



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

ANNUAL REPORT OF THE ETHICS COMMISSIONER

on activities in relation to
PUBLIC OFFICE HOLDERS
FOR THE FISCAL YEAR ENDING MARCH 31, 2005



June 30, 2005

Bernard J. Shapiro

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Tabled in the House of Commons and Senate on June 30th, 2005
062005-05E



June 30, 2005

The Honourable Peter Milliken
Speaker of the House of Commons
The House of Commons
Ottawa, Ontario K1A 0A6

The Honourable Dan Hays
Speaker of the Senate
The Senate
Ottawa, Ontario K1A 0A4

Dear Sirs,

Pursuant to Section 72.13 (1)(b) of the *Parliament of Canada Act*, I am pleased to submit to you the report of the Ethics Commissioner on activities in relation to Public Office Holders for the fiscal year ending March 31, 2005.

In this first annual report on the activities of my Office, I have included a certain amount of background information as well as comments on the major activities during the Office's first year of operations. It has been a challenging year in terms of the effort required both to implement the revised *Conflict of Interest and Post-employment Code for Public Office Holders*, and to create a new organization.

Yours sincerely,



Bernard Shapiro
Ethics Commissioner

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PREFACE

This Report is in fulfillment of the statutory requirement (Section 72.13 (1) of the *Parliament of Canada Act*) that, within three months after the end of each fiscal year, the Ethics Commissioner shall submit two reports on his activities for that year. One of these reports, on his activities related to members of the House of Commons, is to be forwarded to the Speaker of the House of Commons who will table that report in the House. The second report, relating to his activities concerning Public Office Holders, is to be forwarded to the Speakers of both the House of Commons and the Senate, who will each table the report in the House over which they preside.

This first annual Report outlines the activities of the Office of the Ethics Commissioner with respect to Public Office Holders. It covers the period from the day of the Office's inception, May 17, 2004, to the end of the fiscal year, March 31, 2005.

The first year of operations of the Office has given rise to a number of conceptual and operational challenges - challenges that must be addressed if the effectiveness of the "ethics regime" in the federal government is to be sustained and, where possible, enhanced. These challenges will be addressed in a subsequent report which will deal with these issues as they relate to Public Office Holders and/or Members of the House of Commons. This subsequent report will be available before Parliament reconvenes after its summer recess.



INTRODUCTION

After more than three decades of initiatives aimed at developing and implementing an effective conflict of interest regime for Parliamentarians and Public Office Holders (see Appendix 1), on March 31, 2004, 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. The legislation created:

- a new position, the Ethics Commissioner, who reports directly to Parliament; and
- a new parliamentary entity, the Office of the Ethics Commissioner, which is vested with parliamentary privileges and is to operate within the parliamentary framework.

In April 2004, I was recommended to the House of Commons for a five-year term appointment as the first Ethics Commissioner. The Standing Committee of the House of Commons on Procedure and House Affairs considered my proposed appointment, and recommended that the House approve it. The House did so on April 29, 2004. I assumed my duties as Ethics Commissioner on May 17, 2004.

My mandate includes the administration of the *Conflict of Interest Code for Members of the House of Commons* and the Prime Minister's *Conflict of Interest and Post-employment Code for Public Office Holders*. In addition to my advisory role under both Codes, the legislation accorded me the authority to conduct inquiries of Ministers, Ministers of State and Parliamentary Secretaries under the Public Office Holders' Code, and of Members of Parliament under the Members' Code.



YEAR 1 – MAJOR ACTIVITIES

In taking on the responsibility for the *Conflict of Interest and Post-employment Code for Public Office Holders*, I was able to build on the work of the previous Office of the Ethics Counsellor, particularly as the Code, its obligations and the necessary supporting processes did not change immediately under the new regime.

However, while there had been proposals to move responsibility for ethics from the executive branch of the government to the legislative branch for many years, it soon became clear that neither the Privy Council Office nor the House of Commons itself had considered carefully the means for effecting such a transition. Consequently, much effort – and a quite unreasonable amount of time – was needed during the first year of the new Office to accomplish that transition.

Creating the New Office

The creation of a new entity of Parliament, the first in many years, raised a number of issues for us to manage within extremely tight timeframes. A first challenge was to create a functioning organization with the

appropriate resources to deliver on the mandate that the Ethics Commissioner was given by Parliament. My Office could not simply take over the operations of the former Ethics Counsellor, as his Office was part of Industry Canada and, as such, part of the executive branch of government. The employees of that Office were federal public servants. Budgets and services came from within the resources of Industry Canada. The situation of the new Office was quite different since, as outlined above, it was an entity of Parliament, i.e. a part of the legislative branch of government.

In order, however, to maintain some continuity of services and access to the expertise built up under the former ethics regime, the Office negotiated a Memorandum of Understanding with Industry Canada for the transition period (May 17, 2004 to March 31, 2005), under which they would continue to provide support services to the Office on a cost-recovery basis.

As a distinct entity and a separate employer from the federal government, as well as within Parliament, there was a need not only to implement an organizational structure with its own internal human resources policies, but also to develop a new classification system with a supporting compensation structure. On December 1, 2004, employment offers were made to all former employees of the Office of the Ethics Counsellor. Of the twenty employees in the Office prior to May 17, 2004, only nine accepted the offer. This led to a substantial loss of expertise - and production - for a period of several months.

Thus, throughout the last fiscal year, a great deal of management attention was directed to the staffing of the organization, leading to inappropriate delays in other substantive activities. I am, however, pleased to note that by the end of the fiscal year, 86% of the positions had been staffed, of which 77% were permanent appointments. The organizational chart for the Office is attached as Appendix 2.

