

**The 2007-2008  
ANNUAL REPORT**

**In respect of the  
*CONFLICT OF INTEREST ACT***

**June 2008**

**Mary Dawson  
Conflict of Interest and  
Ethics Commissioner**

The 2007-2008 Annual Report

in respect of the  
*THE CONFLICT OF INTEREST ACT*

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June 13, 2008

The Honourable Noël A. Kinsella  
Speaker of the Senate  
Room 280-F, Centre Block  
Parliament of Canada  
Ottawa, Ontario K1A 0A6

Dear Mr. Speaker:

I am pleased to submit to you my first report on the performance of my duties and functions under the *Conflict of Interest Act* in relation to public office holders for the fiscal year ending March 31, 2008.

This fulfills my obligations under paragraph 90 (1)(b) of the *Parliament of Canada Act*.

Sincerely,

Mary Dawson  
Conflict of Interest and Ethics Commissioner



66, rue Slater Street  
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June 13, 2008

The Honourable Peter Milliken  
Speaker of the House of Commons  
House of Commons  
Room 224-N, Centre Block  
Ottawa, Ontario K1A 0A6

Dear Mr. Speaker:

I am pleased to submit to you my first report on the performance of my duties and functions under the *Conflict of Interest Act* in relation to public office holders for the fiscal year ending March 31, 2008.

This fulfills my obligations under paragraph 90 (1)(b) of the *Parliament of Canada Act*.

Sincerely,

Mary Dawson  
Conflict of Interest and Ethics Commissioner

## **PREFACE**

This Annual Report is made in fulfillment of the requirements of paragraph 90 (1)(b) of the *Parliament of Canada Act*. It reports on activities of the Conflict of Interest and Ethics Commissioner under the *Conflict of Interest Act* in respect of public office holders for the 2007-2008 fiscal year ending on March 31, 2008.

A separate annual report is made in fulfillment of the requirements of paragraph 90(1)(a) of the *Parliament of Canada Act*. It reports on the Commissioner's activities under the *Conflict of Interest Code for Members of the House of Commons* for the same fiscal year.

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## INTRODUCTION

The *Conflict of Interest Act*, which came into force on July 9, 2007, and the position of Conflict of Interest and Ethics Commissioner were both created under the *Federal Accountability Act*. They replace the *Conflict of Interest and Post-Employment Code for Public Office Holders* and the position of Ethics Commissioner, respectively.

The overall objective of the *Conflict of Interest Act* (the Act) is to enhance confidence and trust in government by holding a wide range of public sector officials to standards that place the public interest above their private interests. The Act stipulates that compliance with its terms is a condition of employment for some 2,650 officials who are known under the Act as public office holders. The Act is intended to establish clear conflict of interest and post-employment rules and to minimize the possibility of conflicts arising between private and public interests. The Act is also intended to encourage experienced and competent individuals to seek and accept public office and to facilitate interchange between the private and public sectors.

The Conflict of Interest and Ethics Commissioner is an Officer of Parliament who reports with respect to administrative matters to the House of Commons through the Speaker of the House of Commons. The Commissioner has the rank of a deputy head of a department and is responsible for the control and management of the Office of the Commissioner.

The role of the Office of the Conflict of Interest and Ethics Commissioner in relation to the Act is to administer it with a view to avoiding conflicts of interest. More specifically, the main responsibilities of the Office are:

- to advise public office holders on obligations under the Act;
- to receive confidential reports of assets, liabilities and activities of certain public office holders;
- to maintain confidential files of required disclosures;
- to maintain a public registry for publicly declarable information; and
- to conduct examinations into alleged contraventions of the Act.

The Office is primarily concerned with situations of conflict of interest as set out in the Act and not with all types of ethical concerns. Perhaps because “ethics” is included in the title of the Commissioner’s position, there is a tendency for some to think of the Office as a single window into the government’s ethics machinery. The actual mandate is, however, focussed on conflicts of interest between the public duties and private interests of public office holders.



## A YEAR OF TRANSITION

On July 9, 2007 the new *Conflict of Interest Act* came into force and I started work as Canada's Conflict of Interest and Ethics Commissioner. The Office plays an important role in reassuring Canadians that Canada's most senior public officials and elected representatives are held to a very high standard of conduct. This annual report, which covers the period up to March 31, 2008, sets out the highlights of what has been nine months of transition and continuous learning. Although my time in office does not span the full year being reported upon, statistical information and budget numbers contained in this Report are provided for the full 12 months of the fiscal year in order to facilitate comparisons with reports for previous years.

