



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

THE 2006-2007
ANNUAL REPORT
OF THE ETHICS COMMISSIONER

on activities in relation to
PUBLIC OFFICE HOLDERS
FOR THE FISCAL YEAR ENDING MARCH 31, 2007



June 2007

Bernard J. Shapiro

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062007-04E





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June 19, 2007

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

Dear Mr. Speaker:

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, 2007.

This is my third annual report on the activities of the Office of the Ethics Commissioner. As you are aware, I have resigned from my position as Ethics Commissioner effective March 31, 2007. Following the coming into force of the new *Conflict of Interest Act*, the Office of the Conflict of Interest and Ethics Commissioner will replace the Office of the Ethics Commissioner.

In this, my final report, I have included comments on the major activities of the Office during the past year, and identified improvements that the Office has made in its approaches to issues and its operations. Those actions have sought to ensure that we would be properly accountable to Parliament and to Canadians in sustaining and enhancing the ethics regime in the federal government.

Yours sincerely,

Bernard J. Shapiro



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June 19, 2007

The Honourable Noël Kinsella
Speaker of the Senate
The Senate
Ottawa, Ontario K1A 0A4

Dear Mr. Speaker:

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, 2007.

This is my third annual report on the activities of the Office of the Ethics Commissioner. As you are aware, I have resigned from my position as Ethics Commissioner effective March 31, 2007. Following the coming into force of the new *Conflict of Interest Act*, the Office of the Conflict of Interest and Ethics Commissioner will replace the Office of the Ethics Commissioner.

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Yours sincerely,

Bernard J. Shapiro

TABLE OF CONTENTS

Preface.....	2
Introduction.....	3
Review of the Past Year – Major Activities	3
A. Operations	3
Administration of the Conflict of Interest and Post-Employment Code for Public Office Holders.....	3
Recusals	4
Blind Trusts and Blind Management Agreements.....	6
Examinations pursuant to the Parliament of Canada Act	7
Waiver of Post-Employment Compliance Measures.....	8
Communications	9
Parliamentary Relations.....	10
B. Internal Activities.....	11
Expenditures	11
Human Resources	12
Information Technology (IT) Projects.....	12
Operational Review – Follow up.....	13
Challenges Ahead	14
Implementation of the <i>Conflict of Interest Act</i>	14
Operational Enhancements	16

Appendix I – Financial Statements, March 31, 2007

Appendix II – Organizational Chart, Office of the Ethics Commissioner

Appendix III – Guidelines for Reimbursement of Costs

Appendix IV – Timeline: key events in the history of OEC

Appendix V – Examination Process (Chart only)

PREFACE

This report fulfils 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 my activities related to Members of the House of Commons, is to be forwarded to the Speaker of the House of Commons for tabling in the House. The second report, relating to my activities concerning public office holders, is to be forwarded to the Speakers of both the House of Commons and the Senate, who will table the report in the House over which they preside.

INTRODUCTION

This is my third and last annual report in relation to the administration of the *Conflict of Interest and Post-Employment Code for Public Office Holders* (referred to in this report as “the Code”). It covers the period from April 1, 2006 to March 31, 2007.

A major focus of the year’s activities in relation to public office holders centred on supporting and monitoring compliance with the Code by a large number of new and departing appointees arising from the change of government in February 2006.

This report reviews the major activities of the past year, presents general observations in relation to the administration of the Code, describes some of the new policies and interpretations relative to the Code, describes the communications, parliamentary relations and educational activities, and outlines the key challenges ahead with respect to administering the new *Conflict of Interest Act*.

REVIEW OF THE PAST YEAR – MAJOR ACTIVITIES

A. Operations

Administration of the Conflict of Interest and Post-Employment Code for Public Office Holders

The key tasks for the Office related to the administration of the Code are to advise newly appointed public office holders on how best to structure their private affairs in order to comply with the Code, to review annually the compliance arrangements of current public office holders, and to provide public office holders with confidential advice about issues that arise in relation to specific questions, most of which relate to permissible outside activities, acceptance of gifts and hospitality, attendance at special events, and post-employment issues.

As of March 31, 2007, there were approximately 2,750 public office holders subject to the Code. About 1,040 were full-time appointments, subject to the full application of the Code. The remainder were part-time Governor in Council appointees subject only to the Principles of the Code, along with any supplementary measures adopted by, or included in the legislation governing their respective organizations. It should be noted that on February 10, 2007, Returning Officers ceased to be part-time Governor in Council appointees and are now appointed by the Chief Electoral Officer, thereby reducing the number of part-time Governor in Council appointees by approximately 300.

During the last fiscal year, the Office completed 1,440 cases (709 cases of initial compliance and 731 adjustments required due to material changes in a public office holder’s situation). This 20% increase over 2005-06 in cases was due mainly to the

change of government on February 6, 2006, which led to a large number of new appointments, particularly among ministerial staff. Some 70% of the full-time public office holders who completed their initial compliance in 2006-07 achieved compliance with the Code within the 120-day timeframe or within the extension period I had granted.

In roughly one third of the files completed in 2006-07, the Office was notified more than 3 weeks after their appointment. Consequently, the remaining time period for these public office holders to comply with the deadline provided by the Code was reduced. In seven instances, the Office was notified of new ministerial staff appointments more than 120 days after they assumed their role, placing them in a position where they would not be able to complete their compliance arrangements within the required timeframe. To remedy this situation, the Office is striving to ensure that everyone involved in the appointment process (e.g. Ministers' Offices, Privy Council Office) is aware of the need to promptly notify the Office of new appointments.

Recusals

A guiding principle of the Code is that public office holders, in fulfilling their official duties and responsibilities, must arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from arising. In practice, this Office distinguishes between decisions made by a Minister, Secretary of State or Parliamentary Secretary in the interest of his or her constituents versus those that would benefit his or her own private interests:

- Ministers, Secretaries of State and Parliamentary Secretaries must recuse themselves from the decision-making process if decisions arising from their own duties and responsibilities could have an impact on their private interests, or the private interests of their relatives or friends. In this situation, the public office holder must sign a *Public Declaration of Recusal* and ensure that officials are notified of the formal recusal requirements, and that appropriate mechanisms are put in place to ensure the compliance with the recusal.
- Ministers, Secretaries of State and Parliamentary Secretaries must abstain from the decision-making process if that decision could impact on their riding or constituents (e.g. involving an individual, a corporation, a non-profit organization or a municipality in their riding) other than as one of a broader class of persons or organizations. A formal *Public Declaration of Recusal* is not required in this situation; however, appropriate measures to deal with such issues should be put in place to ensure that the public office holder has abstained from the decision-making process.

Ministers and Parliamentary Secretaries requiring recusal arrangements

The Honourable Tony Clement – Minister Clement was required to recuse himself from participating in any discussions or decision-making processes with a specific and direct link with Prudential Chem Inc., Prudential Business Outsourcing (PBO) and/or Prudential Consulting Inc. (PCI). This measure expired when Minister Clement divested his interests in these companies in September, 2006.

The Honourable Michael Fortier – Minister Fortier is required to abstain from participating in any discussions or decision-making processes with a specific and direct link with Société Delphes Inc.

The Honourable Marjory LeBreton – Senator LeBreton has two recusals in place. The first relates to her role as Chairperson of the National Board of Directors of Mothers Against Drunk Driving (MADD). As the organization lobbies the federal government on modifications to the Criminal Code's provisions and penalties, Senator LeBreton must recuse herself from any discussions and decision-making processes at Cabinet regarding any proposed amendment to the Criminal Code specifically related to impaired driving. With the second recusal, she must also recuse herself from all current and future deliberations and decision-making processes related to Bill C-9, which modifies the eligibility for conditional sentences for persons convicted of specified Criminal Code offences, including certain impaired driving offences. On a number of occasions during 2006-07, Senator LeBreton recused herself from Cabinet discussions on these matters.