The Office's operating budget also had to be developed, and was included in Parliament's Supplementary Estimates (A) for the 2004-2005 fiscal year. Under the legislation that created the Office, the annual request for funding and any supplementary requests are directed to the Speaker of the House of Commons for consideration. The Speaker then transmits the estimates to the President of the Treasury Board. In this model, neither the executive branch nor the legislative branch is involved in the approval of the estimates, reflecting the independent status of the Office. Appendix 3 presents the financial statements of the Office for the period from May 17, 2004 to March 31, 2005¹. In 2005-2006, the Office will develop a financial information link on the website in order to ensure transparency and accountability in the Office's financial activities.

The Office needed the full range of support services including financial services, administrative services, information technology, human resources and legal services. Since it was too costly to provide such services internally but nonetheless important to maintain an adequate segregation of activities (as required by the *Financial Administration Act*), it was necessary to negotiate agreements with other organizations, such as the House of Commons, the Library of Parliament and Public Works and Government Services (for Security and Human Resources Shared Services). Negotiating agreements, particularly with the House of Commons, was a complex process that took months to resolve completely. The Office is, however, now fully operational, and services provided by its partners fully meet our requirements.

¹The financial statements were prepared by the Library of Parliament pursuant to our Office's service agreement with them.



Administering the Code for Public Office Holders

Role

The Executive Affairs Branch of the Office administers the *Conflict of Interest and Post-employment Code for Public Office Holders* (the Code). Its most important tasks are to annually review the Confidential Reports filed by the Public Office Holders and provide confidential advice to them. The Code is a document that was tabled in the House of Commons by the Prime Minister on October 7, 2004. It should be noted that the Code does not have the force of law (i.e. it is not a statute). However, it requires Public Office Holders to sign a document certifying that, as a condition of their holding office, they will observe the Code.

Approximately 1,250 of these Public Office Holders are full-time appointments, and are, therefore, subject to the full application of the Code. These Public Office Holders include not only the Prime Minister, Ministers, Ministers of State, Parliamentary Secretaries and Ministers' Exempt Staff, but also full-time Governor in Council appointees including Deputy and Associate Deputy Ministers and heads of agencies, Crown corporations, boards, commissions and tribunals. About 2,200 part-time Governor in Council appointees are also subject to the Principles of the Code, along with any supplementary measures adopted by, or included in the legislation governing, their respective organizations.

Process

Much of the work involves ensuring that Public Office Holders are in compliance with the Code as soon as possible after assuming office, and that they remain in compliance for the duration of their appointments. The process begins with a letter from the Ethics Commissioner outlining their obligations under the Code. They are then required to complete a report in which they disclose to the Ethics Commissioner on a confidential basis all their assets, liabilities and outside activities. This report must be submitted within 60 days of appointment. In addition, and unless otherwise authorized by the Ethics Commissioner, every Public Office Holder is required to complete all compliance arrangements within 120 days of appointment. The Office is responsible for protecting this confidential information. In order to do so, we have redesigned the Office, and more specifically, the Office's file room to improve security beyond previous levels. In doing so, we drew on guidance from the House of Commons and Public Works and Government Services regarding file security issues. We take great care to make sure our files continue to be handled in such a way that protects the sensitive personal information contained within them.

The confidential reports submitted are carefully examined by the staff in the Office of the Ethics Commissioner. In consultation with the Public Office Holder, arrangements are made to prevent real, potential and apparent conflicts of interest and to ensure compliance with the Code. These arrangements cover everything from outside activities and the acceptance of gifts to assets and the avoidance of preferential treatment. Assets, for example, are classified as exempt, declarable or controlled. Exempt assets must be disclosed to the Office, but are otherwise exempt from further compliance measures. Declarable assets are those for which extra care must be taken to avoid conflicts of interest and are subject to public declaration. Controlled assets are those that could be affected by federal government decisions. These are subject to divestment, either through sale at arm's length, or by placement in a blind trust or blind management agreement, and they may require recusal arrangements on the part of the Public Office Holder. Once the initial compliance process has been completed, Public Office Holders are required to remain in full compliance at all times. They are required to report any changes to the initial information provided to the Office and their files are subject to annual review. During the past year, the Executive Affairs Branch completed initial compliance arrangements for 610 new appointees.



The majority of full-time Public Office Holders are also subject to the post-employment provisions of the Code for one year after leaving office. Before leaving government, the majority of Public Office Holders seek our advice to ensure that their new positions do not place them in conflict with the public appointment from which they are stepping down.

We are also called on to advise prospective part-time Public Office Holders. They routinely seek our opinion on whether their current activities or assets would place them in a conflict of interest, and look to us for assistance in resolving conflicts before assuming office. These cases can be challenging, as they require us to apply not only the principles of the Code, but also to provide advice on the statutes constituting their own organizations, as well as any conflict of interest measures those organizations may already have in place.

The past year has also seen a substantial increase in requests from Governor in Council appointees seeking our advice regarding the acceptability of participating in partisan political activities. To ensure that these Public Office Holders remain impartial in the discharge of their official duties and responsibilities, they are prohibited, for example, from personally seeking nomination, raising funds or managing a campaign. Depending on an individual appointee's position, participation in such activities is generally acceptable only on resignation.

Changes to the Mandate

Included in the mandate of the new Office of the Ethics Commissioner is the responsibility to “administer any ethical principles, rules or obligations established by the Prime Minister for public office holders” and to “provide confidential advice to the Prime Minister with respect to those ethical principles, rules or obligations and ethical issues in general.” Accordingly, the Executive Affairs Branch of my Office participated in the development of the revised Conflict of Interest and Post-employment Code for Public Office Holders, issued by the Prime Minister in October 2004. Building on earlier Codes, the revised Code includes:

- a prohibition on solicitation that could place Public Office Holders in a position of obligation incompatible with their public duties;
- a requirement on the part of trustees and managers of blind trusts and blind management agreements to report annually to the Ethics Commissioner in order to verify the nature and market value of the assets for which they are responsible;
- a stricter post-employment guidelines for former Ministers preventing them from lobbying former Cabinet colleagues;
- new guidelines on the acceptance of invitations to sporting, cultural and other special events;
- a provision that no gifts, hospitality or benefits, irrespective of the value, may be accepted if it appears to be an attempt to influence the judgment of Public Office Holders in the performance of their official duties; and
- an expansion of the general provisions regarding gifts, hospitality and benefits to spouses, common-law partners and dependant children of Public Office Holders.



