

The Report of the Ethics Counsellor

on the Activities of
the Office of the Ethics Counsellor
to September 30, 2002

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November 15, 2002

The Right Honourable Jean Chrétien, P.C., M.P.

Prime Minister of Canada

Langevin Block

80 Wellington Street

Ottawa ON K1A 0A2

Dear Prime Minister:

It is with considerable pleasure that I present to you the first Annual Report of the Ethics Counsellor. This report meets your commitment to Parliament that the Ethics Counsellor would now table an Annual Report on the activities of the Office.

Because this is the first such report, I have provided considerable background on the administration and operations of my Office and the Conflict of Interest and Post-

Employment Code for Public Office Holders. To ensure the most complete first report possible, I have reported on the entire period from the creation of this Office in 1994 until September 30, 2002.

I approached the preparation of this report to meet the broader objectives you noted in your letter to me of June 11, 2002, that the “annual report will manifest accountability for the government’s activities, and will help Parliament stay well informed about the nature of your work. In addition, it will be a useful tool for the general public to gain a better appreciation of the importance of ethics in government.”

Thank you for this opportunity.

Yours sincerely,

Howard R. Wilson
Ethics Counsellor

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Section 1

Overview

Good governance is essential for any society to operate effectively. Canadians need to know their governments make decisions in the public interest. They need to know the personal interests of public office holders do not influence those decisions. The creation of the post of Ethics Counsellor in 1994 and the establishment of the Office of the Ethics Counsellor represented a major shift in how ethics issues were addressed in the Government of Canada.

1.1 Ethics and Canada’s Constitutional Conventions

The 1994 decision to have the Ethics Counsellor report to the Prime Minister, rather than to Parliament, was based on two considerations.

The first, and most important, was constitutional convention. In Westminster democracies, the Prime Minister is responsible to Parliament for the performance of his Ministers and the government. The Prime Minister issued the Conflict of Interest and Post-Employment Code for Public Office Holders, which is the major component of the ethical framework for public office holders in the Government of Canada. It applies to the senior members of the executive branch of government. It does not apply to other members of the House of Commons or the Senate.

Similar approaches are in place for members of the Ministry in the governments of the United Kingdom and Australia that go beyond the requirements that apply to all legislators — once again, respecting the conventions of the Westminster system.

The second reason was based on a contrast between the role of the Ethics Counsellor and that of other officers, such as the Auditor General, who do report to Parliament.

The role of the Auditor General is clear and traditional; it is to ensure that government expenditures are legal and effective. The Conflict of Interest Code, however, deals with many grey areas. It was understood that the Office of the Ethics Counsellor would have to deal with the appearance of a conflict of interest, rather than just an actual conflict of interest.

1.2 Taking a Proactive Approach to Achieve Well-informed Ethical Choices

Since its creation, the Office of the Ethics Counsellor has worked proactively with individual public office holders through a system built on basic principles. It focusses on preventing problems in advance. This has translated into a system that is oriented to working with public office holders to resolve personal situations in favour of the public interest at the beginning of their career.

This approach differs fundamentally from those that use a rules-based system. The experience with these systems is that they tend to focus on whether there is a rule preventing a particular action. Their legalistic nature creates a tendency for people facing criticism about the ethics of their actions to focus on the wording of the law rather than inherent ethics. They encourage a defensive approach on the part of public office holders.

1.3 The Advisory Role

The essence of the work of the Office is advisory — how should public office holders manage their personal interests with the highest standards expected by the public.

This proactive approach seeks to anticipate the situations in which public office holders might face accusations of unethical conduct. By setting out clear processes for managing personal and financial affairs, the government's ethical framework enables public office holders to avoid claims that they are acting in any way other than the public interest.

A fundamental element in the effectiveness of these codes is the availability of knowledgeable advisors in the Office of the Ethics Counsellor. These people work with public office holders, providing guidance and counsel on how to arrange their personal affairs to comply with the standards.

1.4 Partnerships

To help encourage this rising standard in public life, the Ethics Counsellor and his Office have been active partners in working with colleagues in Canada's provincial and territorial governments.

An extremely important development is the acceptance in a growing number of developing countries of the essential need to deal with corruption in all its forms — to accept that corruption and ethics in government is a governance issue. The Office has been involved with countries that are developing more open, democratic systems. Those countries are seeking to end long-standing practices, such as widespread corruption, to ensure a sustainable base for democratic government. Leaders in these countries recognize the importance of much higher ethical standards for their citizens.

1.5 A Continually Rising Standard

As Canadians raise the bar as to what actions by public office holders are acceptable, the Prime Minister, the government and the Office of the Ethics Counsellor have responded. The guidelines that the Ethics Counsellor uses have become richer with experience and

the analysis of new questions. Public office holders have generally recognized changing public expectations and adapted.

Most recently, on June 11, 2002, Prime Minister Chrétien set out an eight-point plan of action dealing with ethics in government.

This decision and the public debate that preceded it was rooted in the evolving expectations of Canadians about ethical standards in government and public life — a process also taking place around the world. In the eight years since the establishment of the Office of the Ethics Counsellor, public office holders, and particularly Ministers, have witnessed the development of a more challenging ethical environment. They have seen a steady rise in scrutiny about potential conflict between their personal and public lives.

Section 2

The Modern Framework for Ethics Issues in the Government of Canada

2.1 Introduction

The Government of Canada now has a framework of codes and guidelines that are rooted in a principle-based approach to achieving high ethical standards. Rather than setting out a long list of rules, Canada's approach has been to establish broad and clear standards based on a set of principles. The goals of this approach are to inspire integrity and achieve transparency by using proactive steps that encourage open, ethical decision-making. The fundamental assumption in this approach is that people choose to take on the demands of public office out of a desire to make a positive contribution, rather than for narrow self-interest.

The Conflict of Interest and Post-Employment Code for Public Office Holders (the Conflict of Interest Code) and other guidelines are described in general terms in this section to provide a context for the more detailed description of the work of the Office of the Ethics Counsellor in the following sections.

2.2 Approach and Objectives

In June 1994, Prime Minister Chrétien issued a new Conflict of Interest Code and created the new position of Ethics Counsellor with responsibility for the administration of the Code and the application of compliance measures (for a summary of ethics initiatives from 1973–93, see Appendix 8). The full text of the Conflict of Interest Code is available on the Ethics Counsellor's Web site at <http://strategis.gc.ca/ethics>

The objective of the Code is to enhance public confidence in the integrity of public office holders and the decision-making process in government. At the same time, the Code seeks to encourage experienced and competent people to seek and accept public office and to facilitate interchange between the private and the public sectors.

It establishes clear rules of conduct and post-employment practices to minimize the possibility of conflicts arising between the private interests and public duties of office holders.

2.3 The Public Office Holders Subject to the Conflict of Interest Code

The Conflict of Interest Code applies to all members of the Ministry: the Prime Minister, Ministers, Ministers of State and Secretaries of State. It also applies to Parliamentary Secretaries and all full-time Governor-in-Council appointees such as deputy ministers of government departments and the heads of agencies, Crown corporations, boards, commissions and tribunals.

Equally, all political staff members of a Minister or Secretary of State are subject to the Code, whether they work in a ministerial office, a Parliament Hill office or in a constituency. Certain ministerial staff members are subject to the post-employment provisions of the Code while others, to the principles only. Details on the designations may be found in Appendix 2.

Part-time Governor-in-Council appointees are subject to the principles of the Code, but not its compliance measures.

The Code does not apply to other members of the House of Commons or the Senate.

Public servants are subject to a separate Conflict of Interest and Post-Employment Code for the Public Service issued by Treasury Board. The deputy minister of each department or agency is responsible for its administration and application, supported by the Office of Values and Ethics of the Treasury Board of Canada Secretariat.

2.4 The Code's Principles

The Conflict of Interest Code sets out ten principles that offer direction and guidance to public office holders. Those principles stress the high standards of conduct and behaviour Canadians expect of those in public office. The principles of the Code are found in Appendix 1.