Mr. Rod Bruinooge – Mr. Bruinooge must abstain from any discussions and decision-making processes concerning the land claim that involves the Métis of Red River of Manitoba, a matter that is before the Court of Queen's Bench of Manitoba.

Governor in Council Appointees requiring recusal arrangements

Mr. Richard Dicteri, Deputy Minister, Industry Canada – Mr. Dicteri is required to abstain from any discussions or decision-making processes that would involve direct dealings with, or could have a direct and significant impact on, Ontario Power Generation Inc.

Ms. Hélène Gosselin, Deputy Head, Service Canada, Human Resources and Social Development Canada – As Ms. Gosselin's husband is employed by IBM Canada, she must recuse from any discussions and decision-making which could have a direct impact on IBM Canada.

Blind Trusts and Blind Management Agreements

Subsection 7(8) of the Code provides that, on the recommendation of the Ethics Commissioner, reimbursements for costs to comply with the Code's compliance measures may be permitted. The reimbursement guidelines for blind trusts, blind management agreements and other expenses are attached as Appendix III.

This year, we conducted a comprehensive review of the policy for the reimbursement of certain costs. This led to the adoption of an amendment to the reimbursement policy and guidelines governing their application. We also reviewed the base rates at which we recommend reimbursement of fees to the trustees of public office holders for their services based on the rates charged by Canadian legal and accounting firms that provide these services. However, no change was made to the schedule currently in place. While the Office determines and recommends legitimate, reasonable and reimbursable costs, their actual payment is made by the respective host or former organization/department of the public office holder.

During the 2006-07 fiscal year, the Office processed 130 claims and recommended a total of nearly \$755,000 in reimbursement costs. The majority of these costs (90%) were for the establishment and administration of a blind trust, 6% were for the establishment and administration of a blind management agreement, and 4% were for the dismantlement of a blind management agreement.

Subsection 7(1) of the Code and subsection 1(b) of the Schedule to the Code allow the Ethics Commissioner to recommend the use of a blind management agreement (BMA) as a compliance measure in respect to the corporate interests of a public office holder in order to avoid a real or potential conflict of interest situation from arising. Essentially, a BMA places the corporate assets of a public office holder in the hands of a manager who is at arm's length from the individual, who is empowered to exercise all the rights and privileges associated with the public office holder's corporate assets. A BMA requires that a Public Declaration, which has been verified as to accuracy by the manager, be signed by the public office holder. This public declaration identifies the interest of a public office holder in a corporation as well as its holdings that have contracts with the federal government or its agencies.

In reports tabled in the fiscal years 2001-02 and 2005-06, the Auditor General made a recommendation that supervisors (managers) of BMAs certify that the information used to produce the public declaration of declarable assets is complete and accurate. Therefore, since October 2004, the documents used to establish a BMA contain a clause requiring managers to provide the Office with an annual report verifying the accuracy of the nature and details of the public office holder's interests.

I must note that BMAs have not often been used by public office holders as a method of divestment. Further, the new *Conflict of Interest Act* specifically forbids the use of BMAs as a method of divestment of assets held by public office holders.

At present, only three BMAs are still active. Two fully meet the requirements of the Code and one is being wound up. Notwithstanding the promulgation of the Act, the managers of the existing BMAs will be required to report annually until the BMAs are terminated, that is, when the concerned public office holders either leave office or are no longer required to divest. The Office will continue to request and verify the accuracy of the annual reports provided by the managers of these BMAs.

Examinations pursuant to the Parliament of Canada Act

Section 72 of the *Parliament of Canada Act* empowers the Ethics Commissioner to examine, at the request of a member of the Senate or the House of Commons, any alleged breach of the ethical principles, rules and obligations established by the Prime Minister for members of the Ministry and Parliamentary Secretaries. No such examinations were conducted in 2006-07, although requests were made of the Office to conduct examinations.

- Two Members of Parliament requested that I investigate the alleged breach of the new post-employment compliance measures contained in the 2006 version of the Code by persons whom they believed to be former members of ministerial exempt staff.

I replied that there were two requirements that must be met in order for ministerial exempt staff to be subject to the post-employment provisions set out in Part III – Post-Employment Compliance Measures of the Code: they must sign the Certification Document indicating that they will observe the Code as a condition of holding office, and they must be designated as subject to Part III by their Minister. The individuals in question resigned from their employment in their Ministers' offices prior to the deadline for signing the required document certifying their compliance to the Code, and they had not been designated by their Ministers. Therefore, the individuals were not subject to the Code at the time of their termination of employment as ministerial staff, and were not subject to the post-employment measures of the Code.

- A Member of Parliament requested that I investigate the alleged political activities of a Governor in Council appointee.

I replied that the *Parliament of Canada Act* provides the authority for me to conduct examinations only on Ministers, Ministers of State and Parliamentary Secretaries, and not Governor in Council appointees.

- Members of the public made various requests that I investigate alleged actions committed by the Prime Minister, Ministers of the Crown, and Members of Parliament.

I responded noting in each case that the *Parliament of Canada Act* allows only members of the Senate or the House of Commons to make these requests.

Waiver of Post-Employment Compliance Measures

Section 30(5) of the Code requires the Ethics Commissioner to publish all decisions together with the reasons in instances where a waiver or reduction to the post-employment limitation period has been granted. In 2006-07, I granted two waivers, as outlined below.

Mr. Scott Newark

Mr. Scott Newark, a former Senior Policy Advisor to the Honourable Stockwell Day, Minister of Public Safety, worked in the Minister's office from March 6 to April 28, 2006. Mr. Newark requested a waiver of the limitation period to permit him to work for the Customs Excise Union Douanes Accise (CEUDA), while subject to the one year limitation period required under the post-employment compliance measures of the Code. This request was made in light of the fact that Mr. Newark had direct, official and significant dealings with CEUDA while working in Minister Day's office.

I considered the circumstances surrounding Mr. Newark becoming a public office holder, thus subject to the provisions of the Code by virtue of the nature of his work for Minister Day. I also took into account Mr. Newark's previous work experience, notably his long standing professional relationship on border security matters and the work he had performed for CEUDA immediately prior to working for Minister Day. In light of the foregoing, as well as section 30(3)(b) of the Code related to employment prospect, I was satisfied that the public interest in granting the waiver outweighed the public interest in maintaining the prohibition. However, the application of this waiver under section 30(1) of the Code is limited to his working with CEUDA only, as described in section 28 (1).

Ms. Jennifer Brown

Ms. Jennifer Brown worked for a short period of time in the office of the Minister of Canadian Heritage and Status of Women. Ms. Brown requested a waiver of the one-year limitation period as outlined in section 28(1) of the Code related to employment and contracts, in order to permit her to return to work for the Ontario Ministry of Culture. It was determined that, since she did not have direct and significant official dealings with the Ontario Ministry of Culture while she worked in the Minister's office, no waiver was required.

Ms. Brown also requested a waiver of the one-year limitation period as outlined in section 28(2) of the Code with respect to making representations back to the Department of Canadian Heritage and Status of Women Canada. I took into account the circumstances surrounding her becoming and ceasing to be a public office holder, more

specifically, the short period of time working for the Minister (34 days) and the limited nature of the work she carried out. It was determined that, having only worked in the Minister's office for such a short period of time, Ms. Brown did not have any significant dealings with officials of the Departments. Accordingly, a waiver of her obligations under section 28(2) of the Code was granted.

Communications

During 2006-07, four areas were significant to our communications and outreach activities:

1. The gap between the broad public expectations of the Office and the relatively narrow legislative mandate upon which it operates;
2. A first survey of the public office holders' assessment on the Office's services;
3. Networking with our international and federal-provincial-territorial counterparts; and
4. Preparedness for the coming into force of the *Conflict of Interest Act*.

The Expectation Gap and Its Educational Challenge

There is an obvious gap between public expectations and the legislated role of the Ethics Commissioner because of the common view that the Ethics Commissioner is a kind of federal ombudsperson who can address any citizen's grievance that may have, or seems to have, an ethical element to it. For instance, only 12% of the correspondence received by the Office during 2006-07 was related to issues within my jurisdiction, for which I could provide a substantive response.