Accomplishments

The last year has been a challenging one for the Executive Affairs Branch, as it has been for the Office as a whole. Both the temporary lack of staff and the election of June 2004 accompanied by the subsequent appointment of new Cabinet Ministers, members of their exempt staff and Governor in Council appointees created a significant backlog of initial compliance files. Previous appointments also had to be reviewed following revisions of the Code in December 2003 and October 2004. In addition, the Office's move from the public service to an entity of Parliament involved changes in both our staff and procedures. Still, our staff rose to these challenges, handling 1,437 cases in the last fiscal year. This number represents nearly double the yearly average of 755 cases over the last 12 years, or a 90% increase in productivity. During this period, advisors were also responding to frequent calls for advice from Ministers' offices and Governor in Council appointees. A major recruitment drive by the Office of the Ethics Commissioner reached its completion at the end of March this year, resulting in an infusion of capable and enthusiastic advisors. This Office is, therefore, much better prepared for the coming year than it was for the last.

As of March 31, 2005, all Ministers, Ministers of State and Parliamentary Secretaries were in compliance with the Code. Given the continuing naming of new Governor in Council appointments and Ministers' Exempt Staff, there are always a number of new appointees that are in the process of coming into compliance. In 2004-2005, this "backlog" has been larger than usual. In addition to the new appointments, the combination of the temporary loss of staff resources in the Office and the priority given to the launch of the new Code for Members of Parliament has placed the "system" under considerable stress with respect to Public Office Holders. These special contingencies are now largely behind us, and as a result, a return to the 120-day limit for compliance can now be envisioned.



Blind Trust and Blind Management Agreements

Blind trusts provide Public Office Holders with an alternative to the outright sale of controlled assets. A blind trust places assets in the hands of an arm's length trustee. That trustee may neither receive direction from nor provide information to the Public Office Holder, except for the purposes of fulfilling legal requirements related to the filing of personal income taxes. To ensure true blindness can be achieved, a blind trust is typically used for a diversified portfolio of stocks and is not permitted for a single or minimal block of shares. Blind management agreements, on the other hand, place assets in the hands of an arm's length manager and prevent the Public Office Holder from directly or indirectly exercising the rights and privileges associated with that asset. A blind management agreement can be used, for example, to distance a Public Office Holder from his or her interests in a private corporation that has contractual dealings with the federal government. A blind management agreement can be accompanied by recusal arrangements as well. As noted earlier, the Code now requires trustees and managers of blind trusts and blind management agreements to report annually to the Ethics Commissioner in order to verify the nature and market value of the assets for which they are responsible.

The *Conflict of Interest Code for the Public Office Holders* provides that, on the recommendation of the Ethics Commissioner, reimbursements for costs to comply with the Code's compliance measures may be permitted. Eligible costs for trusts and/or management agreements may consist of:

- reasonable legal, accounting and transfer costs for establishment and/or dismantlement;
- annual, actual and reasonable costs for its maintenance and/or administration;
- commissions for transferring, converting or selling assets; and
- other financial costs required because of the complexity of the arrangements.

Costs incurred for withdrawal from activities when the Public Office Holder's name must be removed from federal or provincial registries of corporations are also eligible for reimbursement.

To administer this area of the Office's mandate, reimbursement guidelines have been developed to ensure consistency and fairness. The reimbursement guidelines for blind trusts and blind management agreements are attached as Appendix 4. Moreover, trustees of Public Office Holders must submit supporting information to assist in determining eligibility for reimbursement. The average rates introduced in the Office's policy have been derived from canvassing a number of Canadian firms (legal and accounting) who provide such services. These rates will be revisited on an annual basis to reflect "up-to-date" reasonable costs.

In 2004-2005, the Office processed over 140 claims and recommended a total of approximately \$450,000 in reimbursement costs. While the majority of these costs (65%) were for the administration of a blind trust, 20% were for the administration of a blind management agreement, and 14% for the establishment of a blind trust. While the Office determines and recommends legitimate, reasonable and reimbursable costs, the actual payment is issued by the respective host organization/department of the Public Office Holder.



Inquiries pursuant to the Parliament of Canada Act

One of the challenges of my new mandate has been the legislated power to conduct inquiries at the request of Parliamentarians into the ethical behaviour of Ministers, Ministers of State and Parliamentary Secretaries pursuant to Section 72.08 of the *Parliament of Canada Act*.

In 2004-2005, I received only one official request for examination under that section. On November 22, 2004, Ms. Diane Ablonczy, member for Calgary – Nose Hill, made an initial request related to the conduct of the Honourable Judy Sgro, then Minister of Citizenship and Immigration. On December 14, 2004, Ms. Ablonczy wrote to me again requesting that the scope of her initial request be enlarged.

In this particular inquiry, thirteen allegations were made, and given the considerable disagreement over the relevant facts that were involved, it was necessary to conduct a more far-ranging examination than had been initially imagined. Nevertheless, the report both describing the inquiry and presenting the conclusions was released on June 21, 2005, and it can be accessed electronically at <http://www.parl.gc.ca/oec-bce>.

The experience of conducting this inquiry brought to light potential problems of internal inconsistency in the Act as well as a number of varying views as to the scope and nature of the Ethics Commissioner's mandate in this area. I intend to consider these matters in a subsequent report to Parliament.

RECUSALS

Introduction

Complying with the *Conflict of Interest and Post-employment Code for Public Office Holders* requires Public Office Holders to arrange their private interests in a manner that will prevent conflicts of interest from arising. This can include situations where a Public Office Holder will have to refrain from exercising any official power or performing any official duty or function with respect to matters which have a specific and direct link to their private interests. In these instances, we assist in the development of a recusal process tailored to his or her specific circumstances. The details of this process are subject to public disclosure.