My focus is on prevention, so one of my first priorities was to make an immediate effort to provide clear information about the new Act and its implications for those governed by it. Within the first three months, all public office holders were sent a copy of the Act and summaries of its provisions. In addition, my Office has been active in delivering presentations to groups covered by the Act as well as to groups with a more general interest in the federal conflict of interest regime and the functioning of my Office.

Having a legislated set of conflict of interest rules for public office holders is a significant step in upholding the standards Canadians expect of public office holders at the federal level. In my view, public office holders consider it very important to behave ethically. They want and deserve a clear understanding of the standards expected.

I intend to ensure that the Act is applied and interpreted fairly and consistently. The legislation imposes significant obligations on people who hold public office at the federal level. In applying its provisions, I have been particularly mindful that two of the stated purposes of the Act are to encourage experienced and competent people to seek and accept public office and to facilitate interchange between the private and public sectors. While I must respect and work within the intent of the Act, I intend to apply it with common sense and due consideration for the people who are bound by it. Further, my expectation for the Office is that our processes be as user-friendly as possible in a mutually respectful environment.

The Office is always available to provide confidential advice to individual public office holders. We encourage them to seek that advice. This advisory service has been particularly active this year providing answers over the telephone or in writing to questions posed about the new Act and what it means for public office holders.

We have also worked to inform the public about my role. We have observed some confusion about this as some of the issues raised with us by members of the public go beyond my jurisdiction or mandate. It has therefore been important to provide clear, factual information. The Office website has been updated to include new information relating to the Act and summaries of public office holders' obligations. Recently a new guideline on gifts was posted, as well as a guideline on the reimbursement of costs associated with divestment of controlled assets.

I met with the Standing Committee on Access to Information, Privacy and Ethics on November 20, 2007 to discuss my mandate, reporting requirements and objectives. I have made presentations to senior officials, heads of federal agencies and the Council on Governmental Ethics Laws, an international organization of government ethics administrators. In partnership with the Office of the Senate Ethics Officer and the Canada Public Service Agency, my Office hosted the annual meeting of the Canadian Conflict of Interest Network in September 2007 and welcomed conflict of interest commissioners from ten provincial and territorial jurisdictions. I would like to express my appreciation for the collegiality and support shown to me by my colleagues in assisting the Office with organizing that meeting.

The Office has undergone some organizational changes over the year in response to the new mandate and I expect to make some more adjustments over the course of the coming year. The most notable change this year was the creation of a legal services unit to give us the capacity to address various questions raised by the introduction of the legislative regime as well as to provide advice on the interpretation and application of the revised *Conflict of Interest Code for Members of the House of Commons*. I expect to rely on our internal legal services unit to provide the legal support for examinations and compliance functions.

## **APPLYING THE ACT**

Considerable effort this year has gone into careful and systematic study of the new Act so that it can be applied fairly and consistently. It has been important to begin developing internal working tools and a common understanding within the Office of how the Act is to be applied.

In the course of applying the Act, I have looked at previous positions developed under the former *Conflict of Interest and Post-Employment Code for Public Office Holders*. While this is often very instructive, it is not always the case that interpretations under the Code remain valid under the new Act. The need to follow proper principles of statutory interpretation for the new Act has meant that past practices have had to be modified in some instances.

In the following pages I will describe the activities of the Office in implementing the Act. At the same time I will make observations about the Act itself. My responsibility is to implement the Act as it is written. On occasion I have had to interpret the Act in the face of ambiguous wording, and, in other cases, I have had to find ways to give practical meaning to the language and intent of a provision where a literal reading would appear to be inappropriate in the context of the general scheme of the Act. My intent is to be transparent about the approaches I am taking in these circumstances.

### **Who is Covered by the Act**

The Act has two definitions that establish to whom the Act applies. The first is “public office holder”. This expression includes ministers, ministers of state, parliamentary secretaries, ministerial staff, ministerial advisors, deputy ministers and most full and part-time governor-in-council appointees. There are approximately 2,650 public office holders, more than half of whom are part-time.

All public office holders must comply with certain basic rules such as arranging their private affairs to avoid conflicts of interest, not using influence or allowing themselves to be influenced inappropriately, recusing themselves in instances of potential conflicts and not accepting gifts that might reasonably be seen to have been given to influence the public office holder in the exercise of a power, duty or function.