The first two principles set the tone for ethical conduct. The first states public office holders “shall act with honesty and uphold the highest ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced.” The second principle is that public office holders “have an obligation to perform their official duties and arrange their private affairs in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law.”

A further principle requires that public office holders arrange their private affairs in a manner that will prevent “real, potential or apparent conflicts” from arising. If conflicts are anticipated or arise, office holders are expected to resolve these ethical issues in favour of the public interest.

2.5 The Code's Disclosure Requirements

The Code stresses prevention and avoidance right from the time of a public office holder's appointment. At the base of the system is the disclosure requirement. This requires office holders to report in confidence to the Ethics Counsellor all of their assets, investments, debts and outside activities, both past and current, as well as the receipt of any gifts, hospitality or other benefits. The disclosure requirements for Ministers, Secretaries of State and Parliamentary Secretaries extend to their spouses and dependent children. Spouses are not themselves subject to the Conflict of Interest Code but their interests and outside activities may require that the Minister refrain from dealing on matters that would directly benefit that spouse's interests.

2.6 Exempt Assets Under the Code

The Code sets out the types of assets that are exempt from compliance measures and that the office holder can continue to hold and personally manage. These are normally assets for the private use of office holders and their families and not of a commercial character. They include a residence, recreational property, household goods and personal effects, government bonds and open-ended mutual funds.

2.7 Declarable Assets Under the Code

Certain other assets require a public declaration. Examples are an ownership interest in a private business that has no contracts with the federal government, commercially operated farms and rental property. An office holder may continue to deal with such assets, but must exercise vigilance to prevent conflicts from arising.

2.8 Controlled Assets Under the Code

Public office holders may not trade in shares of companies listed on stock exchanges, whether or not the value of these investments may be affected by government decisions. An office holder must either sell these assets or place them in a blind trust, which someone else manages at arm's length. That trustee may not receive any instructions from the office holder except for general guidance on the degree of acceptable risk at the time of the original trust agreement.

As the trustee manages the trust through the buying and selling of shares, the public office holder remains truly blind to the nature of their actual holdings. They are entitled to know monthly the value of their trust but not its composition. The blind trust option is also available for self-directed registered retirement savings plans, registered retirement income funds and registered education savings plans.

Where a public office holder has an ownership interest in a privately held company that has contracts with federal government institutions, the blind trust is not suitable. It cannot be credibly claimed that the individual is "blind" to their interests.

The solution is to establish a blind management agreement and to make a public declaration identifying the assets involved. These agreements name a manager who is at arm's length to the office holder to exercise all rights and privileges associated with the shares of the company. While this means the public office holder has no ongoing involvement with the company, he or she must withdraw from any discussions or decision-making in the discharge of official duties that could directly affect the company and its assets.

The Ethics Counsellor must approve all blind trusts and blind management agreements, including the selection of trustees.

2.9 Personal and Corporate Debts Under the Code

A public office holder may owe money to individuals or organizations that have business dealings with federal government institutions. In these cases, the Ethics Counsellor will determine whether additional compliance arrangements are necessary in order to prevent any conflict of interest from arising. These would include not dealing on any matter which directly benefits that individual or organization.

2.10 Outside Activities Under the Code

Public office holders are prohibited from engaging in the practice of a profession, actively managing or operating a business or commercial activity, retaining or accepting directorships or offices in a company, holding office in a union or professional association, or serving as a paid consultant.

A public office holder may hold directorships, memberships and honorary positions in non-commercial, charitable and philanthropic organizations, provided that he or she is not involved in assisting these organizations in any dealings with the federal government. Each activity of this type is subject to the approval of the Ethics Counsellor and to a public declaration.

2.11 Gifts, Hospitality and Other Benefits Under the Code

The Code's provisions also specify the circumstances under which gifts, hospitality and other benefits may be accepted. Gifts received from family members and close personal friends and those worth less than \$200, that will not influence the office holder in the exercise of public responsibilities, are acceptable and need not be disclosed.

Public office holders may accept gifts and other benefits worth more than \$200 if they arise from work-related activities or public events in which they participate in an official capacity, provided the gift or benefit is a normal expression of hospitality or protocol. These gifts, hospitality or benefits must be disclosed to the Ethics Counsellor and publicly declared. Gifts under \$1000 in value may be retained by a public office holder. Those of a value greater than \$1000 must be turned over to the office holder's department or agency.

These provisions complement the guidance on gifts, hospitality and other benefits set out by the courts, especially in their decisions on cases relating to Section 121(1)(c) of the

Criminal Code. That section makes it an offence for officials or employees of the government to accept benefits of any kind by themselves or through family members, directly or indirectly, from people who have dealings with the government unless they have had the consent in writing of the head of the branch of government that employs them. The most recent guidance is in the Supreme Court of Canada decision in *R. v. Hinchey* [1996] 3 S.C.R. 1128.

2.12 Avoidance of Preferential Treatment

The Conflict of Interest Code has very specific rules on preference. For example, a public office holder is to take care to avoid being placed, or appearing to be placed, under obligation to someone who might benefit from “special consideration” on the part of the public office holder.

Limitations are placed on Ministers and Secretaries of State on the hiring of members of their immediate families by their offices and departments. As well, they need to ensure that members of the immediate family of another Minister, Secretary of State or party colleague in Parliament are not to be hired by their department except by means of an “impartial administrative process” in which they play no role. They are, however, permitted to hire a member of a colleague’s immediate family for a position on their political staff.

One of the more important provisions on preference in the Code is the requirement that public office holders “shall not accord preferential treatment in relation to any official matter to family members or friends or to organizations in which they, family members or friends have an interest.”

2.13 The Post-Employment Provisions of the Code

The Conflict of Interest Code also sets out measures that apply to public office holders when they leave office.

There is a one-year cooling-off period (two years for Ministers) on taking employment with any organization with which they had direct and significant official dealings during their last year in public office. As well, office holders may not make representations on behalf of third parties to their former departments and other federal government agencies with which they had direct and significant official dealings during their last year in public office.

As well, they are prohibited from giving advice to an employer or client based on information obtained in the course of their public office if this information is not available to the public.

2.14 Dealings with Judicial and Quasi-Judicial Tribunals

Beyond the Conflict of Interest Code, guidelines exist to address a variety of situations that public office holders may face. One of these reflects the long-standing prohibition

against Ministers and their staff intervening on behalf of constituents or anyone else concerning any matter before the courts. This prohibition protects judicial independence. The protection of judicial independence has been extended to quasi-judicial agencies such as the Canadian Radio-television and Telecommunications Commission (CRTC), the Immigration and Refugee Board (IRB) and the Employment Insurance Boards of Referees. These tribunals were established by Parliament to operate at arm's length from government. As a consequence, there are limitations on the ability of a Minister or Secretary of State to act on behalf of constituents with federal quasi-judicial tribunals.

The guidelines, as set out in Appendix 4, state that Ministers, Secretaries of State and their staff may not intervene, or appear to intervene on behalf of anyone, including constituents, with federal quasi-judicial tribunals on any matter before them that requires a decision in their quasi-judicial capacity, unless authorized by law.

2.15 Dealings with Departments and Agencies

Under Canadian Cabinet convention, a Minister must not speak about or otherwise become involved in a colleague's portfolio without first consulting the responsible Minister and gaining that Minister's approval. This reflects the accountability of Ministers to Parliament for their departments and the accountability of public servants to their Minister. At the same time, Ministers also have very important responsibilities to represent the interests of their constituents.

In practice, this means that Ministers' staff in constituency offices may contact public servants in federal government institutions on behalf of constituents. However, Ministers and Secretaries of State and their staff are expected to take up any representations or interventions on behalf of constituents directly with the responsible Minister and his or her ministerial office.

2.16 Dealings with Crown Corporations

Guidelines exist for members of Cabinet regarding their dealings with Crown corporations. Every Crown corporation is accountable to Parliament for the conduct of its affairs through a responsible Minister. But, unlike regular government departments, Crown corporations have a greater degree of managerial autonomy with responsibility exercised by the board of directors. The guidelines establish that the Minister responsible for a Crown corporation must not become involved in day-to-day operational matters but can deal with the corporation on its broad policy orientations.