Prime Minister

Prime Minister Paul Martin is a Public Office Holder for whom a specific recusal process has been established. Having had substantial business interests, including a controlling share in Canada Steamship Lines (CSL), he sought the advice of what was then known as the Office of the Ethics Counsellor in early 2003 to ascertain what compliance arrangements might be necessary should he become Prime Minister. As a result, a detailed recusal process was developed which was implemented when he became Prime Minister. Appendix 5 outlines this process in detail. This process includes not only a requirement to publicly disclose the areas of recusal affecting him, but also to provide the public with information regarding specific instances where he has recused himself.



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This recusal process relates to any matters under consideration by Cabinet or Cabinet Committees, as well as issues that may arise in briefings or meetings and other discussions with the Prime Minister, that have a specific and direct link to the business interests of Canada Steamship Lines. Three broad areas of recusal – marine transportation policy, shipbuilding and fee structures for the St. Lawrence Seaway – were identified. However, recusal is not necessary where the matters under consideration are of general application or affect the business interests of Canada Steamship Lines as a member of a broad class of businesses. While control of the company was transferred to Mr. Martin's three sons in 2003, this did not remove the need for recusal, as the Ethics Counsellor at the time advised him that the sale was not to a third party at arm's length.

Initially, the recusal process involved three parties: the Ethics Counsellor, the Privy Council Office and the Prime Minister's Office. The Ethics Counsellor established the areas of recusal and was responsible for providing guidance on the need for recusal in specific instances. When the Office of the Ethics Commissioner was established in May 2004, it assumed this responsibility.

As the recusal process has evolved, it is now through the Deputy Secretary to the Cabinet (Operations) that officials of the Privy Council Office and the Prime Minister's Office liaise with the Office of the Ethics Commissioner on issues related to the need for recusal on the part of the Prime Minister. Our office reviews various documents, including the agendas of all meetings of Cabinet and Cabinet committees, in order to determine which, if any, items necessitate recusal. Canada Steamship Lines has also committed to keeping our office informed of company developments. The process has benefited from the Privy Council Office's provision of additional and relevant information to assist our Office in determining when specific recusals are needed. In addition, the recusal process has been extended to include the Prime Minister's exempt staff, an arrangement that further limits the likelihood of an indirect conflict of interest.

Of the 37 cases reviewed by the Office during the past fiscal year, the Prime Minister was required to recuse in ten instances. They involved:

Marine Transportation Policy:

- The approval of certain Governor in Council appointments within the Minister of Transport's portfolio
- A vote on amendments to the Canada Shipping Act
- Cabinet committee discussions of marine security policy issues involving user fees
- Discussions related to marine service fees supporting the Canadian Coast Guard
- Discussions related to Environment Canada's legislative proposal to strengthen enforcement capacity and penalties for ship owners and officers who cause oil to be released at sea

Shipbuilding:

- Discussions related to the procurement of new vessels for the Canadian Coast Guard

Fees - St. Lawrence Seaway:

- Information on a specific issue between CSL and several port authorities regarding security fees
- Discussions between CSL and officials in Transport Canada related to harbour dues

Other issues:

- A response to a letter from a municipal official related to the termination by Stelco Inc. of 200 steel workers in Hamilton
- Certain items in the work plans of the Minister of Transport



Other Public Office Holders Requiring Recusal Arrangements

In addition to the Prime Minister, 13 other Public Office Holders were required to establish, or continued to be subject to, a recusal process as a compliance arrangement. Details of these recusal arrangements are included in Public Declarations that are available for review on our Public Registry (www.parl.gc.ca/oec-bce/site/pages/ethics-e.htm). These declarations document specific measures undertaken by these individuals to refrain from exercising any official power or performing any official duty or function on matters that could put them in a conflict of interest. Public Office Holders for whom a recusal process was in place over the past fiscal year, and the issue(s) from which they were recused, are:

Bélanger, Mauril – issues related to the relocation of the Rockcliffe Military Air Base and the National Defense headquarters, as both facilities are located in his constituency

Bornmann, Roy – discussions and decision making-processes impacting Pilothouse Public Affairs, a company that employs his brother Erik as a lobbyist registered to make representations to government organizations including Environment Canada

Emerson, David Lee – issues directly impacting Canfor Corporation, where as a former President and CEO he has an entitlement to an unregistered pension plan

Fontana, Joe – issues directly impacting Canadian Rockport Homes International, a company in which he holds an ownership interest

*These declarations are no longer active as the individuals are no longer Public Office Holders.

Fox, Francis* – issues specifically impacting Rogers Wireless and Pelmorex Management Inc., companies in which he holds an ownership interest, as well as issues impacting Pelmorex's subsidiaries the Weather Network and Météomédia and, in general, the telecommunications sector

Gosselin, Hélène – issues directly impacting IBM Canada, a company that employs her husband

Graham, William – issues directly impacting Graymont Limited, a major producer of chemical lime in which he has an ownership interest

Marshall, David – issues directly impacting the Canadian Imperial Bank of Commerce, in which he holds an ownership interest

Nicholson, Peter – issues specifically impacting BCE Inc., Nortel Networks and Stelco Inc., companies in which he holds an ownership interest, and issues impacting the steel and telecommunications sectors in general

Paradis, Denis* – issues specifically related to Vignoble St-Armand Inc., a company in which he has an ownership interest, and issues related to the production, importation and sale of wine. He is also recused from official functions related to the Excise Act 2001 and the *Importation of Intoxicating Liquors Act* as well as discussions or decisions related to policies and modifications pursuant to these Acts as they relate to the taxation and importation of wines or goods used in the production and transformation of wines

Pratt, David* – issues related to the possible consolidation of DND/Canadian Forces headquarters with the Dwyer Hill military facility, as the latter is located in his constituency