The second is “reporting public office holder”. Approximately 1,100 of the 2,650 public office holders are defined as reporting public office holders. This group is comprised primarily of those public office holders who work full-time.

Reporting public office holders are subject to a broader range of obligations under the Act, including the obligations to make confidential disclosures and related public summary statements and to divest themselves of controlled assets through arm’s-length sales or blind trust agreements. They are also required to make public declarations of recusals, certain assets, certain outside activities, and gifts (other than those from

relatives or friends) that have a value of \$200 or more. Ministers of the Crown and parliamentary secretaries have some additional obligations relating to liabilities and travel.

By way of general observation, the Act covers a multiplicity of different groups and its application may not always fit for one group as easily as it may fit for another group. This will become apparent in some of my comments that follow. Most of these comments apply only to reporting public office holders.

### *Governor in Council Appointees*

Understanding the definition of public office holder is fundamental to understanding the scope of application of the Act. Two issues have arisen in interpreting the scope of the expression “Governor in Council appointee”, listed in paragraph (d) of the definition as one of the classes of individuals included within the definition.

The first issue relates to the role of the Governor in Council with respect to appointments. Sometimes an appointment to a public office is made by a board or some other entity and only approved by the Governor in Council. The expression “Governor in Council appointee” would not appear to include individuals appointed by another entity even if, for example, the Governor in Council approves the salary and benefits of that individual. I have taken the position that individuals appointed by an entity other than the Governor in Council, or in some cases a minister, are not covered by the Act. This interpretation is strengthened by the existence of paragraph (d.1) in the definition “public office holder”, which specifically includes “a ministerial appointee whose appointment is approved by the Governor in Council”. The fact that the Act makes specific reference only to ministerial appointees approved by the Governor in Council suggests that other appointees that are then approved by the Governor in Council are not meant to be subject to the Act.

Soon after the coming into force of the Act, a small number of individuals who were treated as subject to the former conflict of interest codes but whose appointments had not been made by, but only approved by, the Governor in Council were advised that they were not subject to the provisions of the Act. Most of the individuals concerned have opted to continue as if they were covered by the Act.

The other issue relates to the fact that the word “appoint” is not always used where the Governor in Council names a person to a position. Where the enabling statute gives the Governor in Council the authority to appoint or name an individual to a public office, I have taken the position that the individual is covered by the Act regardless of the language in the instrument that names the person. Thus, for example, an individual is considered to be a Governor in Council appointee if the following or similar expressions are used in the instrument that provides for the appointment: “designates”; “confirms the acting of”, and “authorizes the acting of”.

As my Office is advised of new appointments, there may well continue to be situations where individuals not subject to the former conflict of interest codes appear to fit the definitions under the Act or vice versa. These cases will be dealt with after undertaking the appropriate research and taking steps to ensure that similar situations will be treated similarly.

### *Ministerial Staff*

Under the former Code, all staff working for a Member of Parliament who is also a minister, whether in a constituency office, on Parliament Hill or in a departmental office, were considered to be subject to the Code. Early in my mandate I determined that the expression “ministerial staff”, as used in the Act, does not include staff in offices on Parliament Hill or in constituency offices. In these latter instances, the staff are working for the minister in his or her role as a Member and not in his or her role as a minister.

### **Disclosures and Declarations**

Within 60 days after appointment, reporting public office holders are required to make a confidential report to my Office disclosing such matters as the description and value of all their assets, direct and contingent liabilities, recent and expected income and a description of certain of their activities in the previous two years.

Within 120 days after appointment, reporting public office holders must make public declarations of all assets that are neither exempt nor controlled assets, as well as any positions of office with outside organizations that are permitted under the Act. They must also sign a summary statement indicating the method used to divest themselves of all controlled assets.

In addition, throughout the term of their appointments, disclosures and public declarations are required for certain gifts, all recusals and any new positions of office with outside organizations that are permitted. Annually after appointment, a review of confidential disclosures is required, which results in an adjustment to the public declarations if necessary. All declarations are posted on the registry for reporting public office holders, which can be accessed from the Office website.

Of the 416 new reporting public office holders during the year, 82 percent made their initial disclosures within the required 60 days of appointment and 52 percent met the 120 day requirement. This rate of compliance with the deadlines is disappointing. However, some of the delay in meeting the required timelines was caused this year by the uncertainty regarding the timing of the coming into force of the new Act and by the change to a legislated regime with new rules to be interpreted. It is expected that there will be better adherence to the deadlines in the future, especially with the implementation of a new monetary penalties regime over the course of the next fiscal year.