However, in meeting the Office's communications challenge, our website has greatly contributed to the provision of information to the public. For instance, in 2006, there were 82,600 visits to our website, from approximately 55,800 different visitors. This represents an average of 226 visitors per day, and almost 7,000 visits per month.

A quick review of the website's hits in 2006 shows that, by far, the inquiry reports involving members of Cabinet were the most visited and downloaded, followed by the *Conflict of Interest and Post-Employment Code for Public Office Holders*, and the report on sponsored travel made by members of the House of Commons.

Survey of Services Provided to Public Office Holders

Early in 2007, the Office conducted our first survey of public office holders, targeting parliamentary secretaries and chiefs of staff. Although the response rate to our survey was only 15%, we found that:

- overall, the respondents were very satisfied with the Office's services; and

- the most important issues requiring further information or clarification were gifts and hospitality, and the impact of the new *Conflict of Interest Act*.

Our Networks

As part of the larger Ethics community, the Office has been an active participant in The Council on Governmental Ethics Laws (COGEL), a 200-member international organization drawn primarily from the United States and Canada, with members also in Europe, Australia and Latin America. The Office participated in its December 2006 conference held in New Orleans. Canada will host the next conference, to be held in Victoria from September 16 to 19, 2007.

During 2006-07, the Office received many foreign delegations interested in the administration of conflict of interest regimes for both members of legislatures and public office holders. We participated in the Parliamentary Officers' Study Program sponsored by Parliament for visitors from various Commonwealth countries, and met with delegations from countries including China, Georgia, Pakistan and Tanzania.

At the federal-provincial-territorial level, the Office has been an active participant in the Canadian Conflict of Interest Network (CCOIN), and was represented at its annual conference, held in Iqaluit, Nunavut, from September 7 to 10, 2006. In 2007, the new Office of the Conflict of Interest and Ethics Commissioner will host, jointly with the Senate Ethics Officer and the Vice-President, Office of Values and Ethics, Public Service Human Resources Management Agency of Canada, the annual CCOIN conference to be held in Ottawa from September 13 to 16.

The Coming into Force of the *Conflict of Interest Act*

Following Royal Assent to the *Federal Accountability Act* on December 12, 2006, much of the Office's activities have centered on preparing for the coming into force of the *Conflict of Interest Act* (part of the *Federal Accountability Act*). Communication activities included the update of information products and briefing materials, and the preparation of various presentations. One of the major initiatives has been the creation of a new website in line with the changes brought about by the Act, including new reporting requirements.

Parliamentary Relations

As the *Federal Accountability Act*, which included the *Conflict of Interest Act*, had major implications for the Office, I made several recommendations and shared some concerns with Parliamentarians when I appeared on May 16, 2006 before the House of Commons Legislative Committee and again, on September 5, 2006 before the Senate Standing Committee on Constitutional and Legal Affairs.

In May 2006, I provided a list of outstanding issues related to the current Code and its administration to the Standing Committee on Access to Information, Privacy and Ethics for its consideration. In addition, a proposed process and procedure for the conduct of examinations of public office holders pursuant to the *Parliament of Canada Act* was brought forward for the Committee's comments. A summary chart of the proposed examination process is attached as Appendix V. Finally, on November 1, 2006, I appeared before the Committee on the Office's 2006-07 Estimates.

B. Internal Activities

Expenditures

In 2006-07, the Office used our full \$5.406 million in approved parliamentary appropriations (see Appendix I). 68.4% of the expenditures was used for salaries, and the remaining was used for operational costs. This is an increase of \$866,502 from 2005-06. The higher costs for professional services are due to the upgrade of our information technology systems and databases as a result of last year's operational review, as well as to respond to the expanded mandate of the Office as provided by the *Conflict of Interest Act*. A supplemental allocation of \$500,000 was also obtained to defray the costs associated with the anticipated coming into force of the *Act*.

Our Office's expenditures were largely allocated to Operations (61%), with Policy at 19% and Communications and Parliamentary Relations at 20%. These percentages include a share of the expenditures incurred by Corporate Services.

Following the practice initiated in 2004-05, the Office has continued with monthly website posting of our financial transactions in order to ensure transparency and accountability in the management of public funds.

Memoranda of Understanding (MOUs)

The Office has ongoing memoranda of understanding or service agreements with the House of Commons, the Library of Parliament, and Public Works and Government Services Canada (PWGSC):

The agreement with the House of Commons covers support and maintenance of our computer network, databases, desktops, printers and other peripheral equipment. The annual cost is \$320,219.

The agreement with the Library of Parliament covers financial services. These include accounting operations, main and supplementary estimates, financial reporting, budget and salary management, financial systems, and procurement. The annual cost is \$250,000.

The agreement with PWGSC covers pay and benefits support services. The annual cost is \$44,850.

Human Resources

The Office has 35 full-time equivalent (FTE) employees in 2006-07, an increase of one FTE from 2005-06. The workforce has minimal turnover, and demonstrates the diversity expected in relation to employment equity objectives. The organizational chart for the Office is attached as Appendix II.

The Office continues to work toward the development and implementation of internal human resources policies and practices to improve the effectiveness and efficiency of the Office and the quality of the workplace. As part of this effort, the employer-employee committee has continued to make recommendations to the Ethics Commissioner on policies, practices and procedures in human resources management.

The Office has also continued with its effort to be included and identified as a member of the family of parliamentary entities, and to develop more joint initiatives in the human resources management area with the other parliamentary partners. During 2006-07, the staff of the Office became eligible to participate in the House of Commons Language Training and Employment Assistance Programs. In addition, the Office has been identified as a parliamentary entity in the new Employment Opportunity website for parliamentary organizations, along with the House of Commons, the Senate and the Library of Parliament.

Information Technology (IT) Projects

As a result of the operational review and in order to handle the activities of the new Office, the Office has reviewed its current information technology workflow to reflect new practices and requirements. With the assistance of staff from the House of Commons, our Office has engaged the services of various IT consulting firms to complete a review/analysis of our needs, make recommendations and develop applications. The goal is to improve the way our Office operates and better serve our constituents. The current projects are:

- development of a Leave and Schedule Management System
- enhancements to the Public Registry
- enhancements to the Office's website
- identification and evaluation of a new Case Management (CRM) program
- digitization of records for business recovery purposes and the identification of mergers for other business applications, and
- IT Project Management.

A total of \$413,000 has been spent on these projects during the 2006-07 fiscal year.

Operational Review – Follow-Up

As a follow-up to the report on the operational review conducted in the fall of 2005, the Office identified five priority projects in early 2006 to implement some operational review recommendations. They were completed in the fall of 2006, with the exception of the information technology project, which is ongoing. A brief description and results from each project follows.

1. “Chase and Breach”

This project reviewed the Office’s activities on outreach and follow-up with public office holders to ensure that they meet their reporting obligations. We have since implemented enhancements to these activities, and we have improved the format, frequency and content of our reports on breaches of the Code.

2. Life cycle assignment of files

We have decided that, to the extent possible, one person should have responsibility for the file on an individual public office holder or a Member of the House of Commons from the initial appointment/election of that person to public office through to oversight of his/her post-employment activities. This is expected to allow us to build and sustain good relationships with constituents. It should also increase the comfort level of our constituents, since access to their personal and confidential information is being controlled closely.

3. Streamlining of delegation of authority

A streamlined operational approval process to enhance the timeliness of our advice to constituents and the overall efficiency of the Office has been implemented. This process is supported by a new delegation matrix that addresses the risk associated with various files as well as their complexity.

4. Use of information technology to enhance office efficiency

We have mapped out all existing operational processes within the Office, including policy, communication, inquiry and financial processes in the area of blind trusts and blind management agreements. These processes have been used as “building blocks” for the Office’s new client management system.