Scott, Sheridan – new files and situations involving former colleagues at Bell Canada for one year and old files for the life of that file

Strauss, Jay – issues directly impacting Strauss Communications Inc., in which he has an ownership interest through a family trust

Although cumbersome and time-consuming, the recusal system works reasonably well. Both the Prime Minister and the other Public Office Holders subject to recusal have been cooperative, and the arrangement certainly adds to the range of tools that the Office can use in order to minimize conflicts of interest. Moreover, especially with respect to the Prime Minister, changes instituted over the past year have increased the level of coordination and improved the flow of information between the Office of the Ethics Commissioner, the Privy Council Office and the Prime Minister's Office. Staying within the current system, I intend to recommend that in the future, recusals by the Prime Minister from Cabinet or Cabinet Committee meetings be recorded and, subsequently, a report of these instances of recusal be provided to the Office by the Clerk of the Privy Council for inclusion in a registry to be made available for public inspection.

An analysis of the current recusal arrangements as well as potential expansions, alternatives and additions to it will be one of the matters taken up in a subsequent report to Parliament mentioned in the Preface to this report.

*These declarations are no longer active as the individuals are no longer Public Office Holders.



CHALLENGES AHEAD

As suggested in the Preface to this Report, the activities and operations of this initial year in the Office have raised a number of substantive challenges to the potential effectiveness of the Office – challenges that will be taken up in a special report to be made available before Parliament reconvenes after the summer recess. Among these challenges are those that are primarily operational. Thus, for example, is the work required for an annual review of all Public Office Holders' files productive, or would a bi-annual review be sufficient? More important, however, are the conceptual challenges. Among these are:

- access by citizens to the Ethics Commissioner;
- review of the mandate of the Commissioner and the associated legislation;
- recusal and its alternatives; and
- potential conflicts of interest between the inquiry function of the Commissioner and the Commissioner's role – if it is retrospective – in providing confidential advice.

There is, however, one general issue that I believe should be raised at this time.

During the past year, I, as the Ethics Commissioner, have taken every opportunity offered to speak to Canadian audiences about the work and the challenges of the Office. In addition, I have made some attempt to assess the concerns of Canadians as reflected in my informal discussions with those Canadians who have contacted the Office in order to raise what they regard as ethical lapses in the work of the federal government.

During the discussions with audiences and citizens related to either Members of the House of Commons or Public Office Holders, it was clear that their concerns went far beyond conflict of interest as it is embodied either in the code for Public Office Holders or in the code for Members of the House. They recognize, of course, that conflicts of interest are important to avoid, but it appears that the overriding concern for both audiences is “truth telling”.

The widely commented-on cynicism of Canadians with regard to our own democratic institutions would seem to relate to their perception that their political representatives – whom they themselves elected – are somewhat parsimonious with the truth. That is, many Canadians – at least among those who have some contact with me and the Office – have come to believe that what is communicated to them is not some honest version of the truth, but a “spin” designed to influence their future electoral choices rather than to assist them in understanding the difficult realities which they face as citizens and the very difficult choices which, in turn, governments must make.

Whatever the underlying reality, if this perception persists, there will be a real limit to the extent to which any supplementary ethics regime – whether focused on conflicts of interest or not – can act as it should, that is as an effective building block in the effort to enhance the confidence that Canadians can have in their own democratic institutions.



APPENDIX I

Chronology of Conflict of Interest Initiatives by the Government of Canada

1973: Prime Minister Trudeau issued the first Conflict of Interest Guidelines for Public Office Holders.

1978: Prime Minister Trudeau extended the Guidelines to Ambassadors and Parliamentary Secretaries and introduced Post-Employment Guidelines.

1979: Prime Minister Clark issued a new set of guidelines, which also extended to the spouses of Ministers.

1984: The Task Force on Conflict of Interest (The Starr/ Sharp Task Force) issued its report entitled "*Ethical Conduct in the Public Sector*".

1985: Prime Minister Mulroney tabled a new *Conflict of Interest and Post-Employment Code for Public Office Holders*.

1988: Prime Minister Mulroney announced initiatives on review of appointments; Parliament adopted the *Lobbyists Registration Act*.

1993: Prime Minister Campbell consolidated the responsibilities for the Public Office Holders' Code and the administration of the *Lobbyists' Registration Act* under the Minister of Industry in his role as Registrar General.

1994: Prime Minister Chrétien issued a new Conflict of Interest Code and created the position of Ethics Counsellor.

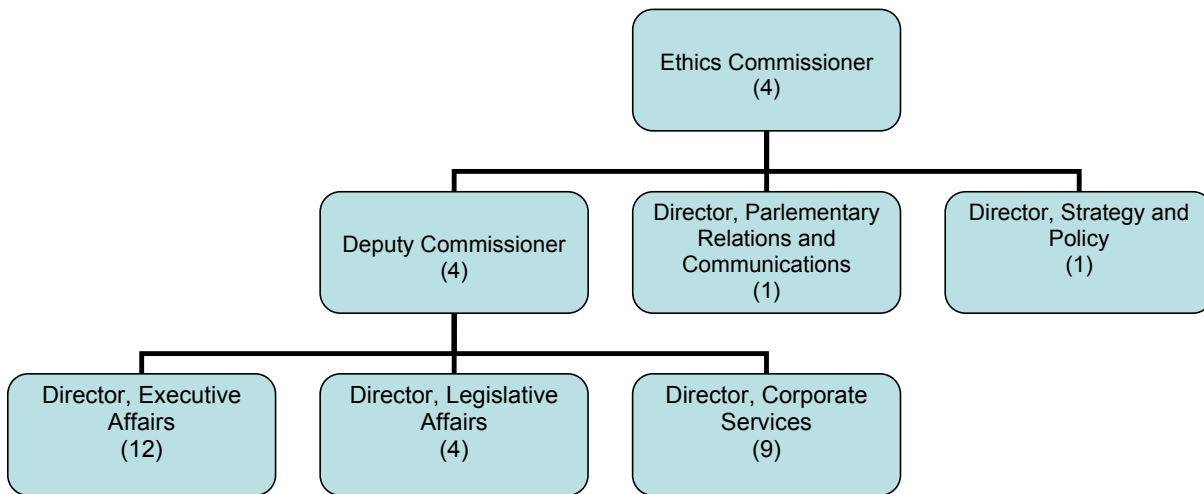
2004: Parliament passed Bill C-4, creating the position of Ethics Commissioner as an officer of Parliament and authorizing the Commissioner's mandate.