Other Ministers, including Secretaries of State, may not personally contact a Crown corporation on behalf of a constituent. Any such contact must be left to those ministerial staff who deal with constituency issues. The purpose is to protect the managerial autonomy of the Crown corporation. These guidelines are set out in Appendix 5.

2.17 Ministers and Activities for Personal Political Purposes

On June 11, 2002, the Prime Minister announced new guidelines for the Ministry relating to activities for personal political purposes. The guidelines refer to four specific areas that

offer a potential conflict between a Minister's public duties and his or her private political interests in a leadership campaign:

- Individuals working on the campaign at the same time as they are working on contracts with the Minister's department;
- Lobbyists registered as lobbying the Minister's department while working on his or her campaign;
- Operations of the ministerial office; and
- Fundraising.

These guidelines are set out in Appendix 6.

Section 3

The Roles and Responsibilities of the Office of the Ethics Counsellor

The Office of the Ethics Counsellor is accountable to the Prime Minister for the administration of the Conflict of Interest and Post-Employment Code for Public Office Holders. However, it is organizationally part of Industry Canada.

The Office has three major roles with respect to the administration of the Conflict of Interest Code and the other guidelines that set out government's ethical framework for public office holders. These are:

- an advisory role through which it provides advice to public office holders on issues that raise questions and concerns;
- a review role through which it deals with issues such as allegations of possible contraventions of the Code and other ethical concerns; and
- a partnership role through which it collaborates with other governments and organizations, at home and abroad, with interests in public and private sector ethics.

Each of these roles is described in more detail in the following sections of this report. It should be noted that the Office of the Ethics Counsellor administers the Lobbyists Registration Act on behalf of the Minister of Industry and the Ethics Counsellor is responsible for enforcement of the Lobbyists' Code of Conduct.

A summary of the Office's client base and resources can be found in Appendix 9.

Section 4

The Advisory Role

4.1 Introduction

The most important work of the Office of the Ethics Counsellor, both in terms of substance and time, is its advisory role. It is for this reason that the position was called Ethics Counsellor, not Ethics Commissioner.

The Office has important responsibilities to work with public office holders as they arrange their personal affairs to ensure full adherence to the principles of ethical government. While this work necessarily takes place in confidence, it enables the Ethics Counsellor and the Office advisors to assess the risks between the public responsibilities of office holders and their private interests. All conflicts are resolved in favour of the public interest.

The Office of the Ethics Counsellor usually offers advice to public office holders through an administrative process that has three elements, as shown in the chart in Appendix 7:

- initial compliance;
- annual review; and
- post-employment.

The Office of the Ethics Counsellor has produced a publication, *Implementing the Conflict of Interest Code: The Case of Joe Q. Public*. It contains completed examples of the principal documents that the Office of the Ethics Counsellor uses to apply the Conflict of Interest and Post-Employment Code for Public Office Holders. This publication is on the Ethics Counsellor's Web site at <http://strategis.gc.ca/ethics>

4.2 Initial Compliance

Potential candidates for appointment to public office often communicate with the Office of the Ethics Counsellor before a possible appointment in order to determine their obligations under the Conflict of Interest Code and the impact this will have on their private interests. The Prime Minister's Office and the Privy Council Office are in regular communication with the Office on appointments.

The Ethics Counsellor writes to each new public office holder upon appointment with details about the Code and its obligations. The next step is for the public office holder to sign the Certification Document signifying his or her acceptance that observance of the Code measures is a condition of holding his or her position.

The cornerstone of the compliance process is completion of the public office holder's Confidential Report. This report enables the Office to analyze the potential for conflicts that will need resolution. The report, which is to be submitted within 60 days from appointment, must describe all of the office holder's private interests such as any assets, liabilities and outside activities.

Public office holders must also indicate any relationship between their private interests and federal government institutions. They specifically are asked to identify any possible impact on their official duties and responsibilities that may arise in relation to contracts, financial contributions or other forms of government assistance.

All compliance arrangements are to be completed within 120 days of appointment, unless the Ethics Counsellor agrees to an extension. Once the confidential report is in hand, an advisor in the Office will work with the public office holder to identify the most appropriate ways of eliminating potential conflicts.

For assets, these measures might include a public declaration, arm's length sale of the assets or the establishment of a blind trust or blind management agreement. For outside activities, the measures may include resignation or withdrawal from any direct dealings with the federal government on behalf of an organization. Appendix 3 describes typical mechanisms used to address potential conflicts of interest.

Once this work has been completed, the public office holder signs a summary statement noting the compliance measures used to meet the requirements of the Code. With this, the Ethics Counsellor formally approves the measures and confirms this to the public office holder, except in the case of members of the Ministry, where the Prime Minister makes the formal approval.

All summary statements of public office holders as well as their public declarations of assets, outside activities, and gifts and hospitality can be found in the Public Registry on the Ethics Counsellor's Web site at <http://strategis.gc.ca/ethics>

4.3 Annual Review

Public office holders have an obligation to remain in compliance with the Code at all times. They are required to inform the Ethics Counsellor within 30 days of any changes to their assets, debts and outside activities. As well, they are to report within 30 days of the receipt of any gifts, hospitality or other benefits, worth more than \$200.

To complement this ongoing reporting, on the anniversary date of the public office holder's appointment, the Ethics Counsellor will initiate an annual review of the public office holder's confidential report and compliance arrangements.

4.4 Post-Employment

The post-employment measures are designed to protect the public interest by ensuring that public office holders do not appear to take advantage of their last year in office to obtain employment with an organization with which they had "direct and significant official dealings" in that year. As well, they cannot lobby their old department or any other federal government organization with which they have had direct and significant official dealings on behalf of their new employer for one year after leaving office or use insider information.

The Office formally communicates with these individuals at the end of their time, setting out these post-employment obligations. Many public office holders do not, however, wait until the last moment. They seek advice in advance as to what is permissible. It is also not uncommon for the new employer of a former public office holder to seek confirmation that the individual is in full compliance with his or her Code obligation.

4.5 Ministers, Secretaries of State and Exempt Staff

Some of the most important advisory work of the Office deals, not with the individual compliance arrangements of public office holders, but with the operations of ministerial offices.

With the exception of the Leader of the Government in the Senate, Ministers and Secretaries of State are almost always elected members of the House of Commons who have important responsibilities to represent the interests of their constituents with the federal government. Nonetheless, as Ministers they have considerable decision-making powers and they need to exercise care when they make representations on behalf of constituents. In recent years, the government has placed limitations on how Ministers and their offices can deal with quasi-judicial tribunals and Crown corporations. To respect an important Cabinet convention, Ministers and their offices are advised to deal directly with their Cabinet colleagues or their ministerial offices and not with public servants in another department.

The Office organizes briefing sessions on these issues with Ministers and their offices at the time of appointment and annually thereafter. The sessions include briefings of constituency staff in the ridings because this is where most of the day-to-day work on behalf of constituents takes place.

The Office receives requests for guidance from Ministers' offices almost daily on a wide range of issues. Typical subjects include guidance on responding to requests for letters of recommendation or character references, gifts and hospitality, fundraising for charities and support for projects at the federal, provincial or municipal levels. This activity reflects the close working relationship between the Office of the Ethics Counsellor and ministerial offices.

Guidelines dealing with quasi-judicial tribunals, departments and agencies and Crown corporations are described in Appendix 4 and Appendix 5 of this report respectively.

4.6 Part-Time Governor-in-Council Appointees

Part-time Governor-in-Council appointees are only subject to the principles of the Conflict of Interest Code and any statutory provisions or guidelines that apply to their agency. Since 1998, the Office of the Ethics Counsellor has provided formal advice to these appointees.

The advice given to part-time Governor-in-Council appointees informs them of their obligations under the Conflict of Interest Code and sets out any statutory provisions on conflict which might apply as well as the code of conduct, if any, established by their agency. The advice includes guidance on the acceptable level of involvement in political activities. For example, part-time members of quasi-judicial tribunals need to resign if they wish to seek a nomination, fundraise or campaign. Members of non-quasi judicial organizations may become involved in these activities but only if they take leave without pay.