There were delays in the annual review process as well, attributable in large part to the transition to a new regime, but these delays are well on the way to being addressed.

Letters have been sent to all reporting public office holders with past due annual reviews for an update of their information and we will be ensuring that the process of annual reviews takes place in a timely way in the future.

### **Divestment of Controlled Assets**

Reporting public office holders are prohibited from holding controlled assets and must, within 120 days after appointment, divest themselves of their holdings either by way of an arm's-length sale or placement in a blind trust. There are limited exceptions related to the use of the assets as security to a lending institution and where the assets are of minimal value.

These restrictions prevent reporting public office holders from investing in the stock market throughout the terms of their appointments and can sometimes require the resolution of difficult situations that can arise, for instance, when they hold controlled assets jointly with their spouses, or when they receive controlled assets after appointment by way of gift or testamentary disposition. In addition, there could be guardianship or trust arrangements, or situations where a power of attorney becomes a trustee on the death of a relative, that risk being undermined by divestment requirements.

Under the Act, reporting public office holders can seek reimbursement of costs related to divestment. The Office has recently published a document on its website called *General Guidelines for the Reimbursement of Costs* that deals with costs associated with divestment by sale or by placement in a blind trust.

Trust administration or dismantlement activities were undertaken with respect to a total of 110 individual trust arrangements during the year. The total cost to the Crown for these activities was \$692,242 for the year.

### *Controlled Assets and Declarable Assets*

Controlled assets are defined broadly in section 20 of the Act, being described as “assets whose value could be directly or indirectly affected by government decisions or policy ...” This general description is followed by a non-exhaustive list of examples of assets that are traded on markets open to the general public.

It could be argued that the value of virtually all assets could be directly or indirectly affected by government decisions or policy. However, this would lead to an unexpected result. Because the class of assets that must be publicly declared but not divested is not defined but only described as those that are neither controlled assets nor exempt assets, a broad reading of the class of controlled assets would render the category of declarable assets virtually non-existent. This would greatly increase the number and nature of assets subject to divestiture, many of which could only be divested by means of an arms-length sale. In some cases it would be virtually impossible to complete such a transaction within 120 days of appointment. Examples of what might be caught are working farms or family businesses.

For this reason, I am being guided by the list of examples, rather than the general description, in the definition of “controlled assets” to determine the scope of the meaning of “controlled assets”.

#### *Exemption from Divestment – Minimal Value*

The Act provides for an exemption for most reporting public office holders from the requirement to divest if the Commissioner is of the view that “the assets are of such minimal value that they do not constitute any risk of conflict of interest in relation to the reporting public office holder’s official duties and responsibilities”. Although the test is somewhat ambiguous, I am interpreting this to mean that an exemption cannot be granted if there is any risk of conflict no matter how small the value of the asset.

For reporting public office holders whose positions carry no risk of conflict in respect of controlled assets and whose controlled assets have a total value of less than \$20,000, requests for exemption will generally be approved. I have chosen this threshold because divestment by way of blind trust is rarely possible for assets where the total value is less than \$20,000. Trustees are simply not prepared to handle such relatively small accounts. Reporting public office holders have a choice under the Act of two ways to divest, by arm’s-length sale or blind trust. If I had chosen a lower threshold, that choice would effectively be removed, leaving the reporting public office holder the sole option of selling in order to comply with the Act. My interpretation preserves, to some extent, that choice.

#### *Temporary or short term appointments*

There are difficulties in applying divestment obligations to reporting public office holders who are appointed temporarily or for a specified short term. Divestment obligations must be completed within 120 days of appointment. This requirement causes a great deal of personal disruption where divestment is required for a minimal period of time. These situations arise frequently, particularly in respect of ministerial staff appointed for the summer or for other short periods of time. They also arise in respect of individuals acting temporarily to replace someone. Most acting appointments are for six months or less.

I have taken the view that there is little public interest to be served in enforcing the strict letter of the divestment provisions in such instances. If the appointment is for a period of less than 120 days, we apply the disclosure requirement but we do not apply the divestment provisions of the Act at all. However, these individuals remain subject to the general conflict of interest prohibitions.

