹⁷ Office of the Senate Ethics Office, Opinion Regarding Senator Housakos Pursuant to Subsection 42(1) of the *Conflict Of Interest Code For Senators*, issued on December 16, 2009, 7. As it turned out, Housakos was never a member of the senior management of BPR, and instead became President of Terreau for nine months. He resigned this position of September 3 2010, citing his heavy a workload as a Senator.

contract.”⁹⁸ As well, the contract was never considered by the Senate’s Transport Committee. It would appear that the advice that Fournier gave to Housakos on February 4 was taken to heart.

Conclusion

Commissioner Dawson’s annual reports demonstrate that her office is doing its best to inform MPs and public office holders about the conflict of interest rules through a number of innovative approaches, such as information sessions for various groups, email bulletins, and web-based resources. In my opinion, however, these measures can never be as effective as the kinds of face-to-face meetings that the other Canadian ethics commissioners have with members of legislatures. The advantage of the Senate ethics regimes in other legislatures, including the Senate, is that these meetings can and do take place, and thus the Senate approach is more effectively preventative than the ethics regime for the House of Commons/Cabinet. Hence, the Senate Ethics Office has not been requested to conduct any inquiries, and has published only one opinion. Abolishing the Senate Ethics Officer and thus heaping even more responsibility on the already overworked Conflict of Interest and Ethics Commissioner would clearly be a retrograde step.

In practically all of the reports written both by Dr. Shapiro and Ms. Dawson, it was evident that errors in judgment were made (whether or not these resulted in breach of the ethics rules) that could have been avoided if only the member had requested the advice of the Ethics Commissioner prior to embarking on the activity that led to allegations of breach of the rules. It is likely that the advice of the Commissioner was not sought out because there are very few personal relationships of trust that exist between the Commissioner and individual members, as they exist between the commissioner and members in provincial legislatures, or between the Senate Ethics officer and individual Senators.

The first attempt to introduce ethics legislation into Parliament was actually initiated by the Mulroney government, which proposed a three-person ethics commission rather than a one-person commissioner. It may be useful for the House of Commons to re-consider this model – modified to provide for a Chief Commissioner and two Deputy Commissioners (and all would be officers of Parliament with independence) which would make it possible for all MPs, cabinet ministers and ministerial staff to meet face-to-face with a Commissioner after their first election or appointment and on an as-needed basis after that, rather than an optional meeting with a more junior advisor. A three-person ethics commission would result in about the same ratio of commissioner-to-legislator as exists in the largest provincial legislatures and the Senate.⁹⁹ As well, an assistant

⁹⁸ Ibid., 19.

⁹⁹ It would likely not be necessary for these three positions to be full-time. The advantage of having three positions would be that a commissioner could meet personally with all MPs within 30 days of an election (and annually after that), and would be available at short notice to advise MPs and cabinet ministers about any concerns they might have about appropriate ethical behavior. As well, there would be an advantage to having three commissioners decide, after collecting the facts about an alleged violation of the Act or the

commissioner should be appointed with responsibility for administering the Conflict of Interest Act in relation to public office holders other than cabinet ministers, thus freeing up the Chief Commissioner and Deputy Commissioners to focus on the House of Commons and the cabinet.

A second problem with the ethics regime for MPs and cabinet ministers is that it is cumbersome because of the existence of two sets of rules, both of which must be adhered to by cabinet ministers. Senate Ethics Officer Fournier has argued that the longer a set of ethics rules, the less likely that they will be followed.¹⁰⁰ Most Canadian provinces and territories have just one set of rules (whether legislated or codified) that cover both elected members and cabinet ministers, but with stricter provisions for ministers. Combining the rules into one document would help to promote a better understanding of the rules and therefore more compliance by cabinet ministers and ordinary MPs. As well, with just one set of rules to apply and adjudicate, the Commissioner would need to issue only one report instead of two as a result of an investigation that involves both the Act and the Code.

During the term of office of Bernard Shapiro as the Ethics Commissioner, partisan politics overshadowed the good work that he did to set up the office and investigate a number of very complex allegations (regarding situations that might not have arisen had he been able to meet personally with all MPs, including cabinet ministers). Nevertheless, he did his best to act in a non-partisan fashion and to ensure that the new office was set up in as sensible a fashion as possible. In Mary Dawson's term, there seems to be somewhat less of a tendency for members to use the ethics regime for partisan purposes, though that tendency has clearly not disappeared. However, the Parliamentary ethics regime is likely to run less smoothly than its provincial/territorial and Senate counterparts until face-to-face meetings between a Commissioner and cabinet ministers and MPs become the norm. The current government's attempt to abolish the office of Senate Ethics Officer is a counterproductive step, as it would further reduce the opportunity for the Commissioner to undertake effective preventive education. It would be far better if the government could redirect its energy to follow through with the platform that the Conservative party previously supported to reform the method by which the Conflict of Interest and Ethics Commissioner is appointed. The process should be put into the hands of the House of Commons and out of the purview of the Prime Minister's Office – a truly democratic reform. As well, the House should consider the creation of the two Deputy Commissioners (to help with the preventive work in Cabinet and the House of Commons) and an Assistant Commissioner (to administer the Conflict of Interest Act regarding the more than 3000 public office holders other than cabinet ministers, parliamentary secretaries and ministerial staff).

Code, whether there has been a breach of the rules, and if so how serious. These are not always clear-cut matters, and three heads will likely produce more consistent and fair judgments than one.

¹⁰⁰ Jean T. Fournier, "Emergence of a Distinctive Canadian Model of Parliamentary Ethics," *op. cit.*

Appendix I

Dates of Establishment of Offices of Independent Ethics Commissioners in Canada	
■ Ontario	1988
■ British Columbia	1990
■ Nova Scotia	1991 (designated judge)
■ Alberta	1992
■ Newfd/Lab	1993
■ Saskatchewan	1994
■ NWT	1998
■ PEI	1999
■ New Brunswick	2000
■ Nunavut	2000
■ Manitoba	2002
■ Yukon	2002
■ Quebec	2002 (jurisconsult); 2010 (ethics commissioner)
■	
■ House of Commons	2004
■ Senate	2005

Appendix II

Investigations by Canadian Ethics Commissioners, 2004-2008

(Appendix G, p. 74, of the Annual Report 2008-2009 of the Senate Ethics Officer (Office of the Senate Ethics Officer, Ottawa)



APPENDIX G

INVESTIGATIONS BY ETHICS COMMISSIONERS (2004-2008)*

	Date of Establishment of Offices	Number of Parliamentarians	2004	2005	2006	2007	2008
Ontario	1988	107	3	0	2	0	2
British Columbia	1990	79	1	0	1	1	1
Nova Scotia	1991	52	0	0	0	0	0
Alberta	1992	83	1	1	0	3	0
Newfoundland and Labrador	1993	48	0	0	0	0	0
Saskatchewan	1994	58	2	1	0	0	2
Québec	1996	125	n/a	n/a	n/a	n/a	n/a
NWT	1998	19	1	0	0	0	0
P.E.I.	1999	27	0	0	0	1	2
New Brunswick	2000	55	0	0	1	0	0
Nunavut	2000	19	1	0	0	0	2
Manitoba	2002	57	0	0	0	0	0
Yukon	2002	18	0	0	0	0	2
House of Commons	2004	308	0	3	4	1	5
Senate	2005	105	n/a	0	0	0	0
Total			9	5	8	6	16

Source: Canadian Conflict of Interest Network (CCOIN).

* All Canadian jurisdictions have independent commissioners and codes of conduct or laws setting out conflict of interest rules.