Lastly, the Office draws their attention to the decision of the Supreme Court of Canada in *R. v. Cogger* [1997] 2 S.C.R. 845. Since part-time Governor-in-Council appointees are considered “officials” within the meaning of Section 121 (Frauds on Government) of the Criminal Code, any dealings they may have on behalf of private sector clients with regard to business with the federal government may fall within the parameters of the Supreme Court of Canada’s interpretation of the Criminal Code.

4.7 Advice to Departments, Agencies, Boards, Commissions and Tribunals

Federal departments, boards, commissions, tribunals and advisory panels regularly approach the Office of the Ethics Counsellor for advice on conflict of interest and other ethical issues. For example, the Office has worked with many tribunals, boards and commissions as they develop guidelines of acceptable conduct and behaviour for their officials and employees that complement the principles of the Conflict of Interest Code.

The Office works closely with Treasury Board of Canada Secretariat and individual departments to clarify issues in relation to the Conflict of Interest and Post-Employment Code for the Public Service. This assistance has included the development of a model blind trust agreement as a mechanism for dealing with the divestment of controlled assets by public servants. The Office has also strongly supported the Treasury Board of Canada Secretariat’s initiative to strengthen ethics in the public sector.

The Ethics Counsellor is also a member of the Advisory Panel on Conflict of Interest and Post-Employment of the Department of National Defence (DND). This panel deals with the application of post-employment measures to senior officers of the Canadian Forces as well as senior civilians in DND.

4.8 Members of Parliament and Senators

While Ministers and Parliamentary Secretaries are covered by the Conflict of Interest Code, other Members of Parliament and Senators are not. Nevertheless, the Office of the Ethics Counsellor is often asked for guidance by Members of Parliament and Senators on potential conflict of interest issues.

Section 5

The Review Role

5.1 Introduction

The review role of the Office of the Ethics Counsellor began in 1994 and expanded over time. When the Office was established in 1994, it was expressly stated that the Prime Minister could ask the Ethics Counsellor to investigate allegations raised about a Minister. As the Office evolved, the Ethics Counsellor began to undertake reviews on his own initiative of allegations pertaining to the obligations and rules of the Conflict of Interest Code. The Office has also reviewed new and emerging issues in order to make recommendations to the Prime Minister. The eight-point plan of action on government ethics, which the Prime Minister announced on June 11, 2002, expanded this review role

further when he said that the “Ethics Counsellor will inquire into complaints, or other matters related to a Minister of the Crown, referred to his Office by a Member of Parliament.”

This steady expansion indicates how the review role has become increasingly important over time. Public office holders, especially Ministers, are under intense public scrutiny in Parliament and from the media to ensure that they live up to contemporary ethical expectations. Because the Office of the Ethics Counsellor works proactively with office holders to avoid conflicts in advance, the results of reviews generally demonstrate that office holders have usually been careful to arrange their affairs and decision making in line with the Conflict of Interest Code and related guidelines.

In addition to the information on major issues that have arisen over time, which is set out in this section, details on some reviews carried out by the Ethics Counsellor can be found on the Web site at <http://strategis.gc.ca/ethics>

5.2 Dealings with Judicial Tribunals, Quasi-Judicial Tribunals

In 1994, the then Minister of Canadian Heritage was alleged to have written a letter in support of a constituent’s application to the Canadian Radio-television and Telecommunications Commission (CRTC), a quasi-judicial organization of the federal government. The CRTC reports to Parliament through that Minister.

As a result of the allegations made, the Ethics Counsellor was asked to review the situation and recommend guidelines on dealings between Ministers’ offices and quasi-judicial bodies in respect of constituency matters. The Prime Minister issued the resulting guidelines on October 31, 1994, and these are described in Appendix 4.

In 1996, the then Minister of National Defence and Veterans Affairs was reported to have written a letter on behalf of a constituent to request an accelerated case review by the Immigration and Refugee Board. The Ethics Counsellor concluded that the Minister had breached the 1994 guidelines on dealings with quasi-judicial organizations and the Minister resigned from the Cabinet.

5.3 Private Interest and Outside Activities

One of the principles of the Conflict of Interest and Post-Employment Code for Public Office Holders provides that public office holders are obliged to perform their official duties and arrange their private affairs in a manner that will bear the closest public scrutiny.

In this day and age, the private financial affairs of public office holders can be quite complex, involving other investment partners or inter-corporate ownerships. The application of the Conflict of Interest Code provisions strives to strike an appropriate balance between the private interest of an individual and that individual’s public duties

and responsibilities. This balance is predicated on the view that the public interest must prevail in all cases.

The complexity of some cases involving private interests, in the absence of an awareness of all of the relevant facts, can give rise to serious allegations of apparent or potential conflict of interest. Two cases that the Office of the Ethics Counsellor was asked to examine demonstrate this point.

In the first case, allegations were made in May 1999 that the then Minister of Finance was in a conflict of interest because of his involvement in the Cabinet decision on compensating victims of tainted blood products. The Prime Minister asked the Ethics Counsellor to investigate and report on the matter.

Specifically, concerns were expressed that the Minister was a member of the board of directors of the Canada Development Corporation between 1981 and 1986, which had a controlling interest in CDC Life Sciences Inc. This company, in turn, controlled Connaught Laboratories Limited, which was under contract to the Canadian Red Cross to fractionate blood plasma. The concerns noted that the government's 1998 decision on compensation for hepatitis C victims excluded those who were infected pre-1986 when the Minister of Finance was on the Canada Development Corporation board.

After an extensive investigation of the matter, the Ethics Counsellor concluded that the Minister of Finance was not in a position of conflict of interest when he participated in a Cabinet decision on compensation a decade later. The report of this enquiry was tabled on April 7, 2000, and is available on the Internet at <http://strategis.gc.ca/ethics> under the heading "Items of Special Interest."

In the second case, allegations were made in 1999 that the Prime Minister was in a conflict of interest because his constituency office assisted the Auberge Grand-Mère in obtaining a business loan and grants from federal institutions at a time when, it was claimed, the Prime Minister had a financial interest in the adjacent golf course.

The Ethics Counsellor reviewed the facts and concluded that the Prime Minister ceased having an ownership interest in the Auberge Grand-Mère and the golf course in 1993, prior to his becoming Prime Minister. In April 1993, the numbered holding company owned by the Prime Minister and his family sold its interest in the Auberge Grand-Mère. Later, in November 1993, the holding company sold its shares in the company owning the golf course.

The sale of the golf course shares was unsecured. In 1996, the Prime Minister advised the Ethics Counsellor that he had received no payments regarding the sale of the golf course shares and wanted to know what his options were. His lawyer was of the view that he had two options: to take the buyer to court or to try, through his lawyer, or to organize a method by which the payment would be made. The Prime Minister chose the latter course. The legal debt owed the Prime Minister was unaffected, and remained the same, whether the value of the golf course increased or decreased.

In the fall of 1999, the Ethics Counsellor was informed that a settlement had been reached for the payment of the golf course shares sold by the Prime Minister in 1993. The sale therefore permitted the financial obligations to the Prime Minister to be discharged.

The position of the Ethics Counsellor, in 1999 and since, has been that the Prime Minister had no financial interest in the golf course nor in the auberge, two entirely separate entities. Because the shares were never returned to the Prime Minister's holding company, the Prime Minister had never reacquired the interest in the golf course and, therefore, was not in a conflict of interest situation. The actions of his office in respect of the auberge were those of a Member of Parliament supporting a constituent.

5.4 Preferential Treatment

One of the more important obligations in the Conflict of Interest Code is that of preferential treatment. The principal rule states that public office holders shall not "accord preferential treatment in relation to any official matter to family members or friends or to organizations in which they, family members or friends, have an interest."

Over the years since 1994 there have been a number of reviews involving such matters, for example, as a spouse of a Minister being hired by a government department and contracts being given to friends and close political associates.