5. Merger of the Executive and Legislative Affairs Branches

A new structure merging the Executive and the Legislative Affairs Branches into the Operations Branch was incorporated in the proposed organizational chart for the new Office. In the interim, a merged model has been put in place on a pilot basis.

Challenges

Operational improvement is a continuous process that requires the ongoing and conscientious effort of all staff. In light of the requirements to implement the new *Conflict of Interest Act*, some re-thinking and realignment of the projects will be addressed as part of the implementation plan for the Act.

CHALLENGES AHEAD

Looking ahead, a key challenge for the new Office in 2007-08 will be the implementation of the new *Conflict of Interest Act*. As described in previous sections of this report, much effort has been devoted by the Office in the latter part of 2006-07 to prepare for this implementation.

Implementation of the Conflict of Interest Act

During my appearances before the legislative committees studying Bill C-2, one of my key comments was that the new Act represents a fundamental shift in the federal conflict of interest regime for public office holders from a ‘values-based system’ based on explicit principles, to a ‘rules-based system’ enshrined in legislation. As well, I noted that the Act did not include any preamble or principles to serve as an overall guide and standards upon which ethical conduct can be evaluated. This also implies that the flexibility which the Commissioner could use in the interpretation and administration of the Act would be diminished.

Given the change in this fundamental approach in the design of the conflict of interest regime, I believe that there are two broad areas of challenges in implementing the Act, namely administering and enforcing the rules, and education.

Administering and enforcing the rules

The statutory nature of the new regime means a focus on enforcing specific conflict of interest provisions, rather than avoiding and managing conflict of interest situations that might arise. While the Act contains a definition of “conflict of interest”, there are no specific definitions for the concepts of “potential” or “apparent” conflicts of interest. While it would be unreasonable for the Office to cease giving advice to public office holders who might face apparent or potential conflict of interest situations simply because

these issues are not specifically mentioned in the Act, the Office will need to be conscious of this change, and if necessary, adjust the focus of its work accordingly.

As with any new statute, a key challenge will be interpreting the provisions of the Act. Many issues that will arise will be in uncharted waters, and our interpretations will set precedents for other cases in the future. Some rulings might even face challenges in the courts. Therefore, we need to proceed carefully and with due diligence.

Other significant initiatives that need to be implemented include:

- setting up an administrative monetary penalties regime for non-compliance with certain provisions of the Act, such as establishing the criteria for imposing fines, procedures to ensure fairness and administrative systems;
- developing systems to deal with the expanded disclosure and reporting requirements on various activities, and the Public Registry; and
- acquiring resources and developing procedures to deal with an expected increase in requests for examinations into the conduct of public office holders, reflecting the expansion of persons who could be subject to an examination to include all full-time and part-time, current and former public office holders, as well as due to the new power of the Commissioner to self-initiate an examination.

Education

An effective education and outreach strategy must be a key component of the overall implementation plan for the Act. At the outset of the implementation phase, an important challenge will be to inform the public office holders who are subject to the Act about the rules and their obligations under the new Act. More importantly, we need to initiate discussions with public office holders on the broader meaning of conflict of interest and ethics. The common thinking is that, especially after a new piece of legislation has just come into force, if an action is not strictly forbidden by law, then it must be acceptable and 'legal' to do so. The Office will need to impress upon the public office holders that simple compliance with the Act does not mean that all ethics/conflict of interest requirements have been met, as clearly the Act does not cover all circumstances.

Operational Enhancements

The Office has identified several key areas for operational improvement to support implementation of the *Conflict of Interest Act* and the ongoing administration of the *Conflict of Interest Code for Members of the House of Commons*, including:

- development of an integrated and efficient information management system to handle increased correspondence and for document filing and tracking;
- development and implementation of a human resource strategy that will enable the Office to recruit, retain and develop staff and foster a continuous learning environment, particularly in light of new skills required in areas such as legal services and inquiries; and
- addressing the need for increased physical infrastructure, including office space, file rooms, information management and associated security measures.

I am confident that, under the leadership of the new Conflict of Interest and Ethics Commissioner, the dedicated and experienced staff of the Office will be up to the task in meeting these challenges.

OFFICE OF THE ETHICS COMMISSIONER

Statement of Operations (Unaudited)

For the year ended March 31
(in dollars)

	2007			Total	2006
	Communications	Operations	Policy Development		Total
Salaries and employee benefits	854,098	2,604,949	790,799	4,249,846	3,314,690
Professional and special services	230,874	753,678	262,663	1,247,215	1,310,093
Accommodation	64,577	194,624	59,764	318,965	318,965
Amortization	51,404	154,921	47,572	253,897	234,767
Communications, travel and relocation	9,301	28,215	25,260	62,776	100,457
Material and supplies	5,198	15,666	4,811	25,675	35,929
Equipment rentals	6,584	19,844	6,094	32,522	31,798
Repairs and maintenance	4,122	12,423	3,814	20,359	22,270
Information	3,110	1,947	569	5,626	20,915
Total Expenses	1,229,268	3,786,267	1,201,346	6,216,881	5,389,884
Net cost of operations	(1,229,268)	(3,786,267)	(1,201,346)	(6,216,881)	(5,389,884)

The accompanying notes form an integral part of these financial statements.

OFFICE OF THE ETHICS COMMISSIONER

Statement of Financial Position (Unaudited)

as at March 31

(in dollars)

	2007	2006
Assets		
Financial assets		
Accounts receivable and advances (Note 4)	164,364	173,069
Total financial assets	164,364	173,069
Non-financial assets		
Tangible capital assets (Note 5)	621,656	776,600
TOTAL	786,020	949,669
Liabilities		
Accounts payable and accrued liabilities	1,062,273	168,747
Vacation pay and compensatory leave	97,546	100,634
Employee severance benefits (Note 6)	653,540	547,335
Total liabilities	1,813,359	816,716
Equity of Canada	(1,027,339)	132,953
TOTAL	786,020	949,669

The accompanying notes form an integral part of these financial statements.

OFFICE OF THE ETHICS COMMISSIONER

Statement of Equity of Canada (Unaudited)

as at March 31

(in dollars)

	2007	2006
Equity of Canada, beginning of year	132,953	(524,377)
Net cost of operations	(6,216,881)	(5,389,884)
Current year appropriations used (Note 3)	5,406,375	4,539,873
Change in net position in the Consolidated Revenue Fund (Note 3)	(902,231)	1,016,308
Services received without charge from other government departments (Note 7)	552,445	491,033
Equity of Canada, end of year	(1,027,339)	132,953

The accompanying notes form an integral part of these financial statements.

Variance

0

0

OFFICE OF THE ETHICS COMMISSIONER
Statement of Cash Flow (Unaudited)

For the year ended March 31

(in dollars)

	2007	2006
Operating activities		
<i>Net cost of operations</i>	6,216,881	5,389,884
Non-cash items:		
Amortization of tangible capital assets	(253,897)	(234,767)
Services provided without charge from other government departments (Note 7)	(552,445)	(491,033)
	5,410,539	4,664,084
Decrease in accounts receivable and advances	(8,705)	169,000
Decrease (increase) in liabilities	(996,643)	613,618
Cash used by operating activities	4,405,191	5,446,702

Capital investment activities

Acquisitions of tangible capital assets	98,953	109,479
Cash used by capital investment activities	98,953	109,479

Financing Activities

Net cash provided by Government of Canada	4,504,144	5,556,181
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The accompanying notes form an integral part of these financial statements.

Variance	0	0
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OFFICE OF THE ETHICS COMMISSIONER

Notes to the Financial Statements (Unaudited)

1. Authority and Objectives

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 began its operations on May 17, 2004. The objective of the Office is to enhance public confidence and trust in the integrity of Members of the House of Commons and Public Office Holders as well as the respect and confidence that society places in the House of Commons as an institution.

The Office of the Ethics Commissioner's business is defined through three activities:

Communications - This program activity defines 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 - This program activity is three-fold: compliance, provision of confidential advice or opinion and investigation.