#### **Penalties**

The Act provides a new power to impose administrative monetary penalties for failure to meet the legislated deadlines for disclosures, divestments and public declarations. The Office is putting in place the necessary administrative processes to

allow for a fair implementation of the penalty scheme. As a first step in this direction it has been necessary to focus on changing our records management systems. Our penalties regime will include a system of warnings and a consistent application of penalty amounts.

There may be quite legitimate reasons for an individual not to be able to meet the deadlines imposed under the Act, such as illness, difficulty in finding a trustee, extended travel and complexity of arrangements in order to be in compliance. The Act, however, provides no mechanism for extending the time limits within which reporting public office holders must comply with their obligations. In deciding whether to apply the penalties, I will need to take into account situations outside the immediate control of the reporting public office holder.



## **SIGNIFICANT INTERPRETATIONS**

### **Conflict of Interest and Private Interest**

The concept of conflict of interest is fundamental to the Act and is described in section 4 of the Act as follows:

#### *Conflict of interest*

*4. For the purposes of this Act, a public office holder is in a conflict of interest when he or she exercises an official power, duty or function that provides an opportunity to further his or her private interests or those of his or her relatives or friends or to improperly further another person's private interest.*

The concept of conflict of interest is built on the concept of private interest. However, "private interest" is only defined to the extent of excluding certain interests listed in section 2 of the Act.

*"private interest" does not include an interest in a decision or matter*

- (a) that is of general application;*
- (b) that affects a public office holder as one of a broad class of persons; or*
- (c) that concerns the remuneration or benefits received by virtue of being a public office holder.*

Determining when a private interest exists is a significant challenge. Private interests are not necessarily confined to financial or business interests as in the *Conflict of Interest Code for Members of the House of Commons*. At the same time, I am of the view that not every personal interest can be included in this concept. This is an area for significant future development that will arise out of both the advisory work of the Office and requests for examinations into particular fact situations. Much remains to be clarified in this regard.

This illustrates the evolving nature of a conflict of interest regime. Any statute on conflict of interest cannot possibly cover all situations under which a conflict of interest could arise. As new issues and situations come up, and as societal standards and expectations change, we need to be prepared to be adaptive and flexible in our interpretations and guidelines while staying within the terms of the Act. I believe this will be a fundamental challenge.

### **Outside Activities**

There were a number of inquiries from reporting public office holders about the prohibition against engaging in outside employment or other activities under section 15

of the Act. The prohibitions are generally quite broad and apply without reference to the existence of a conflict of interest. The Act does, however, provide for limited exceptions.

We have had to provide the often unwelcome advice that professionals (*e.g.* doctors, lawyers, engineers, accountants) are not able to hold office in professional associations, that students who work full-time during the summer in a minister's office cannot maintain any part-time positions they may otherwise have during the school year and that individuals appointed to federal boards cannot continue to manage or operate their private businesses and can no longer be directors or officers in their family corporations.

On the other hand, a reporting public office holder who is a director or officer of a Crown corporation may continue to be a director or officer of a financial or commercial corporation. Aside from the requirement that the Commissioner be of the opinion that there is no incompatibility with their public duties, the plain meaning of the words in subsection 15(3) of the Act places no restrictions on the type of outside corporation a director or officer of a Crown corporation may be involved with. My predecessors interpreted a similar provision under the former Codes as requiring the outside activity to advance the interests of the Crown corporation, but I am of the view that I cannot read such an interpretation into the statutory language.

There is a similar exception that allows any reporting public office holder to be an officer or director of a philanthropic, charitable or other non-commercial organization if the Commissioner is of the opinion that there is no incompatibility with the reporting public office holder's public duties. This provision allows for reporting public office holders to continue to make contributions to the well being of their communities and the country as a whole.

Finally, I recognize that there are some activities that do not fall within the prohibitions set out in section 15 against engaging in employment or a profession or running a business or commercial activity. I am of the view, for example, that in most cases, teaching a course where no employment relationship exists, contributing to a book or manual or writing articles for publication would not be activities caught by this prohibition.

## **Gifts**

My Office receives many inquiries about gifts. We have recently issued a *Guideline on Gifts for Public Office Holders (including Invitations, Fundraisers and Business Lunches)*. This Guideline is posted on our website and copies have been sent to reporting public office holders electronically.

The general prohibition against a public office holder or his or her family members receiving a gift seeks to preserve confidence in the integrity of public decision-making. Subject to limited exceptions, a gift is prohibited when it might reasonably be seen to have been given to influence a public office holder's decision-making.