5.5 Gifts and Invitations

As Section 2 notes, the Conflict of Interest Code has rules on the acceptability of gifts and hospitality. This has led to a number of reviews, most of them referred to the Ethics Counsellor by public office holders seeking guidance. These have involved such matters as accepting an invitation to attend a sporting or cultural event, the appropriateness of gifts from organizations dealing with the public office holder's department or agency and accepting transportation in a company-owned aircraft to travel to an official event. In this latter case, which normally would involve travel to a remote area, the Office requires a payment to the company of the commercial equivalent of the flight costs.

In one case, a complaint under the Conflict of Interest Code and the Lobbyists' Code of Conduct was received concerning an invitation by Bell Canada Enterprises Inc. to the Prime Minister to play a round of golf with a professional golfer at the Bell Canadian Open Pro-Am event. The Ethics Counsellor concluded that the Prime Minister was not in a conflict of interest.

The decision of the Ethics Counsellor was that the invitation to the Prime Minister was as the official representative of the Government of Canada to a major sporting event. This conclusion drew from the decision made earlier in identical circumstances by the Ontario Integrity Commissioner involving an invitation to the Ontario Deputy Premier to play in the Canadian Open Pro-Am at Glen Abbey.

Section 6

The Partnership Role

6.1 Introduction

The field of ethics in government, as in the private sector, is both growing and rapidly evolving. Increasing interest in the effective application of ethical considerations is focussed on the practical issues that give rise to questions about conflict of interest and the most productive models for encouraging the highest ethical standards.

With wide experience and a strong reputation among peers, the Office of the Ethics Counsellor is looked upon as an important partner by ethics professionals in Canada. It has also become an important participant in international developments over the past decade at a time when good governance issues have become better recognized as fundamental conditions for social and economic development. The Office has also developed close links with the private sector as companies place a high priority on dealing with serious governance issues and introduce strong ethics programs. It is the experience of the Office that the public and private sectors have much to learn from each other.

6.2 Partnerships in Canada

The most productive domestic partnership for the Office of the Ethics Counsellor is the Canadian Conflict of Interest Network (CCOIN). This informal group links together the Conflict of Interest, Integrity and Ethics Commissioners from the Government of Canada and those of all provinces and territories, except for Manitoba, which has yet to create such a position. While the mandate of each office differs, they largely deal with conflicts of interest for both Ministers and individual members of their legislatures.

CCOIN members have shared their experiences, particularly through annual meetings. The links also enable members to benefit by seeking, in confidence, the views of colleagues on pressing ethics issues.

The Office also supports the Ethics Practitioners' Association of Canada (EPAC). That association promotes ethical practices in Canadian public and private organizations. It provides ethics practitioners with information and education about organizational ethics and maintains and improves the qualifications and standards of these professionals.

6.3 International Partnerships

The emphasis on ethics in government and steps to deal effectively with the problems of corruption have become a focus of much international effort which the Office of the Ethics Counsellor has strongly supported.

It is now widely accepted that corruption and ethics should be viewed as essential governance issues for any democratic government; not simply issues of crime or morals. Failure to recognize this carries a high price in terms of economic development and the strength of domestic democratic institutions. This shift in thinking began in the 1990s when the World Bank, the International Monetary Fund and the Organisation for

Economic Co-operation and Development (OECD) came to the view that without a determined battle against corruption, economic development would be imperilled in the developing world. They recognized that development would suffer because of lower investment flows, particularly from the private sector. This impact would be magnified as corrupt activities damage many domestic economic activities.

It was also recognized by leaders in a number of developing countries that had begun a transition to democracy that a failure to deal with corruption in its widest sense would seriously damage their new democratic institutions. This recognition was most prominently displayed in the initiative to negotiate an anti-corruption convention in the Organization of American States (OAS), which emerged from the 1994 Summit of the Americas. That initiative came from a number of recently democratically elected leaders in Latin America. They recognized that if they could not deal effectively in removing corruption in its widest sense, economic growth would suffer and, most importantly, public support for their new and fragile democratic institutions would decline.

The preamble to the convention sets this out eloquently:

THE MEMBER STATES OF THE ORGANIZATION OF AMERICAN STATES,
CONVINCED that corruption undermines the legitimacy of public institutions and strikes at society, moral order and justice, as well as at the comprehensive development of peoples;

CONSIDERING that representative democracy, an essential condition for stability, peace and development of the region, requires, by its nature, the combatting of every form of corruption in the performance of public functions, as well as acts of corruption specifically related to such performance; and

PERSUADED that fighting corruption strengthens democratic institutions and prevents distortions in the economy, improprieties in public administration and damage to a society's moral fiber.

To build on this achievement, the Office of the Ethics Counsellor, together with several other ethics offices in OAS countries, have established a Network of Ethics Offices in the hemisphere. Its purpose is to allow colleagues in participating countries to draw on their collective experiences while supporting national and international efforts to improve ethical practices in government.

Other international activity by the Office has been in support of the work by the OECD to develop Guidelines for Managing Conflicts of Interest in the Public Service. As well, the Office has made presentations to conferences on ethics organized jointly by the OECD with Brazil and China. Countries in Africa, East and Central Europe, Asia and Latin America have contacted the Office directly or through the United Nations to draw on the Canadian experience as they develop their own plans for effective ethics mechanisms.

The Office has been a strong supporter of the International Institute of Public Ethics (IIPE), an international professional association for public sector ethics practitioners and scholars. The Office was particularly pleased to have been heavily involved in the 2000 International Conference of the IIPE held in Ottawa, September 24–28, 2000. The

Conference, which was chaired by the Ethics Counsellor, was entitled Ethics in the New Millennium: Bridging the Public and Private Sectors. It attracted 263 participants from 21 countries.

Section 7

Ensuring Accountable, Transparent Actions

7.1 Introduction

The design of the Ethics Counsellor model in use in the federal government is meant to produce positive results through proactive work with public office holders. It seeks to anticipate possible conflicts of interest before they occur and to resolve them in advance. Through the advisory role described earlier, it is meant to provide public office holders with the information and guidance necessary to arrange their personal affairs and carry out their public responsibilities in ways that will withstand the closest public scrutiny.

Even taking into account the importance of treating the individual issues that public office holders bring to the Ethics Counsellor and his staff in confidence, the Office recognizes the importance of acting in a transparent fashion.

In addition to responding to enquiries from the public on the Conflict of Interest Code specifically and public sector ethics more generally, the Office of the Ethics Counsellor has had three major avenues to achieve transparency as follows.

7.2 Appearances Before Parliamentarians

While the Ethics Counsellor does not report to Parliament, he has appeared before committees to testify on specific issues and to offer his views on particular issues before Parliament.

The Ethics Counsellor has appeared seven times before different parliamentary committees:

- Special Joint Committee on a Code of Conduct (September 18, 1995);
- Procedure and House Affairs (November 19, 1996);
- Special Joint Committee on a Code of Conduct (February 5, 1997);
- Finance (February 17, 1998);
- Industry (May 6, 1999);
- Industry, Science and Technology (April 3, 2001); and
- Industry, Science and Technology (June 13, 2002).

The meeting with Procedure and House Affairs was for the purpose of reviewing the draft Lobbyists' Code of Conduct, which had been prepared by the Ethics Counsellor. The meeting before the Finance Committee was to be able to respond to allegations that the Minister of Finance was in a conflict of interest because of a measure proposed in Bill C-28 — the Income Tax Amendments Act, 1997. The 1999 and 2001 appearances were in the context of Estimates hearings. The June 2002 appearance was for a hearing on the

Prime Minister's Eight-Point Plan of Action on Ethics in Government. The opening statements and evidence given at these appearances are on the Ethics Counsellor's Web site at <http://strategis.gc.ca/ethics>

7.3 Responses to Media Enquiries

From the establishment of the Office in 1994, the Ethics Counsellor has attempted to keep open communication with the media, mostly in interviews on the record. It is an essential means of achieving transparency and to ensure that the public is kept informed about these important public policy issues.

7.4 The Web Site: <http://strategis.gc.ca/ethics>

The Internet has enabled governments and citizens to stay in closer touch. Critical government information, that in past years was not easily available to the public, is now immediately accessible because of this new medium.