Policy Development - The objective of this program activity is to develop appropriate policies and practices in order 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.

2. Summary of Significant Accounting Policies

The financial statements have been prepared in accordance with Treasury Board accounting policies which are consistent with Canadian generally accepted accounting principles for the public sector.

Significant accounting policies are as follows:

(a) Parliamentary appropriations – The Office of the Ethics Commissioner is financed by the Government of Canada through Parliamentary appropriations. Appropriations provided to the Office do not parallel financial reporting according to generally accepted accounting principles since appropriations are primarily 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 3 provides a high-level reconciliation between the bases of reporting.

(b) Net Cash Provided by Government – The Office of the Ethics Commissioner operates within the Consolidated Revenue Fund (CRF) which is administered by the Receiver General for Canada. All cash received by the Office is deposited to the CRF and all cash disbursements made by the Office 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 of the federal government.

(c) Change in net position in the Consolidated Revenue Fund is the difference between the net cash provided by Government and appropriations used in a year. It results from timing differences between when a transaction affects appropriations and when it is processed through the CRF.

(d) Expenses – Expenses are recorded on the accrual basis:

- i. Vacation pay and compensatory leave are expensed as the benefits accrue to employees under their respective terms of employment.

OFFICE OF THE ETHICS COMMISSIONER

2. Significant Accounting Policies (continued)

- ii. Services provided without charge by other government departments for accommodation and the employer's contribution to the health and dental insurance plans are recorded as operating expenses at their estimated cost.

(e) Employee future benefits

- i. Pension benefits: Eligible employees participate in the Public Service Pension Plan, a multiemployer plan administered by the Government of Canada. The Office's contributions to the Plan are charged to expenses in the year incurred and represent the total obligation of the Office to the Plan. Current legislation does not require the Office to make contributions for any actuarial deficiencies of the Plan.
- ii. Severance benefits: Employees are entitled to severance benefits under labour contracts or conditions of employment. These benefits are accrued as employees render the services necessary to earn them. The obligation relating to the benefits earned by employees is calculated using information derived from the results of the actuarially determined liability for employee severance benefits for the Government as a whole.

(f) Accounts receivable and advances are stated at amounts expected to be ultimately realized; a provision is made for receivables where recovery is considered uncertain.

(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 denominated in a foreign currency are translated into Canadian dollars using the rate of exchange in effect on March 31.

(h) Tangible capital assets – All tangible capital assets and leasehold improvements having an initial cost of \$500 or more are recorded at their acquisition cost.

Amortization of tangible capital assets is done on a straight-line basis over the estimated useful life of the asset as follows:

Asset Class	Amortization Period
Machinery and equipment	10 years
Other equipment	10 years
Computer equipment	3 years
Computer software	3 years
Leasehold improvements	life of lease

(i) Measurement uncertainty – The preparation of these financial statements in accordance with Treasury Board accounting policies which are consistent with Canadian generally accepted accounting principles for the public sector 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 items where estimates are used are the liability for employee severance benefits and the useful life of tangible capital assets. Actual results could differ from those estimated. Management's estimates are reviewed periodically and, as adjustments become necessary, they are recorded in the financial statements in the year they become known.

OFFICE OF THE ETHICS COMMISSIONER

3. Parliamentary Appropriations

The Office of the Ethics Commissioner receives most of its funding through annual Parliamentary appropriations. Items recognized in the statement of operations and the statement of financial position in one year may be funded through Parliamentary appropriations in prior, current or future years. Accordingly, the Office of the Ethics Commissioner has different net results of operations for the year on a government funding basis than on an accrual accounting basis. The differences are reconciled in the following tables:

(a) Reconciliation of net cost of operations to current year appropriations used:	2007	2006
	(in dollars)	
Net cost of operations	6,216,881	5,389,884
Adjustments for items affecting net cost of operations but not affecting appropriations:		
Add (Less):		
Amortization of tangible capital assets	(253,897)	(234,767)
Services provided without charge by other government departments	(552,445)	(491,033)
Decrease (increase) in vacation pay and compensatory leave	3,088	(33,650)
Increase in employee severance benefits	(106,205)	(222,817)
Adjustment to prior year payables		22,777
Adjustments for items not affecting net cost of operations but affecting appropriations		
Add (Less): Acquisitions of tangible capital assets	98,953	109,479
Current year appropriations used	5,406,375	4,539,873
 (b) Appropriations provided and used		
	2007	2006
	(in dollars)	
Vote 15 – Operating expenditures	4,986,000	4,089,000
Statutory amounts	455,716	453,048
Less:		
Lapsed appropriations: Operating	(35,341)	(2,175)
Total appropriations used	5,406,375	4,539,873

APPENDIX 1

OFFICE OF THE ETHICS COMMISSIONER

3. Parliamentary Appropriations (continued)

(c) Reconciliation of net cash provided by Government to current year appropriations used

	2007	2006
	(in dollars)	
Net cash provided by Government	4,504,144	5,556,181
Change in net position in the Consolidated Revenue Fund		
Variation in accounts receivable and advances	8,705	(169,000)
Variation in accounts payable and accrued liabilities	893,526	(613,618)
Other adjustments		(233,690)
	902,231	(1,016,308)
Current year appropriations used	5,406,375	4,539,873

4. Accounts Receivable and Advances

The following table presents details of receivables and advances:

	2007	2006
	(in dollars)	
Receivables from other Government departments and agencies	163,864	172,569
Employee advances	500	500
Total	164,364	173,069

5. Tangible Capital Assets

(in dollars)

Capital asset class	Cost			Accumulated amortization			2007 Net book value	2006 Net book value
	Opening balance	Acquisitions	Closing Balance	Opening balance	Amortization	Closing Balance		
Machinery and equipment	13,719	-	13,719	1,149	1,372	2,521	11,198	12,570
Other equipment	313,334	2,277	315,611	32,012	31,485	63,497	252,114	281,322
Computer equipment	144,606	65,908	210,514	49,411	52,783	102,194	108,320	95,195
Computer software	111,028	30,768	141,796	39,166	37,009	76,175	65,621	71,862
Leasehold Improvements	447,123	-	447,123	131,472	131,248	262,720	184,403	315,651
Total	1,029,810	98,953	1,128,763	253,210	253,897	507,107	621,656	776,600

Amortization expense for the year ended March 31, 2007 is \$253,897 (2006 - \$234,767).

APPENDIX 1

OFFICE OF THE ETHICS COMMISSIONER

6. Employee Benefits

(a) Pension benefits: The Office of the Ethics Commissioner's employees participate in the Public Service Pension Plan, which is sponsored and administered by the Government of Canada. Pension benefits accrue up to a maximum period of 35 years at a rate of 2 percent per year of pensionable service, times the average of the best five consecutive years of earnings. The benefits are integrated with Canada/Québec Pension Plan benefits and they are indexed to inflation.

Both the employees and the Office contribute to the cost of the Plan. The 2006-2007 expense amounts to \$335,862 (\$335,255 in 2005-2006), which represents approximately 2.6 times the contributions by employees.

The Office's responsibility with regard to the Plan is limited to its contributions. Actuarial surpluses or deficiencies are recognized in the financial statements of the Government of Canada, as the Plan's sponsor.

(b) Severance benefits: The Office of the Ethics Commissioner provides severance benefits to its employees based on eligibility, years of service and final salary. These severance benefits are not pre-funded. Benefits will be paid from future appropriations. Information about the severance benefits, measured as at March 31, is as follows:

	<u>2007</u>	<u>2006</u>
	(in dollars)	
Accrued benefit obligation, beginning of year	547,335	324,518
Expense for the year	117,908	222,817
Benefits paid during the year	<u>(11,703)</u>	
Accrued benefit obligation, end of year	<u>653,540</u>	<u>547,335</u>

7. Related Party Transactions

The Office of the Ethics Commissioner is related as a result of common ownership to all Government of Canada departments, agencies, and Crown corporations. The Office enters into transactions with these entities in the normal course of business and on normal trade terms. Also, during the year, the Office received services which were obtained without charge from other Government departments as presented in part (a).