APPENDIX II

Organizational Chart

OFFICE OF THE ETHICS COMMISSIONER



II-1

The numbers in brackets represent the number of employees to be supervised by each of the positions
Total: 35 employees

June 2005

APPENDIX III

Financial Statements - March 31, 2005

Statement of Financial Position (unaudited)

OFFICE OF THE ETHICS COMMISSIONER

as at March 31, 2005

(in dollars)

Assets

Financial assets	
GST refundable	4,069
Non-financial assets	
Capital assets (note 4)	901,888
Total assets	905,957



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Liabilities and Net Assets Deficiency

Liabilities	
Accounts payable and accrued liabilities	1,038,832
Allowance for employee benefits	66,984
Total liabilities	1,105,816
Net assets deficiency	
Net assets deficiency	(199,859)
Total liabilities and net assets deficiency	905,957

The accompanying notes form an integral part of these financial statements

Statement of Operations and Net Assets Deficiency (unaudited)

OFFICE OF THE ETHICS COMMISSIONER

For the period from May 17, 2004 to March 31, 2005
(in dollars)



III-2

Expenses <small>(note 5)</small>	
Policy	267,646
Communications	142,310
Operations	1,392,555
Corporate Services	1,242,462
Total expenses and net results	3,044,973
Net cash provided by government	2,845,114
Net assets deficiency - ending	(199,859)

The accompanying notes form an integral part of these financial statements

OFFICE OF THE ETHICS COMMISSIONER

For the period from May 17, 2004 to March 31, 2005

(in dollars)

Operating activities

<i>Net results</i>	3,044,973
Non-cash items included in net results	
Amortization of capital assets	(18,443)
	3,026,530
Change in assets other than capital assets and advances	4,069
Change in liabilities	(1,105,816)
Cash applied to operating activities	1,924,783

Capital activities

Acquisitions of capital assets	920,331
Cash applied to capital activities	920,331

Net cash provided by government	2,845,114
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The accompanying notes form an integral part of these financial statements



Notes to the Financial Statements

OFFICE OF THE ETHICS COMMISSIONER

1. Authority and purpose

These statements provide the financial information related to all the operations controlled by the Office of the Ethics Commissioner.

The Office of the Ethics Commissioner was created by an *Act to amend the Parliament of Canada Act and other Acts in consequence*.

The Office of the Ethics Commissioner's business is defined through three activities: communications, operations and policy development. Communications define the strategic direction for the Office of the Ethics Commissioner's liaison with the House of Commons, parliamentary committees, members of Parliament and public office holders, as well as external stakeholders. Operations provides three functions: compliance, provision of confidential advice or opinions and investigation. Compliance encompasses a number of activities such as the confidential disclosure of private interests, the provision of advice, the public disclosure of certain assets, liabilities, activities and gifts, hospitality and benefits, the establishment of blind trusts or blind management agreements and annual reviews. Provision of confidential advice or opinions refers to a formal request from a member of Parliament, public office holder or the Prime Minister with respect to the application of the *Conflict of Interest Code for Members of the House of Commons* or the ethical principles, rules or obligations established by the Prime Minister for public office holders. Investigations may be carried out for members of the House of Commons and for those public office holders who are Ministers, Ministers of State and Parliamentary Secretaries. The objective of developing appropriate policies and practices is to provide sound and consistent advice to clients with respect to the application of the *Conflict of Interest Code for Members of the House of Commons* and the *Conflict of Interest and Post-employment Code for Public Office Holders*.



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2. Significant accounting policies

These financial statements have been prepared in accordance with generally accepted accounting principles to the extent that they are in accordance with government policies and directives. The primary source of the accounting principles is from the recommendations of the Public Sector Accounting Board of the Canadian Institute of Chartered Accountants supplemented by the recommendations of the Accounting Standards Board of the Canadian Institute of Chartered Accountants for situations not covered by the Public Sector Accounting Board. Readers of these statements are cautioned that the introduction of accrual accounting at the departmental level is evolutionary. Not all assets, liabilities and expenses applicable to the department are recorded at this time thus the financial statements are not necessarily complete. All such assets, liabilities and expenses are recorded at a government-wide level in the financial statements of the Government of Canada. The accompanying notes provide additional details and should be read with care.

The significant accounting policies include the following:

(a) Parliamentary appropriations

The Office of the Ethics Commissioner is primarily financed by the Government of Canada through Parliamentary appropriations. Appropriations provided to the Office of the Ethics Commissioner do not parallel financial reporting according to generally accepted accounting principles as they are, in a large part, based on cash flow requirements. Consequently, items recognized in the statement of operations and the statement of financial position are not necessarily the same as those provided through appropriations from Parliament. Note 7 to these financial statements provides information regarding the source and disposition of these authorities. Note 8 provides a high-level reconciliation between the two bases of reporting.

2. Significant accounting policies (continued)

(b) Net cash provided by government

All departments including agencies and departmental corporations operate within the Consolidated Revenue Fund (CRF) which is administered by the Receiver General for Canada. All cash receipts are deposited to the CRF and all cash disbursements made by departments are paid from the CRF. Net cash provided by government is the difference between all cash receipts and all cash disbursements including transactions between departments.

(c) Use of estimation

The preparation of financial statements requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses reported in the financial statements. At the time of preparation of these statements, management believes the estimates and assumptions to be reasonable. The most significant item where estimates are used is amortization of capital assets.