This has made the work of the Office of the Ethics Counsellor much easier. The Conflict of Interest Code, other guidelines, the Office's forms, the Public Registry, reports and rulings, speeches, appearances before parliamentary committees and other information are all instantly accessible.

Appendix 1

Object and Principles — Administration of the Conflict of Interest Code

Object

The object of this Code is to enhance public confidence in the integrity of public office holders and the decision-making process in government:

- A. while encouraging experienced and competent persons to seek and accept public office;
- B. while facilitating interchange between the private and the public sector;
- C. by establishing clear rules of conduct respecting conflict of interest for, and post-employment practices applicable to, all public office holders; and
- D. by minimizing the possibility of conflicts arising between the private interests and public duties of public office holders and providing for the resolution of such conflicts in the public interest should they arise.

Principles

Every public office holder shall conform to the following principles.

Ethical Standards

1. Public office holders shall act with honesty and uphold the highest ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced.

Public Scrutiny

2. Public office holders have an obligation to perform their official duties and arrange their private affairs in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law.

Decision-Making

3. Public office holders, in fulfilling their official duties and responsibilities, shall make decisions in the public interest and with regard to the merits of each case.

Private Interests

4. Public office holders shall not have private interests, other than those permitted pursuant to this Code, that would be affected particularly or significantly by government actions in which they participate.

Public Interest

5. On appointment to office, and thereafter, public office holders shall arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from arising, but if such a conflict does arise between the private interests of a public office holder and the official duties and responsibilities of that public office holder, the conflict shall be resolved in favour of the public interest.

Gifts and Benefits

6. Public office holders shall not solicit or accept transfers of economic benefit, other than incidental gifts, customary hospitality, or other benefits of nominal value, unless the transfer is pursuant to an enforceable contract of property right of the public office holder.

Preferential Treatment

7. Public office holders shall not step out of their official roles to assist private entities or persons in their dealings with the government where this would result in preferential treatment to any person.

Inside Information

8. Public office holders shall not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and responsibilities and that is not generally available to the public.

Government Property

9. Public office holders shall not directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for anything other than officially approved activities.

Post-Employment

10. Public office holders shall not act, after they leave public office, in such a manner as to take improper advantage of their previous office.

Appendix 2

Designations of Ministerial Staff and Appointees — Administration of the Conflict of Interest Code

1. Ministerial Exempt Staff

All persons on the staff of a Minister of the Crown or Secretary of State, full time or part time, on salary or on contract, regardless of the budget source from which they are being remunerated (House of Commons, constituency, Minister's regional office or exempt staff budget), other than public servants, are subject to the principles listed in Part I of the Code and to the compliance measures set out in Part II. A contractor or part-time staff member who works more than, or equal to, two days per week (i.e. 15 hours) on average is subject to the compliance requirements of Part II of the Code. As for departmental employees assigned to the Office, the Deputy Head is responsible for ensuring that they have complied with the applicable provisions of the Code.

Certain members of the staff of a Minister will have to be bound by the post-employment compliance measures stipulated in Part III of the Code. They are senior staff members and any other member in the Office where the nature of the duties requires involvement with sensitive policy files such as those involving Cabinet. Other factors to consider are staff member's authority, influence, visibility and salary level.

Staff members occupying the following positions must be subject to Part III of the Code:

- Executive Assistant and equivalent position for Secretaries of State;
- Heads of Communications (e.g. Director of Communications, Manager of Communications, Press Secretary); and
- Policy Advisors, Legislative Assistants and other assistants working with Cabinet documents or sensitive policy files.

Other staff members may be designated by the Executive Assistant as subject to Part III of the Code in consideration of the above factors.

2. Students

All students employed in Ministers' or Secretaries of State's Offices must comply with the principles of conduct stipulated in Section 3 of Part I of the Code, and the Office should ensure that they receive a copy of them when their employment begins.

Normally, students employed in administrative support positions need not be subject to the detailed compliance requirements of Parts II and III of the Code. Therefore, no detailed confidential report on assets, liabilities, activities and benefits is required of them.

Students hired in positions equivalent to that of a Special Assistant, i.e. who work on sensitive matters or have access to Cabinet documents, would be subject to the same requirements as full-time exempt staff members. Given the short duration of their employment, the Office of the Ethics Counsellor would appreciate being informed at once of such individuals, in order to ensure that the necessary arrangements are completed in good time.

3. Ministerial Appointees

Other individuals may be appointed by the authority of a Minister (such as members of some advisory panels). These persons are referred to as “ministerial appointees.” In the Code, part-time ministerial appointees are subject to the principles in Part I of the Code and any measures established by their organizations. It is the responsibility of the Minister concerned to ensure adherence to the principles. For full-time ministerial appointees, designated by the Minister as subject to the Code, the Ethics Counsellor is responsible for administering its provisions. Ministers are to notify the Ethics Counsellor when making such full-time appointments, indicating whether the post-employment measures in Part III of the Code apply.

Appendix 3

Typical Mechanisms Used to Address Potential Conflicts of Interest

Introduction

A variety of investment mechanisms have been used by people who then become public office holders over the years. Some are fairly straightforward in terms of how they are to be dealt with under the Conflict of Interest and Post-Employment Code for Public Office Holders (the Conflict of Interest Code), while others are more complex in nature. The Office provides advice as to the acceptability of such investment mechanisms under the Code.

In general, publicly traded securities, that is, securities traded on a stock exchange such as common and preferred shares, rights and warrants, listed option and futures contracts or over-the-counter securities such as corporate bonds and debentures, commercial papers, multi-callable notes of corporations, closed-end mutual funds, trust units and foreign government bonds, are considered controlled assets under the Code. Other investment vehicles considered controlled assets are exchange-traded funds or stock market indices like the “i60” participation units and WEBS shares.

While many investors personally manage their own investment accounts, most brokerage and investment firms offer individually managed accounts and “wrapped” accounts.

- Managed accounts that use only mutual funds or pooled funds as the investment vehicles are permissible under the Code and generally do not require any compliance measures.

- On the other hand, managed accounts and discretionary managed accounts that only consist of publicly traded securities would be considered controlled assets under the Code because the account holder owns the individual securities in the account.

Public office holders are required to divest themselves of controlled assets (i.e. publicly traded securities). Divestment may be accomplished by either selling the assets under an arm's length transaction establishing a blind trust, or, in the case of privately held corporations, an established blind management agreement.

When a public office holder must divest controlled assets by means of the establishment of a blind trust or blind management agreement, reasonable costs for establishing, maintaining and eventually for dismantling these arrangements are reimbursed to the office holder by their employing department or agency upon recommendation of the Ethics Counsellor.

Blind Trusts

To establish a blind trust, the public office holder must find an individual such as a lawyer or accountant, who is at arm's length, or an institution capable and willing to accept the responsibility of managing the assets to be divested. This task is facilitated by the availability of a standard form from the Office of the Ethics Counsellor, which sets out the rights and responsibilities of the Settlor (the public office holder providing the assets) and the Trustee (the institution or individual accepting to manage the assets).

Blind Management Agreements

A blind trust is used solely for direct holdings of publicly traded securities. However, some public office holders have ownership interests in more complex undertakings. They may be active owner-managers of a business, or have an interest in a family-owned corporation, in a holding or a trust company, a partnership or a venture having dealings with the federal government. In these instances, a blind trust does not constitute an appropriate divestment vehicle, instead a blind management agreement is utilized.

The Honourable W. D. Parker provided important guidance for addressing potential conflict issues through blind management agreements. He did so in the context of the report on his Commission of Inquiry into the Facts of Allegations of Conflict of Interest Concerning the Honourable Sinclair M. Stevens.

Justice Parker stated that while divestment by way of a blind trust is the appropriate compliance mechanism for a portfolio of publicly traded securities, it would not be practicable in the case of a privately held business or commercial operation that contracts with the federal government. The trustee would be unable to sell these assets if they were placed in a blind trust and would not be expected to.

Given this guidance and in order to deal realistically with such cases, the Office of the Ethics Counsellor developed the blind management agreement. Because of the unique situations that arise in each of these cases, each agreement is tailored to the situation.