(a) Services provided without charge

During the year the Office received without charge from other departments, accommodation and the employer's contribution to the health and dental insurance plans. These services without charge have been recognized in the Office's Statement of Operations as follows:

	<u>2007</u>	<u>2006</u>
	(in dollars)	
Accommodation	318,965	318,965
Employer's contribution to health and dental insurance plans	<u>233,480</u>	<u>172,068</u>
Total	<u>552,445</u>	<u>491,033</u>

The Government has structured some of its administrative activities for efficiency and cost-effectiveness purposes so that one department performs these on behalf of all without charge. The costs of these services, which include translation services, payroll processing and cheque issuance services provided by Public Works and Government Services Canada, are not included as an expense in the Office's Statement of Operations.

APPENDIX 1

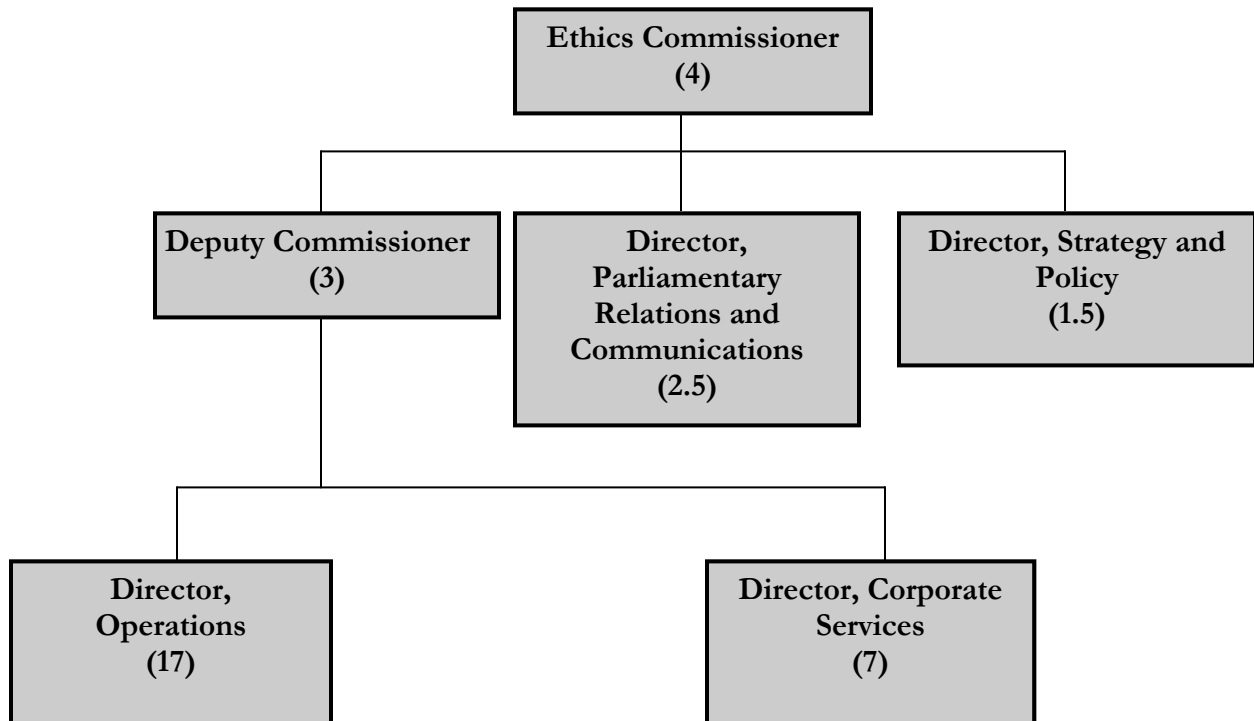
OFFICE OF THE ETHICS COMMISSIONER

7. Related Party Transactions (continued)

(b) Payables and receivables outstanding at year-end with related parties:

	<u>2007</u>	<u>2006</u>
	(in dollars)	
Accounts receivable from other government departments and agencies	163,864	172,569
Accounts payable to other government departments and agencies	222,113	70,027

Appendix II



The number in brackets represents the number of direct reporting subordinate positions.
Total: 35 positions have been staffed

March 2007



APPENDIX III / ANNEXE III

***Reimbursement Guidelines for Blind Trusts and Blind Management Agreements/
Lignes directrices pour remboursements liés aux fiducies et aux accords de gestion sans droit de regard***

Reimbursable fees

- o **Consultation**: Maximum of 3 hours (lawyer, accountant, notary, other service-providers or a combination of any or all of them) at an hourly rate not exceeding \$300.
- o **Establishment/Dismantlement (Blind Trust (BT) & Blind Management Agreement (BMA))**: For all required trusts, a maximum of 10 hours (lawyer, accountant, notary, other service-providers or a combination of any or all of them) at an hourly rate not exceeding \$300. In exceptional circumstances where more than 10 hours may be necessary for any or all service providers because of the complexity of the portfolio, prior approval is required from the Ethics Commissioner.
- o **Amendments/Changes to Agreement other than during establishment**: For all required trusts, a maximum of 3 hours (lawyer, accountant, notary, other service-providers or a combination of any or all of them) at an hourly rate not exceeding \$300. Amendments as a result of changes to the Code will be initiated by the OEC. Prior approval is required for any other changes.
- o **Withdrawal from activities**: Maximum of 3 hours (lawyer, accountant, barrister, notary, other service-providers or a combination of any or all of them) at an hourly rate not exceeding \$300.
- o **Commissions paid for sale, conversion or transfer of assets**: Commissions incurred:
 - i) Where, due to the nature of the public office holder's official duties and responsibilities, the EC has determined that divestment by sale, transfer or conversion is necessary; or
 - ii) Where no provisions for a tax deduction are provided for under the *Income Tax Act*. *(Self-directed RRSP)

Frais remboursables

- o **Consultation** : Maximum de 3 heures (avocat, comptable, notaire, autres services similaires ou une combinaison de ces services), à un tarif horaire n'excédant pas 300\$.
- o **Établissement/Démantèlement (Fiducie sans droit de regard ou Entente de gestion sans droit de regard)** : Pour toutes les fiducies visées, maximum de 10 heures (avocat, comptable, notaire, autres services similaires ou une combinaison de ces services) à un tarif horaire n'excédant pas 300\$. Lors d'éventualités exceptionnelles où plus de 10 heures seraient nécessaires de la part de un ou plusieurs intervenants en raison de la complexité des mesures à prendre, l'approbation du Commissaire à l'éthique doit être obtenue au préalable.
- o **Modifications/Changements à l'entente (sauf pendant l'établissement)** : Pour toutes les fiducies, maximum de 3 heures (avocat, comptable, notaire, autres services similaires ou une combinaison de ces services) à un tarif horaire n'excédant pas 300 \$. Les modifications découlant d'un changement au Code seront engagées par le BCÉ. Une approbation au préalable est requise pour d'autres changements.
- o **Retrait d'activités** : Maximum de 3 heures (avocat, comptable, notaire, autres services similaires ou une combinaison de ces services), à un tarif horaire n'excédant pas 300 \$.
- o **Commissions versées pour la vente, la conversion ou la cession de biens** : Les commissions encourues:
 - i) Lorsque, en raison de la nature des fonctions et des responsabilités du titulaire de charge publique, le Commissaire à l'éthique a établi que le dessaisissement par la vente, la cession ou la conversion est nécessaire; ou
 - ii) Lorsque la *Loi de l'impôt sur le Revenu* ne prévoit pas de déduction fiscale (REER autogéré).

o Administration costs for Blind Management Agreement:

- ⇒ Costs are reimbursed in accordance with the number of administration hours at a maximum hourly rate of \$300. A detailed breakdown of the charges levied must be submitted to demonstrate that all costs are directly related to the management of the assets as provided for in the agreement.
- ⇒ The eligible administration fees for the month where the agreement is established will be calculated from the date of establishment to the end of month.
- ⇒ If the trustee or manager can demonstrate that administration costs were incurred before the official date of the establishment, these costs may be eligible

o Administration costs for BT agreements:

- ⇒ Costs are reimbursed based on the fair market value of the trust and on the following annual maximum rates of reimbursement for the annual administration costs of blind trusts with marketable securities.