In order to determine whether a particular gift is being offered inappropriately, all the circumstances surrounding that gift must be considered; hence it is not possible to articulate a general rule as to which gifts are or are not acceptable for public office holders. In this connection, the identity of the donor and his or her existing or future relationship to the public office holder is an important consideration.

There are many events for which invitations are extended to public office holders and their family members that fall within the definition of gift. In that respect, the question whether the invitation “might reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function” has to be addressed. It is important for the public office holder to question the reason for the invitation in the context of the office held.

On the other hand, an invitation to attend a function where the invitation is duty related (*i.e.* for which the public office holder had or has an organizational, ceremonial, presentational or representational role) is not considered to be a gift. Attendance is considered to be the fulfillment of an official function or duty.

Receiving a free business lunch risks being caught by the general prohibition on gifts if it might reasonably be seen to have been given to influence. The nature and venue of the lunch as well as the business relationship to the payor are relevant considerations. While a single business lunch may not be cause for concern, a series of free business lunches might reasonably be seen to have been given to influence the public office holder.

### **Movement between Public Sector Entities**

There is significant movement in any given year of reporting public office holders among federal public sector entities whether as deputies of departments or heads of boards, commissions, agencies or Crown corporations. The wording of the Act forces us to ask whether a change of position within the federal public sector triggers the post-employment obligations of the Act.

This question is particularly relevant for reporting public office holders with respect to the application of subsection 35(1) of the Act, which reads as follows:

#### *Prohibition on contracting*

*35. (1) No former reporting public office holder shall enter into a contract of service with, accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he or she had direct and significant official dealings during the period of one year immediately before his or her last day in office. [Emphasis added]*

To read the word “entity” as including a public sector entity, would be to limit mobility within the federal government. It would mean that a former reporting public office holder could not be hired within the one year period following his or her previous appointment or employment by another federal public sector entity with which he or she had significant dealings during the period specified. As a practical matter, I treat such movement as not being caught by subsection 35(1). Although I have the power under section 39 to waive the applicable period of the prohibition on a case by case basis, the language of section 39 itself suggests that section 35 is not intended to restrict contracts with public sector entities but rather only with private sector entities.

### **Timing of Post-employment Advice**

The Act requires that the Commissioner advise public office holders of their post-employment obligations before their last day in office. It is a constant challenge to meet this obligation because it is often impossible to know or predict when the last day in office will be. Some would say that to advise soon after appointment would suffice to meet this obligation. I do not take this approach because the usefulness of such advice is linked to its relevance to public office holders at the appropriate point in time, which would be when they are about to leave office.

Consequently, the Office provides post-employment information when it is made aware of the pending or actual termination of an appointment or employment.

## EXAMINATIONS

Previously, under the 2006 Code and the *Parliament of Canada Act*, examinations could only be conducted into alleged contraventions of the Code by a minister of the Crown, a minister of state or a parliamentary secretary. Examinations may now be conducted under the Act into alleged contraventions by any public office holder or former public office holder. Additional authority is also provided under the Act to conduct examinations into alleged contraventions of previous conflict of interest codes by any public office holder or former public office holder. There is a limitation period requiring that an examination be conducted within five years after the Commissioner becomes aware of the alleged contravention and, in any event, within ten years after the alleged contravention occurs.

Under the Act, examinations can be initiated in two ways. First, examinations may be requested under section 44 by a Senator or Member of the House of Commons who has reasonable grounds to believe that there has been a contravention of the Act. In such an instance, the Commissioner is required to proceed with an examination into the alleged contravention unless it is “frivolous or vexatious or made in bad faith”. Second, the Commissioner has the power to initiate an examination under section 45 where she has reason to believe that there has been a contravention of the Act.

The requirement that the Commissioner have reason to believe that there has been a contravention is a significant threshold test that creates its own difficulties but cannot be taken lightly. It raises issues for me about how much tracking of events can or should be undertaken by my Office and whether on-going informal information gathering can or should take place. That entails the related issue of when an examination actually commences and the attendant need for a report.

Members of the public sometimes seek to have me undertake an examination either on the basis of their own suspicion or belief that there has been a contravention or on the basis of rumour or innuendo in the press. If there is little or no credible corroborating information, neither of these situations meets the threshold test set out in section 45. Sufficient credible evidence would have to be available to me to support a reason to believe that there has been a contravention.