However, all of them remove public office holders from any decision-making processes in the day-to-day management of the assets.

A blind management agreement places the shares and control of the assets of the public office holder in the hands of a manager who is at arm's length from the public office holder. The manager is empowered to exercise all of the rights and privileges associated with those shares. The agreement prevents the manager from seeking or obtaining the advice of the public office holder. The public office holder cannot offer or provide advice, neither can the public office holder participate in any discussions and decision-making processes, wherever they may arise, that may particularly or significantly affect the assets.

It is only in exceptional circumstances where an extraordinary corporate event is likely to materially affect the assets, that the public office holder may personally intervene, but only after the Ethics Counsellor has been consulted and determines that the intervention would not give rise to a conflict of interest. A public declaration identifying the assets placed in the blind management agreement must also be made. The public office holder is entitled throughout the duration of the agreement to be kept informed of the basic value of the assets.

In some instances, a public office holder may have invested in publicly traded securities through a holding company of which he or she is the only shareholder. Under these circumstances, it would be acceptable under the Code for both the public office holder and the company to set up a blind trust for the management of the portfolio of securities instead of placing all of the shareholding interest under a blind management agreement.

Family-Related Investment and Management Situations

Public office holders may be called on to administer their parents' assets, either through a power of attorney, as a court-appointed curator or as executors and trustees of their estates. Public office holders may also wish to set up family trusts for their children. The Code required confidential disclosure of these kinds of activities. The assets to be managed are looked at as if the public office holder personally owned them.

Generally speaking, the Code does not restrict these types of activities and duties, if the assets involved are all considered exempt under the Code. However, if publicly traded securities are involved, compliance measures are applicable. If the public office holder is a trustee, executor or holder of a power of attorney, the Office will recommend that he or she refrain from participating in decision-making processes concerning controlled assets, delegate such tasks to co-executors or co-trustees and sign any required documents on a pro forma basis only.

However, this may not be possible or practicable. For instance, the public office holder may be the sole executor of an estate and has been acting in this capacity prior to appointment. If he or she has no beneficial interest in the estate, is at arm's length to the beneficiaries of the estate and the management of the controlled assets would not be inconsistent with the performance of his or her official duties, then the Ethics Counsellor

may approve a continued role in exercising full powers over controlled assets. As part of this, the public office holder may not use or take advantage of any information to which he or she might become privy by reason of his or her official duties and which is not generally available to the public.

In the case of a family trust, the public office holder would be unable to act as trustee if controlled assets are involved. While it would be permissible for the public office holder to contribute cash to the trust, he or she would also have to abstain from providing investment advice to the trustee, as well as from participating in any decision-making process with regard to controlled assets. If the trust is set up in such a way that the public office holder is to be a co-beneficiary, the trustee would need to be at arm's length. This means a relative or friend also would be ineligible to act as trustee.

Joint Portfolio Holdings

While a public office holder is required to comply with the Code, his or her spouse is not and faces no restrictions on the types of assets he or she may own. In the case of joint holdings between spouses, the goal is to strike a proper balance between the rights of the spouse who is not subject to the Code and the obligations placed on the public office holder under the Code.

If the spouse is agreeable, the usual methods of divestment (sale at arm's length or blind trust) are available. The Office of the Ethics Counsellor looks at other cases individually to determine the most appropriate compliance measure. It considers determining who would normally make the investment decisions, the amounts contributed by each spouse and the mix of assets in the portfolio.

The Office also considers the official duties and responsibilities of the public office holder to determine whether those duties may give the public office holder insider knowledge that could give rise to a real, potential or apparent conflict of interest.

Spousal RRSPs

Self-directed registered retirement savings plans (RRSPs) that are registered in the name of the spouse and to which the public office holder contributes, do not require divestment if they are composed in whole or in part of controlled assets. However, upon taking office, the public office holder must refrain from making additional contributions through investments that are considered controlled assets. Any additional contributions must be restricted to assets considered exempt under the Code.

If the self-directed RRSP is registered in the name of the public office holder and contains controlled assets, divestment is required, either through the sale of the controlled assets or the establishment of a blind trust, irrespective of whether or not the spouse contributes to the registered retirement savings plans. If the public office holder elects to set up a blind trust, any future spousal contribution must be made in the form of cash, for the trustee to invest at his or her sole discretion. On the other hand, if the public office holder, during the initial 120-day period for compliance, sells the controlled assets and

invests the proceeds in exempt assets, he or she may continue to administer the plan. Any spousal contribution must then be restricted to exempt assets.

Appendix 4

Dealings with Quasi-Judicial Tribunals — Basic Principle

Ministers shall not intervene, or appear to intervene, on behalf of any person or entity, with federal quasi-judicial tribunals on any matter before them that requires a decision in their quasi-judicial capacity, unless otherwise authorized by law.

Dealings with Quasi-Judicial Tribunals Within your Portfolio

Ministers (including Secretaries of State) need to be in contact with agencies in their portfolio on a broad range of administrative, policy and regulatory matters when authorized to do so by legislation. For instance, the Minister may communicate with the Chair of a tribunal on its budget.

Ministers and their deputies should work with the agencies in their portfolio to clarify mutually agreed limits on the information which may flow to and from each agency and the appropriate procedures for communication.

The Minister's office can expect requests for assistance from other Ministers on behalf of their constituents. Where such an intervention with an agency is not appropriate because the request concerns a quasi-judicial case, the Minister's office should indicate that an intervention is not possible by any Minister and suggest that the constituent deal directly with that agency.

Dealings with Quasi-Judicial Tribunals on Behalf of Constituents

There are limitations on the ability of a Minister or Secretary of State to act on behalf of constituents as far as quasi-judicial bodies are concerned.

Ministers and their staff cannot intervene on behalf of any person or entity with a federal quasi-judicial agency on any matter before it that requires a decision in its quasi-judicial capacity.

According to Eugene Forsey, there is a Cabinet convention that a Minister should not "speak about or otherwise become involved in a colleague's portfolio without first consulting him and gaining his approval . . ." The practice has evolved whereby Ministers and their offices do not deal directly with public servants, but go through the office of the responsible Minister.

However, Ministers and their staff may seek information on the status of a matter. Furthermore, several departments have set out specific instructions on how Ministers' offices, usually in the constituency, can deal with enquiries regarding such matters as disability benefits, unemployment insurance, old age security, citizenship and immigration, etc.

Appendix 5

Guidelines on the Ministry and Crown Corporations

Any reference to a Minister is to be understood as applying to all members of the Ministry; that is, the Prime Minister, Ministers, Ministers of State and Secretaries of State.

These guidelines do not affect the dealings the Minister responsible for a Crown corporation must have with the corporation to exercise his or her responsibilities for determining the broad orientations of the corporation, including approving its corporate plan, dealing with appropriations and recommending these to Cabinet. The Minister, however, does not become involved in day-to-day operations nor does his or her staff. Because of the wide range of activities carried out by individual Crown corporations, the appropriate role of the Minister must be determined on a case-by-case basis.

1. No Minister should personally promote the private interest of any individual, corporation or non-governmental organization, including a constituent, with any Crown corporation.
2. It is always appropriate for a Minister to raise the concerns of a constituent directly with the Minister responsible for a Crown corporation.
3. The staff of a Minister when dealing with constituency matters may, however, make representations to a Crown corporation.
4. The staff of the responsible Minister, because of their special responsibilities in support of their Minister, may not make representations, on behalf of a constituent, to any Crown corporation which falls within their Minister's portfolio of responsibilities.
5. The office of the Minister responsible for a Crown corporation should establish a procedure, in cooperation with the corporation, to enable the Minister's office to pass on as a referral, for the corporation's appropriate action, representations or enquiries which the Minister or his or her office receive from Parliamentarians, other Ministers or their offices, the Minister's own constituents or, more generally, the public. Crown corporations should establish a procedure to record all representations and enquiries received on these matters. The Office of the Ethics Counsellor will work with Minister's offices and the Crown corporations in establishing these procedures.
6. These guidelines do not prevent any Minister or their political staff from social contact with the officers and staff of Crown corporations, nor from participating in briefing sessions initiated by the corporation.