(d) Basis of financial reporting

All expenses, revenue, assets and liabilities transactions between sub-entities within the Office of the Ethics Commissioner have been eliminated.

(e) Expenses

Expenses are recorded when the underlying transaction or expense occurred subject to the following:

- ✓ Employee severance benefits are expensed by the Office of the Ethics Commissioner when paid. Estimated accruals are not recorded in the Office of the Ethics Commissioner's books, rather they are recognized in the consolidated financial statements of the Government of Canada.
- ✓ Vacation pay and overtime are expensed in the year that the entitlement occurs.
- ✓ Contributions to superannuation plans are recognized in the period that the contributions are made. Actuarial surpluses or deficiencies are not recorded in the Office of the Ethics Commissioner's books but are recognized in the consolidated financial statements of the Government of Canada.
- ✓ Services provided without charge by other government departments and agencies are not recorded as operating expenses. They are rather disclosed in a note to the statements (note 6).

(f) Capital assets

All assets are recorded at cost. Amortization is calculated on a straight-line basis over the estimated economic lives of the assets, as follows:

Class	Sub-Class	Amortization Period
Machinery and equipment	Special equipment	10 years
	Office furniture	10 years
Computer equipment	Computer equipment	3 years
Computer software	Computer software	3 years
Leasehold improvements	Leasehold improvements	life of lease

Current year acquisitions are capitalized and amortized commencing the day the asset is received.

(g) Foreign currency transactions

Transactions involving foreign currencies are translated into Canadian dollar equivalents using rates of exchange in effect at the time of those transactions. Monetary assets and liabilities are translated using the rate of exchange at year-end.



3. Related party transactions

The Office of the Ethics Commissioner is related in terms of common ownership to all Government of Canada departments, agencies, and Crown corporations. The Office of the Ethics Commissioner enters into transactions with these entities in the normal course of business. Certain of these transactions are on normal trade terms applicable to all individuals and enterprises, while others are services provided without charge (note 6).

4. Capital assets

Cost	Acquisitions and Net value - ending
(en dollars)	
Office equipment	4,800
Office furniture	280,868
Computer equipment	132,369
Computer software	107,203
Leasehold improvements	395,091
Total capital assets	920,331
Accumulated Amortization	Amortization and Net value - ending
(en dollars)	
Office equipment	40
Office furniture	2,341
Computer equipment	3,677
Computer software	2,978
Leasehold improvements	9,407
Total accumulated amortization	18,443
Net capital assets	901,888



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5. Summary of expenses

(en dollars)	
Salaries and wages	1,958,729
Allowances for vacation and compensatory leave	66,984
Professional and special services	715,585
Material and supplies	19,523
Rentals	17,461
Communications	60,823
Information	85,476
Travel and relocation	45,091
Repairs	15,202
Furniture and equipment	8,890
Amortization	18,443
Miscellaneous	32,766
	3,044,973

6. Services provided without charge

During the period, the Office of the Ethics Commissioner received services that were obtained without charge from other government departments and agencies. These amounts are not recorded in the financial statements.

(en dollars)

Accommodation provided by Public Works & Government Services Canada	186,063
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7. Parliamentary appropriations

(en dollars)

	2005
Supplementary Vote 12	3,718,700
Lapsed	133,247
	3,585,453
Contributions to employee benefits plan	289,722
Use of appropriations	3,875,175



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8. Reconciliation of net results to appropriations used

(en dollars)

	2005
Net results	3,044,973
<i>Remove items not charged to Vote:</i>	
Amortization	(18,443)
Change in Allowance for employee benefits	(66,984)
Expenditures related to Justice Canada	(4,702)
	(90,129)
<i>Add items affecting appropriation:</i>	
Capital acquisitions	920,331
	920,331
Total appropriations used	3,875,175

9. Comparative figures

The Office of the Ethics Commissioner was created by the *Parliament of Canada Act* and came into force on May 17, 2004. No activities occurred prior to that date.

APPENDIX IV

Reimbursement Guidelines for Blind Trusts and Blind Management Agreements

*Reimbursement Guidelines:*Reimbursable fees

- Consultation: Maximum of 3 hours at an hourly rate not exceeding \$300*.
- Establishment: Maximum of 10 hours at an hourly rate not exceeding \$300*. In instances where more than 10 hours may be required, prior approval is to be obtained from the Ethics Commissioner.
- Withdrawal from activities fee: Maximum of 3 hrs at an hourly rate not exceeding \$300*.
- Administration: Will be calculated as per schedule 1. The eligible cost for the month where the trust is established will be prorated from the date of establishment to the end of the month.
 - If the trustee can demonstrate that administration costs were incurred before the official date of the establishment, these costs may be eligible.

Non reimbursable fees

- Costs incurred in order to fill out the confidential report.

* to be revised annually.

*Schedule:*Blind Management Agreement:

- Costs are reimbursed in accordance with the number of administration hours at a maximum hourly rate of \$300. A report presenting the detailed number of hours must be submitted.

Blind Trust Agreement:

- The following are the maximum rates of reimbursement for annual administration costs for blind trusts with marketable securities based on the fair market value of the trust:
 - Below \$35,000: \$500 annually
 - Above \$35,000:
 - 1.50% on first \$500,000
 - 1.25% on next \$500,000
 - 1.00% on next \$1,000,000
 - 0.75% on next \$1,000,000
 - 0.50% on next \$2,000,000
 - 0.25% on balance over \$5,000,000



APPENDIX V

Recusal Process for the Prime Minister

The following recusal mechanism has been approved by the Ethics Counsellor and put into place, effective December 12, 2003.