House of Commons committees conduct their own public studies from time to time into matters in relation to which I may also receive requests to conduct examinations under the Act. This has led to some general confusion about the different processes and the nature of the possible different outcomes. An examination under the Act must be conducted in private with a report that is made public at the end of the process. The existence of a public study by a House committee, whether commenced before or after the time of receipt by my Office of a request, does not affect my responsibilities under the Act.

Prior to March 31, 2008, there were two requests from Members of Parliament that resulted in examinations being undertaken. A report has been made to the Prime Minister

and made public in June 2008 with respect to Mr. Dimitri Soudas, an official in the Prime Minister's Office. Mr. Soudas was found not to have contravened the 2006 Code. The second examination has not been completed.

There were essentially four requests for examinations from the public after the Act came into force. While there is no requirement that the Commissioner proceed with an examination at the request of a member of the public, I do take note of these requests and provide responses as I consider appropriate. Three of the four requests were not responded to in detail for lack of jurisdiction.

The fourth request was from Democracy Watch, a private organization. Democracy Watch requested that an examination be conducted into alleged contraventions of the Act by the Prime Minister and possible contraventions by the Attorney General of Canada along with other members of Cabinet as well as unspecified senior public office holders.

In response to Democracy Watch, and to 42 form letters making similar requests, I indicated that I would not undertake an examination on my own initiative, primarily on the grounds that I did not have sufficient credible evidence to believe that a contravention of the Act had occurred. Democracy Watch subsequently initiated an application for judicial review before the Federal Court of Appeal. This application is pending.

During the period between April and July 2007, prior to the coming into force of the new Act and before I was appointed as Commissioner, there were two requests for examinations. One request, made in relation to a minister, was not pursued because it failed to meet the requirements for a proper request. The second request, made in relation to a former public office holder was not pursued for lack of mandate.

I also receive requests for inquiries under the *Conflict of Interest Code for Members of the House of Commons*. These requests are referred to in the separate report made in respect of that Code.

## **ADMINISTRATION**

### **Human Resources**

The Office is a parliamentary entity with the authority to hire its own employees and to establish its own classification structure and terms and conditions of employment. It is subject to the *Parliamentary Employment and Staff Relations Act*. The *Public Service Employment Act* does not apply. As of March 31, 2008, 45 employees worked at the Office.

Having the status of a separate employer brings certain flexibilities to the management of human resources. For example, with the guidance of the Hay Group, I have implemented a compensation package (salary, benefits, etc) that is intended to allow the Office to be competitive with other comparable employers. As a result of the *Federal Accountability Act*, our staff can now compete for positions in the core public service.

The Office also maintains its own Terms and Conditions of Employment. We have an employer-employee committee that works on the joint development of internal policies and procedures in human resources management. This year members of this committee developed a draft policy on the prevention and resolution of harassment issues.

### **Finance**

Prior to the coming into force of the Act, the Office was allocated an initial budget of \$5,140,000 in 2007-08. An additional \$672,000 that was primarily intended to cover the forecasted cost of the new internal legal unit and other new positions was processed through the Supplementary Estimates A. Most of the funding received through the Supplementary Estimates A was not spent at year-end because staffing of the new positions did not occur until late in the fiscal year.

Seventy-two percent of the expenditures for 2007-08 related to salaries and the remaining 28 percent related to standard operating costs. Given its size, the Office has arrangements with the House of Commons, the Library of Parliament and Public Works and Government Services Canada for the provision of internal services. Memoranda of Understanding have been negotiated with each of these organizations for the provision of support in information technology, finance and compensation services, respectively.

The Office continues the practice of its predecessor of disclosing on its website travel and hospitality expenditures for the Commissioner and the Deputy Commissioner. Contract information will be disclosed in the new fiscal year.

## **LOOKING AHEAD**

As I am about to enter the second year in my term as Conflict of Interest and Ethics Commissioner, I am pleased with progress made to date. I am also mindful that much remains to be done for the Office to become a mature organization, situated to fulfill its role in implementing the Act.

I intend to continue the focus on prevention. Throughout the past year, I have spoken with many public office holders and have been impressed by their commitment to uphold the Act. At the same time, I have seen some confusion about the requirements of the Act and I intend to continue our efforts to provide clear, factual information to public office holders about their obligations. The Office will monitor questions posed by public office holders and will develop guidelines as appropriate.

