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The Second Report of the  
**Ethics Counsellor**

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on the Activities of  
the Office of the Ethics Counsellor  
from October 1, 2002 to September 30, 2003

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December 10, 2003

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 pleasure that I present to you the second *Annual Report of the Ethics Counsellor*. As with my first report last year, this report meets your promise that the Ethics Counsellor would now prepare an Annual Report on the activities of the Office.

Given the expectation that the work of this Office will be taken up next year by the new Ethics Commissioner, this report emphasizes some aspects of our recent work that will be particularly relevant to that individual and to his or her office.

I believe there is a rising standard of ethical conduct in government. Although this Office deals with a substantial range of complex issues and although public expectations continue to rise, I have been consistently pleased with the extent to which public office holders actively seek to ensure that they operate in ways that will withstand objective scrutiny.

Yours sincerely,

Howard R. Wilson  
Ethics Counsellor

Canada





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## Introduction

The first *Annual Report of the Ethics Counsellor* in 2002 provided an opportunity to inform Canadians about the work of the Office. Going well beyond a listing of activities or major situations that had been investigated, that report set out the basis for the work of the Office and discussed the framework for ethics issues in the Government of Canada, particularly the *Conflict of Interest and Post-Employment Code for Public Office Holders* (the Code). It also noted the series of changes that have reflected a continually rising bar set by Canadians in terms of ethical conduct.

That report was largely structured around an explanation of the three major roles that the Office of the Ethics Counsellor plays: an advisory role, a review role and a partnership role. For each role, the report provided details of some major issues with which the Office has dealt since 1995. Finally, the report noted actions taken by the Office to fully meet the expectations of Canadians for operations and processes that are as accountable and transparent as they can be.

This report draws on a similar structure, in particular, a focus on the three major roles of the Office. It covers the period from October 1, 2002 to September 30, 2003. During that time, the government introduced legislation that, among other elements, proposed to replace the role of Ethics Counsellor with a new Ethics Commissioner who would be responsible to Parliament. That legislation did not receive Royal Assent prior to the prorogation of Parliament on November 12, 2003.

It is expected that when Parliament resumes in early 2004 the legislation will be reinstated and passed. This is, therefore, the final report of the Ethics Counsellor. As such, it represents an opportunity to note some major themes and issues that a new Ethics Commissioner will also have to address.

Readers who wish to gain more background on the work of the Office and its guiding philosophy are encouraged to read the previous report, which is available on the Web site of the Office of the Ethics Counsellor at <http://strategis.gc.ca/ethics>. Further information regarding some of the issues raised in this report is available on the Web site.





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## The Advisory Role

The fundamental orientation of the Office of the Ethics Counsellor is toward a proactive approach centred on observing the basic principles set out in the Code. It is based on the working assumption that people in public life want to “do the right thing.” This makes the advisory role of the Office critical.

Since the Office was created, it has provided advice to public office holders that enables them to bring their personal situations in line with the high standards that Canadians expect. This both reduces the chance that the actions of an individual public office holder may be called into question and encourages them to arrange their affairs in ways that eliminate the need to withdraw from particular decision-making situations.

The two great strengths of the *Conflict of Interest Code* are that it is based on a set of principles and is proactive in attempting to avoid conflicts from arising in advance. The principles set out the standards expected of public office holders. Of the ten principles, three are of particular importance. The first states that 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 states 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 third principle requires public office holders to 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 it shall be resolved in the public interest.

The Code then establishes from these principles a number of rules covering assets and liabilities, outside activities, gifts and hospitality, and post-employment activities.

The confidential disclosure report that public office holders prepare at the outset enables the Office to guide them on the steps necessary to avoid conflicts in advance. Subsequent annual reviews ensure that public office holders remain in full compliance with the obligations of the Code. Canadians should not, therefore, be surprised that when allegations are made that a public office holder has breached the Code, that we commonly find that these allegations are not supported by the facts.

On a day-to-day basis, this advisory role took many forms. Much of it included discussing and assessing unique personal or family financial situations or invitations made to public office holders by groups or individuals outside government.

However, two issues arose with more general implications for Canadian conflict of interest policies and practices.

## **1.1 New Policy on Recusal**

In January 2003, the Honourable Paul Martin asked the Ethics Counsellor for advice on how to avoid real, potential or apparent conflicts of interest were he to become Prime Minister.

After consulting with some provincial colleagues the Ethics Counsellor provided detailed advice to Mr. Martin on July 28, 2003 on the steps he would have to take. This advice can be found at <http://strategis.gc.ca/ethics>.

While this situation was quite specific, it encouraged the Office to review our approach to how we deal with recusals. Recusals occur when a person needs to withdraw from decision-making on a particular issue due to a personal interest, which might be, for example, ownership of a private company. If this company has dealings with the Government of Canada, then the public office holder must avoid dealing with matters of direct and specific benefit to the company.

Prior to 2003, the Office had not published its decisions on recusals; these were simply transmitted to the public office holder. Given the commitment to transparency in the work of the Office, it was decided earlier this year that advice to public office holders on recusals would be included as part of each public office holder's Public Declaration. This would include information on the areas of recusal plus the steps taken to ensure they are respected.