Under \$35,000: \$500 annually
Over \$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

- ⇒ The eligible costs for the month where the trust is established will be calculated from the date of establishment to the end of the month.
- ⇒ If the trustee can demonstrate that management/administration costs were incurred before the official date of the establishment, these costs may be eligible.
- ⇒ In order to permit a transition period, administration fees are reimbursed for a maximum of 2 months following the date of the post-employment letter which specifically refers to the dismantlement, or the date of termination of employment, whichever comes last.

o Non reimbursable fees

Costs incurred in order to complete the confidential report are not reimbursable.

- o Annual reporting : Costs incurred by trustees of blind trusts or manager of blind management agreements will be reimbursed pursuant to the rates set and described under the preceding respective sections identified as "Administrations Costs for Blind Management Agreements" and "Administration costs for Blind Trust Agreements". Costs will relate to the following responsibilities described under Blind Trust and Blind Management Agreement.

Subject to periodical review
Update = March 2007

o Frais d'administration pour une Entente de gestion sans droit de regard:

- ⇒ Les coûts sont remboursés selon le nombre d'heures de gestion à un tarif horaire n'excédant pas 300\$. Un rapport présentant les détails des heures doit être soumis afin de démontrer que les coûts sont reliés directement à l'administration des biens tels que décrits dans l'entente.
- ⇒ Les frais d'administration admissibles pour le mois pendant lequel la fiducie est établie sont calculés de la date d'établissement à la fin du mois.
- ⇒ Si le fiduciaire ou le gestionnaire peut démontrer que les frais de gestion ou d'administration ont été engagés avant la date de création de la fiducie, ces coûts peuvent être admissibles.

o Frais d'administration d'une fiducie sans droit de regard :

- ⇒ Les frais sont remboursés en fonction de la juste valeur marchande de la fiducie et de taux indiqués, qui représentent le taux de remboursement maximal pour les frais annuels d'administration des fiducies comportant des titres négociables :

Moins de 35,000 \$: 500 \$ annuellement
Plus de 35,000 \$:

1.50% pour le premier	500,000 \$
1.25% pour le prochain	500,000 \$
1.00% pour le prochain	1,000,000 \$
0.75% pour le prochain	1,000,000 \$
0.50% pour le prochain	2,000,000 \$
0.25% pour le solde de plus de	5 millions \$

- ⇒ Les frais d'administration admissibles seront calculés de la date de la création à la fin du mois.
- ⇒ Si le fiduciaire ou le gestionnaire peut démontrer que les frais de gestion ou d'administration ont été engagés avant la date de création de la fiducie, ces coûts peuvent être admissibles.
- ⇒ Afin de permettre une période de transition, les frais d'administration sont remboursés pour un maximum de deux mois après la date de la lettre qui renvoie spécifiquement au démantèlement ou la date de cessation d'emploi, la plus éloignée faisant foi.

o Frais non remboursables

Ne sont pas admissibles les coûts engagés pour la préparation du rapport confidentiel.

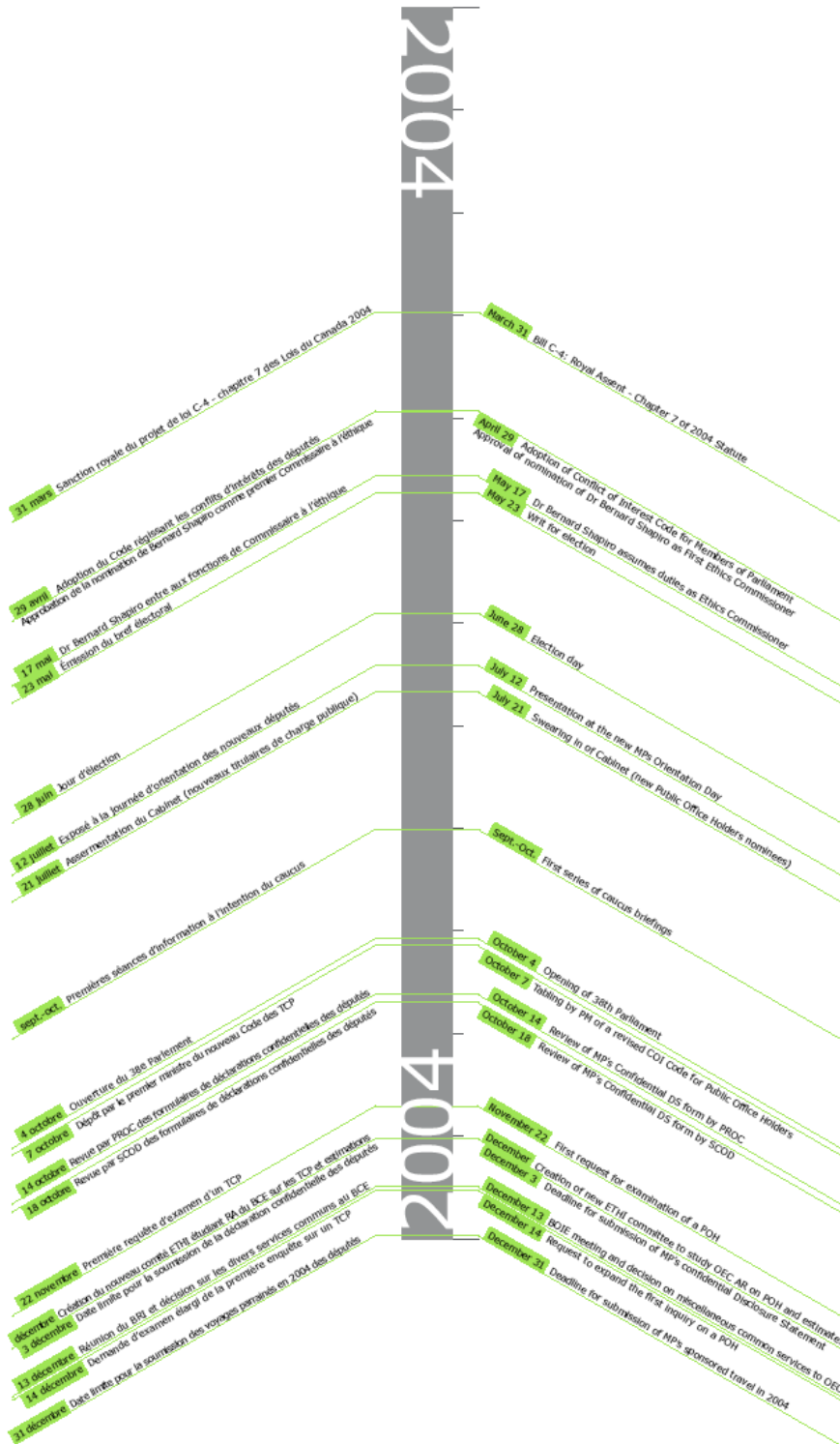
- o Frais de rapport annuel : Les frais engagés par les fiduciaires de fiducies sans droit de regard ou les gestionnaires d'accords de gestion sans droit de regard peuvent être remboursés selon les tarifs prévus aux sections intitulées Frais d'administration d'une fiducie sans droit de regard et Frais d'administration pour une entente de gestion sans droit de regard. Les frais doivent être liés aux responsabilités décrites ci-dessous sous les titres Fiducie sans droit de regard et Entente de gestion sans droit de regard