Appendix 6

The Ministry and Activities for Personal Political Purposes — Guidelines

The Conflict of Interest and Post-Employment Code for Public Office Holders (Conflict of Interest Code), specifically its principles, places an obligation on Ministers, Ministers of State and Secretaries of State to ensure that any leadership campaign, official or unofficial, be organized on their behalf in a manner that will prevent “real, potential or apparent conflicts of interest from arising.”

Principles (1), (2) and (5) are directly relevant:

Ethical Standards

(1) Public office holders shall act with honesty and uphold the highest ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced.

Public Scrutiny

(2) Public office holders have an obligation to perform their official duties and arrange their private affairs in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law.

Public Interest

(5) On appointment to office, and thereafter, public office holders shall arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from arising, but if such a conflict does arise between the private interests of a public office holder and the official duties and responsibilities of that public office holder, the conflict shall be resolved in favour of the public interest.

APPLICATION

The application of these principles to activities for personal political purposes has consequences for a Minister in four areas: contracts with the department, registered lobbyists working on a campaign, the operations of the ministerial office and fundraising.

Contracts

Ministers need to be mindful of situations where individuals involved in the Minister’s campaign, whether as fundraisers, organizers or strategists, may be working on contracts with the Minister’s department. This is a situation which can give rise to the appearance of a conflict of interest and needs to be resolved by the Minister in the public interest by declining the active support of the individual on the campaign. Alternatively, the individual might choose to cease to perform the contract work with the department. Either step will resolve the matter. It is to be noted that this issue arises when an individual is involved in the campaign and is working on a contract. If the contract is with a firm, there is nothing to prevent the contract continuing, provided the individual in

question is no longer involved. In cases where there is any ambiguity, reference should be made to the Office of the Ethics Counsellor.

Lobbyists

Ministers also need to be mindful of situations where individuals involved in the Minister's campaign, whether as fundraisers, organizers or strategists, may be registered under the Lobbyists Registration Act to lobby the Minister's department. This again is a situation which can give rise to the appearance of a conflict of interest and needs to be resolved by the Minister in the public interest by declining the active support of the individual on the campaign. Alternatively, the individual might choose not to lobby the department so long as he or she was involved in the campaign. Either step would resolve the matter. In cases where there is any ambiguity, reference should be made to the Office of the Ethics Counsellor.

Ministerial Offices

There are well-established guidelines for ministerial offices to ensure that public funds are not used in any partisan political activity. Ministers and their staff often combine political activity with trips which are primarily for official ministerial purposes. Provided the official purpose for the travel is central, subsequent partisan political events are permissible. The same approach should apply to leadership campaigns. Responsibility is with the Minister to ensure that any trip, which is publicly funded, meets this test. If ministerial exempt staff want to become engaged full-time in a campaign, they need to either take a leave of absence without pay or resign.

Fundraising

Fundraising is an important part of the political process, including for leadership campaigns. But leadership fundraising when it is to support directly the personal political interest of a Minister does raise several questions which need to be carefully managed.

Disclosure of contributions is an important element in most political fundraising. This is also the case for a leadership campaign. Without disclosure of all contributions, both financial and those in kind, there may be concerns that the Minister had undeclared future obligations to those who contributed to his or her campaign.

To avoid this, Ministers raising money for a leadership campaign may opt to put contributions in a blind trust to be disclosed at an appropriate time after the official campaign has been initiated and no later than 30 days before a convention.

All contributions, including contributions in kind, collected outside of a blind trust, or which otherwise become known to the Minister, will be disclosed every 60 days. All contributions, both financial and in kind, that were received before the publication of these guidelines will be disclosed within 30 days.

Ministers should consult with the Office of the Ethics Counsellor when establishing a blind trust or putting in place procedures for fundraising and disclosure.

These guidelines do not apply to campaign expenditures, nor to funds raised for a political party as they were not raised for personal political purposes.

Conclusion

These guidelines set out the most obvious issues which Ministers contemplating or engaged in a leadership campaign must address. The central point is that responsibility for ensuring there is no conflict rests with the Minister, not with those, for example, who have contracts with the Minister's department or who are lobbying that department. Questions will inevitably arise about particular situations. These can best be resolved by the Minister's office contacting the Office of the Ethics Counsellor.

While this guidance has focussed on leadership campaigns, it applies, as well, to other situations where a personal political interest is being pursued, such as fundraising for a leadership review.

Appendix 7

Administrative Process — Administration of the Conflict of Interest Code

Office of the Ethics Counsellor (EC)
(chart)

Appendix 8

A Summary of Ethics Initiatives from 1973–93

The Government of Canada framework for ethics issues has emerged over almost 30 years of initiatives by Prime Ministers. From its initial base, it has expanded and become more comprehensive as public expectations have risen and as experience has pointed to new areas of attention.

At every step of the way, the framework has remained rooted in Canada's constitutional conventions. It has consistently been a means for the Prime Minister to define the ethical standards expected of members of the Ministry and other people whom he or she appoints and then assess actions based on that framework.

The 1970s

Prime Minister Trudeau issued Conflict of Interest Guidelines in December 1973. They consisted essentially of principles that the government applied to Ministers, political staff (Minister's exempt staff) and Governor-in-Council Appointees through internal directives. The government established an Office of the Assistant Deputy Registrar General to administer those guidelines. The Prime Minister extended the guidelines to ambassadors and Parliamentary Secretaries in 1978, and issued

post-employment guidelines.

In 1979, Prime Minister Clark issued similar guidelines, and extended their application to Minister's spouses.

The 1980s

In 1983–84, a bi-partisan Task Force on Conflict of Interest (the Starr–Sharp Task Force) undertook a comprehensive review. In May 1984, it issued a report, *Ethical Conduct in the Public Sector*, which proposed a Code of Ethical Conduct.

In September 1985, Prime Minister Mulroney tabled a new Conflict of Interest and Post-Employment Code for Public Office Holders in Parliament. This Code was an administrative instrument that applied to all federal office holders, including Ministers, their political staffs and Governor-in-Council appointees.

In 1987, the Honourable Justice W. D. Parker reported on his enquiry into allegations of conflict of interest in the affairs of the Minister of Industry, the Honourable Sinclair Stevens. Amongst the recommendations made, he advised that the asset divestment mechanisms of frozen and retention trusts be abolished and that if a blind trust option were retained, only a narrowly defined category of assets should be permitted for inclusion. The recommendation was accepted and, as a consequence frozen and retention trusts were eliminated as divestment options; publicly traded securities of corporations and foreign governments were the only type of assets permitted to be included in a blind trust.

In 1988, Prime Minister Mulroney announced new procedures for the review of appointments, a study of lobbyist registration and parliamentary study on a Code of Conduct for Parliamentarians. Parliament passed the Lobbyists Registration Act in 1988, and it was administered by the Department of Consumer and Corporate Affairs.

The 1990s

In 1993, Prime Minister Campbell announced a government reorganization. This led to consolidation of responsibilities for administering the Lobbyists Registration Act and the Conflict of Interest and Post-Employment Code for Public Office Holders under the Assistant Deputy Registrar General in the new Department of Industry.

Appendix 9 Office Operations and Resources

In addition to its responsibilities under the Lobbyists Registration Act, the Office of the Ethics Counsellor is responsible for addressing the ethics issues of approximately 1250 public office holders whose work is largely full-time in nature and 2200 public office holders whose work is more part-time. This clientele has remained fairly stable in recent years. In comparison, just 143 people were subject to the first federal Conflict of Interest Guidelines in 1974.

The Office of the Ethics Counsellor exercises the delegated authority of the Minister regarding the processing of all access to information requests. Since 1994, the number of access to information requests handled by the Office has risen from a total of three to an average of forty to fifty.

The Office of the Ethics Counsellor has an operating budget of \$2 050 068 for the 2002–03 fiscal year. Of this, 87.7 percent supports salaries, benefits and related expenses. The Office has a staff allocation of 23.0 full-time equivalents.