## **1.2 Implementing the Guidelines on the Ministry and Crown Corporations**

On June 11, 2002, the Prime Minister issued new guidelines regarding Ministerial dealings with Crown corporations. These guidelines stated that Ministers could not contact Crown corporations directly on behalf of constituents, and established acceptable procedures for Ministerial staff to raise constituent concerns with these corporations. In addition, it was recognized that each Crown corporation should establish procedures that would enable the responsible Minister for the Crown corporation to refer inquiries or representations from other Ministers or parliamentarians for appropriate action by the Crown corporation. These procedures seek to confirm and reinforce the managerial autonomy of Crown corporations and improve transparency.

In July 2002, Crown corporations were formally requested to ensure the implementation of internal procedures for dealings with Ministers based on the new guidelines. To assist them, the Office developed and distributed *Guidelines on the Ministry and Crown Corporations (Procedural Guidance)*. In response to requests from several Crown corporations, this was followed by the distribution in July 2003 of specific models that they could use to develop their own procedures. Substantial consultations took place between individual Crown corporations and the Office in order to ensure the success of the new guidelines.



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## The Review Role

The review role of the Office has evolved over time. When the Office of the Ethics Counsellor was established in 1994, the Prime Minister specifically indicated that he might call upon the Ethics Counsellor to investigate allegations against his Ministers involving conflict of interest. By 1999, the Ethics Counsellor began to initiate reviews on his own initiative when allegations were made that the Code had been breached by a Minister. In 2002, the Prime Minister empowered the Ethics Counsellor to initiate reviews related to Ministers when complaints were made by any parliamentarian. The results of these inquiries are made public.

Throughout the year, this review role took many forms but generally reinforced existing understandings of the *Conflict of Interest Code*. For example, the Ethics Counsellor reviewed the actions of Ministers on issues of specific interest to the constituency or region that they represented in Parliament. The Ethics Counsellor also was asked to review actions of Ministers who were seeking the leadership of their party to ensure that there was no contravention of the guidelines for the “*Ministry and Activities for Personal Political Purposes*” (“the Leadership Guidelines”). As has frequently been the case over the years, there was indeed intense interest in the application of the rules on gifts and hospitality.

### 2.1 Public Tendering

In the course of the year, the Office examined several contracts that had been issued by Ministers’ offices. Ministers are provided with public funds to facilitate the operations of their offices. Contracts that are entered into by Ministers or their exempt staff are subject to the same requirements as those for the Government of Canada in general — the *Financial Administration Act* and the Treasury Board Contracting Policy. The policy generally encourages a competitive process in soliciting and awarding contracts. The policy does permit a “directed contract,” the value of which does not exceed \$25 000, including GST.

For a contract with a value up to \$100 000, however, this competitive requirement can be met by posting an “Advance Contract Award Notice” (ACAN) on the “MERX” Web site that the Government of Canada and many other governments use for tendering purposes. An ACAN is a notice of intention to award a contract to a particular firm or individual. This system allows anyone who believes that they can offer those goods or services to challenge the proposed contract. ACANs are posted for a period of 15 days.

If no challenge to a proposed contract is received by the end of this period, the contract can be awarded, being considered by Treasury Board to have been done by a competitive process.

The Office is of the strong view that the use of ACANs is to be avoided, as these are not sufficiently transparent for the purposes of ensuring openness in soliciting contract proposals for Ministers' offices. Similarly, contracts under \$25 000 in value should also be tendered if the recipient is associated in any way with the Minister. In the view of the Office, these smaller contracts must be tendered if there is any possibility of a need later to extend the contract value beyond \$25 000. In general, the Office believes that it is always better to tender.

## **2.2 Confirming Limits on the Political Activities of Governor-in-Council Appointees**

The government has held a long-standing view that Governor-in-Council appointees should not take part in partisan political events even if they did so before their appointments. The rationale for this view is that continuing active partisan political involvement at the federal, provincial or municipal level can give rise to concerns about the ability of an appointee to remain impartial in the discharge of his or her official duties and responsibilities. While this is particularly the case with quasi-judicial appointees, it applies to all others as well.

Accordingly, the advice of the Office to Governor-in-Council appointees has consistently been that they may not seek nominations, raise funds, manage a campaign or campaign personally. If they wish to become engaged in any of these activities, they must resign. In a limited number of circumstances they may, however, be permitted such activity if they take a leave of absence without pay. Lastly, attending political meetings is not considered desirable.

At the federal level, in February 2003, the national director of the Liberal Party of Canada asked if former Cabinet Ministers who held Governor-in-Council appointments could become delegates to that party's leadership convention, as is provided in the party's constitution. The Ethics Counsellor determined that in view of government policy they should not receive invitations to participate.

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## The Partnership Role

As is the case internationally, the rising ethical standard that Canadians expect from their governments, the private sector and all institutions in society has been matched by a growing network of people and organizations that address ethical issues. The Office of the Ethics Counsellor values the benefits it can receive and the contributions it can make in the various national and international organizations that are devoted to the promotion of stronger public and private sector ethics.