1. Areas of Recusal

- Recusal is necessary when a decision maker could be put in a position of dealing with a matter which could represent a perceived or actual conflict of interest as outlined in the Conflict of Interest and Post-Employment Code for Public Office Holders (the "Code").
- The Ethics Counsellor indicated in a July 2003 letter to Paul Martin, that should he become Prime Minister, he would be required to recuse himself where the matter under consideration has a specific and direct link to Canada Steamship Lines.
- He noted that matters of general impact on Canada Steamship Lines, i.e., those which impact a broad base of businesses across the economy, would not necessitate recusal.
- The Ethics Counsellor has confirmed that, further to his July 2003 letter, the areas of recusal for the Prime Minister remain:
 - shipbuilding;
 - marine transportation policy issues; and
 - fees for the St. Lawrence Seaway.
- The Ethics Counsellor has also confirmed that the activities of Canada Steamship Lines and its holdings will need to be evaluated on an ongoing basis to consider their impact on these, and possible new areas of recusal.
- The Chair of Canada Steamship Lines has formally agreed that he will keep the Ethics Counsellor aware of corporate developments that could impact on recusal.
- Matters related to the three areas of recusal can form part of information or decision items in the course of:
 - attending Cabinet or committees;
 - being briefed by officials, orally or in writing, on Cabinet or committee business as well as with respect to policy, program and process matters; and
 - attending meetings or participating in discussions.



- In light of the recusal process established for the Prime Minister, he will not be involved in decisions or receive information related to the areas of recusal. This is similar to the approach used when the Prime Minister was Minister of Finance. As a result, the Prime Minister may need to refer issues to the Deputy Prime Minister for consideration from time to time.

2. The Administration of Recusal

1. Administering this recusal process involves three parties:

- **the Ethics Counsellor**¹ – who establishes the areas of recusal, determines whether circumstances will necessitate recusal in a specific instance, and carries out all public communications with the media on these matters as required;
- **PCO officials** – who have control over much of the information flowing to the Prime Minister from the Public Service through oral and written briefings or Cabinet attendance; and
- **PMO officials** – who also provide information to the Prime Minister and manage his agenda and schedule meetings.



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a. Ethics Counsellor

- The Ethics Counsellor examines the Prime Minister's assets, liabilities and activities, and instructs him on how they are to be handled to avoid conflicts of interest. The Ethics Counsellor also continues to monitor these interests for any changes which could impact on possible conflicts of interest.
- After instructing on the areas of recusal (initially and on an ongoing basis), the Ethics Counsellor works with the lead PCO official to assess potential areas of conflict related to the Prime Minister's duties and responsibilities as they arise.
- The Ethics Counsellor is responsible for:
 - identifying the areas of recusal, as well as any changes;
 - informing the Prime Minister, the PCO and PMO, of his decisions on how these are to be handled in general, as well as in specific instances; and
 - handling all public communication regarding conflict of interest recusal matters involving the Prime Minister.

¹ When Bill C-34 of the 2nd Session of the 37th Parliament, An Act to Amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence, is reinstated and if it is passed by the Parliament of Canada, the Ethics Counsellor will be replaced by the Ethics Commissioner

b. PCO

- The lead PCO official:
 - liaises with the Ethics Counsellor;
 - keeps other PCO officials informed of areas which could become potential conflicts of interest; and
 - advises and assists PCO officials on recusal in general and provides guidance on how to handle specific cases.
- The Deputy Secretary Operations, in conjunction with Counsel to the Clerk of the Privy Council, is the lead PCO official for recusal purposes, given that most, if not all, of the instances where recusal might be required would fall within this Deputy Secretary's areas of responsibility. These include Cabinet Committee agendas and briefing notes.
- All PCO officials who provide written or oral advice to the Prime Minister, or who are responsible for Cabinet or committees, will be informed of the areas of recusal which apply to the Prime Minister. Assistant Secretaries supporting committees will also need to anticipate possible conflicts well in advance so that information is not inadvertently provided to the Prime Minister.
- Officials are expected to monitor their briefing notes, Cabinet and committee agendas, and Cabinet documents, as well as forward agendas to determine if they contain items which could raise matters for potential recusal.
- Should an official identify an issue which falls within the areas of recusal, the official should raise the matter with their direct report who will then discuss it with the Assistant Secretary for the unit, who will be responsible for referring this to the PCO lead.
- Once the matter has been referred to the PCO lead, the lead will inform the Ethics Counsellor and, as necessary, work with the Ethics Counsellor to gather additional information within PCO that the Ethics Counsellor may need to make a final determination. This process will be documented so that the decision to recuse, or not, is properly recorded.
- If the Ethics Counsellor concludes that recusal is required, the Clerk of the Privy Council and the PCO lead will be informed.
- The Clerk will then discuss the matter with the Prime Minister's Chief of Staff. As necessary, each will then ensure that appropriate steps have been taken to keep the matter in question from the Prime Minister.
- Where recusal occurs and the matter requires input and/or decision, the Clerk will refer the matter to the Deputy Prime Minister for consideration.



- If the matter involves an issue before Cabinet or its committees, the Prime Minister will recuse himself and this will be recorded in the minutes of Cabinet proceedings.
- Ongoing consultation with the Ethics Counsellor will take place to ensure consistent interpretation is applied to the areas of recusal.

c. PMO

- PMO officials will follow the same recusal guidelines as PCO officials (with the Chief of Staff fulfilling the same role as the Clerk of the Privy Council), with support provided directly by the Ethics Counsellor. PMO will identify a liaison person to work with the Ethics Counsellor as issues arise.
- In the case of PMO, particular attention will be paid to the Prime Minister's:
 - political activities and engagements; and
 - meetings and phone calls.

3. Transparency and Reporting

- In order to properly support the recusal process, making a determination on whether a recusal is necessary will be documented appropriately by the Ethics Counsellor, PCO, and PMO.
- In addition to public release of the areas of recusal and any changes which may occur over time, and description of the procedures in place to implement the recusal process, the Ethics Counsellor will provide public information in relation to specific instances where the Prime Minister has recused himself, subject to respecting Cabinet confidences and the Access to Information and Privacy Acts.