Sujet à une révision périodique
Mise à jour = Mars 2007

Appendix IV

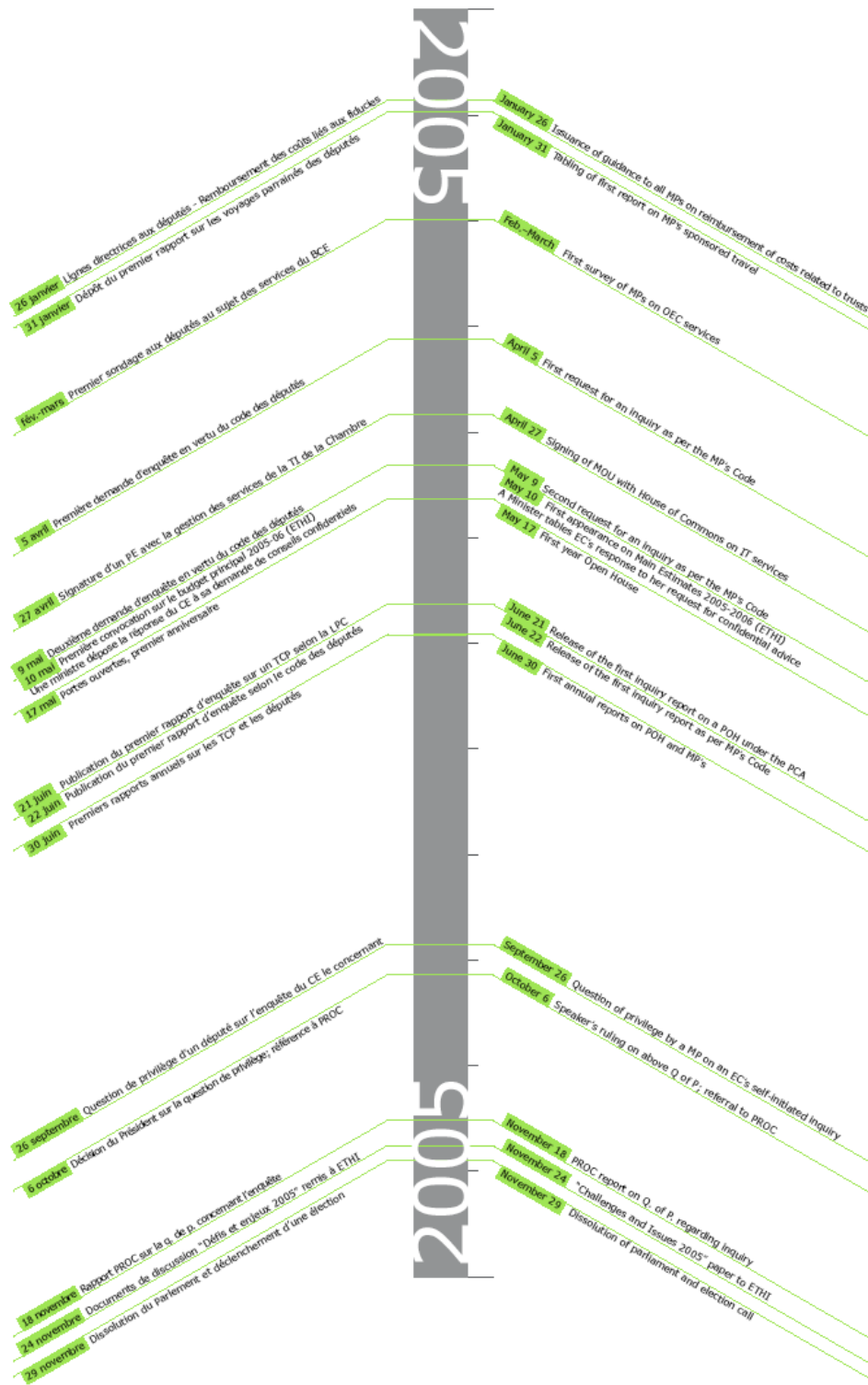
TIMELINE 2004

LIGNE DE TEMPS 2004



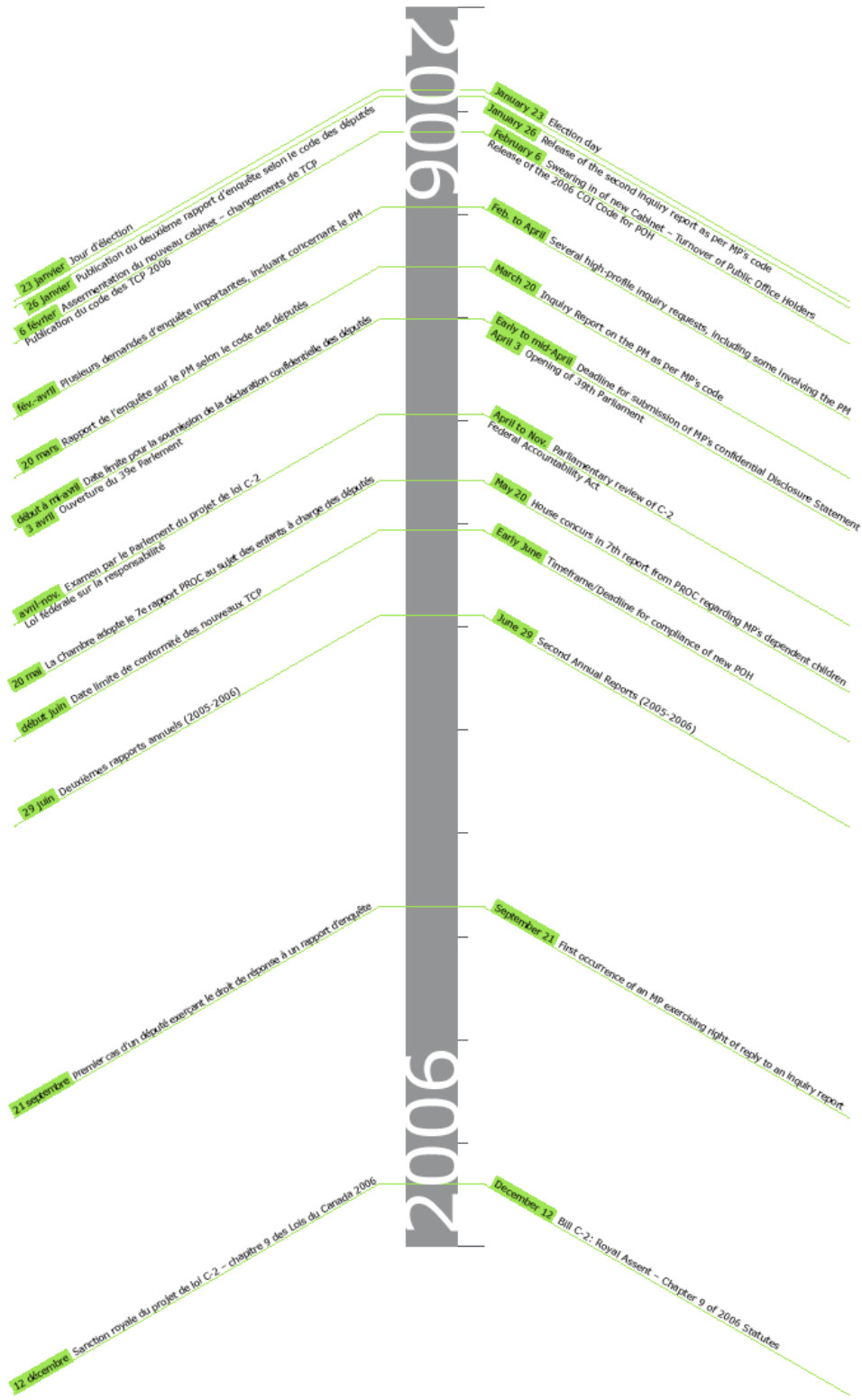
TIMELINE 2005

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TIMELINE 2006

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Appendix V

May 1, 2006



DRAFT/ÉBAUCHE

Examination Process

Conflict of Interest and Post-Employment Code for Public Office Holders