At the domestic level, the Office appreciates the insights and experience of its partners across Canada as the work of applying ethics to specific issues continues to evolve. This same sense of shared commitment and shared learning is increasingly the case outside Canada, as the Office works with the many multilateral institutions and foreign governments. They have been particularly interested in the fact that our Code is based on a strong set of principles. As stated earlier, the Code seeks to avoid conflicts by being proactive and by taking the necessary compliance steps in advance.

### 3.1 Partnerships in Canada

The Office of the Ethics Counsellor works extensively with provincial and territorial government partners through the Canadian Conflict of Interest Network (CCOIN). This partnership enables all participants to discuss common issues and emerging topics. Through CCOIN, expert peers act as a sounding board, offering insights to colleagues who face difficult questions or new situations.

The link to CCOIN members was valuable during the past year for the Office. For example and as indicated earlier, the Ethics Counsellor drew on the experience and expertise of CCOIN colleagues while considering how the Honourable Paul Martin might arrange his personal business interests if he were to become Prime Minister.

The Office is also engaged with the growing number of people and organizations who play ethics advisory roles in Canada's private sector and non-governmental settings. Much of this work takes place through the Ethics Practitioners' Association of Canada.

## 3.2 International Outreach

Neither the networks of ethics practitioners nor the contributions of the Office are confined to Canada. With the growing attention to good and ethical governance as a fundamental driver of sound public policy and improved democratic practice, the Canadian experience and expertise of the Office is being called on in a range of international settings. The exchanges of information that these involve are as useful for the Office as they are for the international partners.

During the past year, the Ethics Counsellor and his senior staff accepted invitations to take part in international conferences in South Korea and the United States to discuss Canadian approaches to public sector ethics issues. At the Organisation for Economic Co-operation and Development (OECD), the Ethics Counsellor chaired its Expert Working Group on Managing Conflict of Interest. This work developed and led to the adoption by the OECD Council of the new *OECD Guidelines for Managing Conflict of Interest in the Public Sector*. This document outlines “best practices” in this complex area of public governance, drawing heavily on Canada’s proactive approach.

The Office has continued to be an active participant in work to bring ethics officers from the Americas together. This included hosting the second annual meeting of the Network of Public Ethics Offices of the Americas and participating in the work program of this informal network. To support the activities of partners in Latin America and to provide more accessible information on Canada’s *Conflict of Interest Code*, the Office Web site has made some of its basic documents available in Portuguese and Spanish.



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## Ensuring Accountable, Transparent Actions

Just as the Office of the Ethics Counsellor seeks to create a climate in which public office holders take steps to avoid the potential for conflicts of interest, the Office also ensures that its own operations occur with the greatest possible degree of transparency. The Ethics Counsellor continued to make himself available, particularly to parliamentarians and the media.

Much of this work involved responding to letters, phone calls and e-mails from individual Canadians. Another focus of effort has been the substantial work needed to meet the requirements of the *Access to Information Act* and the *Privacy Act* in terms of responding to specific requests and reviewing thousands of pages of documentation to strike the correct balance between the right of access and the right to privacy in the disclosure of a public office holder's assets and activities.

In addition to that, the commitment to accountability and transparency takes a number of forms.

### 4.1 Appearances before Parliamentarians

The Ethics Counsellor appeared before the Standing Committee of the House of Commons on Procedure and House Affairs on December 5, 2002 and the Senate Standing Committee on Rules, Procedures and the Rights of Parliament on February 18, 2003. In both cases, he explained the current system and addressed issues as part of parliamentary reviews of the proposal made by the Prime Minister for a code of conduct for parliamentarians and the creation of a new Ethics Commissioner role. These proposals later became incorporated in Bill C-34.

### 4.2 Reporting to Canadians through the Office Web Site

The Internet has become a primary vehicle for Canadians and Canadian institutions to seek and provide information. The Web site of the Office of the Ethics Counsellor (<http://strategis.gc.ca/ethics>) has become a valuable way to provide information rapidly and transparently to Canadians on many aspects of the work of the Office.

In an average week, the Web site of the Office receives almost 1000 visits, and some 2272 pages are accessed. Over the period covered by this report, the site had 50 832 individual visitors, who accessed 118 141 separate pages.

An excellent example that emerged during the year of this capacity to provide information quickly was in the context of information on fund-raising by candidates for the leadership of the Liberal Party of Canada. In June 2002, the Prime Minister issued a set of rules governing the use of public resources and reporting on financial contributions that Ministers were soliciting or receiving for their leadership campaigns.

Given the degree of interest in leadership campaign fund-raising, the work of the Office to receive and post fund-raising information on its Web site proved to be very popular. This became a way to provide information to the media and to Canadians in a timely and transparent way.

## **Conclusion**

This report sets out some of the more important developments that occurred over the past year. Our experience is that the principle-based and proactive approach of the *Conflict of Interest Code* is sound. New issues, however, will continue to arise and the Code must be capable of evolving.