My Office will also continue with the public outreach activities begun this year to inform the general public about the Act. We expect to complete a redesign of the Office website which is intended to make its content more accessible to the public.

I will continue to strive for clarity, consistency, and common sense in applying the Act. I expect that decisions coming out of examinations carried out by the Office as well as the Office's advisory services will bring greater clarity to certain provisions of the Act. In this first annual report, I have provided observations on the Act based on nine months of experience. The Office will continue to review and update the administrative policies and processes currently in place. This will include updating our forms, ensuring that appropriate record-keeping procedures are in place, reducing the backlogs associated with the annual review process and working towards ensuring that public disclosures are made within the timeframes established under the Act.

I expect to make some changes to our organizational structure to strengthen the Office's research capacity. We need to be aware of similar work being done within Canada and internationally so that we can best provide interpretations and guidelines that respond to evolving societal standards and public expectations.

This has been a year of learning for me and for all staff. I am indebted to the staff who have stayed with the office after the transition and I would like to take this opportunity to thank all of them for their commitment and hard work. I want to continue work begun this year to foster a positive and supportive workplace which will allow the Office's workforce to grow professionally while balancing their professional and personal aspirations.



## APPENDIX: Financial Statements (Unaudited)

For the year ended March 31  
(in dollars)

	2008				2007
	Communications	Operations	Policy Development	Total	Total
Salaries and employee benefits	646,172	2,606,282	647,776	<b>3,900,230</b>	4,249,846
Professional and special services	157,707	628,237	178,866	<b>964,810</b>	1,247,215
Accommodation	80,412	324,335	80,611	<b>485,358</b>	318,965
Amortization	46,945	189,349	47,062	<b>283,356</b>	253,897
Communications, travel and relocation	9,626	39,460	9,890	<b>58,976</b>	62,776
Material and supplies	9,143	35,142	8,735	<b>53,020</b>	25,675
Repairs and maintenance	8,022	32,353	8,041	<b>48,416</b>	20,359
Equipment rentals	4,265	17,204	4,276	<b>25,745</b>	32,522
Information	5,026	9,953	2,474	<b>17,453</b>	5,626
Total Expenses	<b>967,318</b>	<b>3,882,315</b>	<b>987,731</b>	<b>5,837,364</b>	<b>6,216,881</b>
<b>Net Cost of Operations</b>	<b>(967,318)</b>	<b>(3,882,315)</b>	<b>(987,731)</b>	<b>(5,837,364)</b>	<b>(6,216,881)</b>

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

## Statement of Financial Position (Unaudited)

As at March 31  
(in dollars)

	<u>2008</u>	<u>2007</u>
<b>Assets</b>		
<b>Financial Assets</b>		
Accounts receivable and advances (Note 4)	<u>57,107</u>	<u>164,364</u>
<b>Total financial assets</b>	<b>57,107</b>	<b>164,364</b>
<b>Non-financial Assets</b>		
Tangible capital assets (Note 5)	<u>379,685</u>	<u>621,656</u>
<b>TOTAL</b>	<b><u>436,792</u></b>	<b><u>786,020</u></b>
<b>Liabilities</b>		
Accounts payable and accrued liabilities	<b>266,596</b>	1,062,273
Vacation pay and compensatory leave	<b>131,237</b>	97,546
Employee severance benefits (Note 6)	<u>726,720</u>	<u>653,540</u>
<b>Total Liabilities</b>	<b>1,124,553</b>	<b>1,813,359</b>
<b>Equity of Canada</b>	<u>(687,761)</u>	<u>(1,027,339)</u>
<b>TOTAL</b>	<b><u>436,792</u></b>	<b><u>786,020</u></b>

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

## Statement of Equity of Canada (Unaudited)

As at March 31  
(in dollars)

	<u>2008</u>	<u>2007</u>
<b>Equity of Canada, beginning of year</b>	<b>(1,027,339)</b>	132,953
Net cost of operations	<b>(5,837,364)</b>	(6,216,881)
Current year appropriations used (Note 3)	<b>4,852,651</b>	5,406,375
Change in net position in the Consolidated Revenue Fund (Note 3)	<b>635,287</b>	(902,231)
Services provided without charge by other government departments (Note 7)	<b>689,004</b>	552,445
<b>Equity of Canada, end of year</b>	<b><u>(687,761)</u></b>	<b><u>(1,027,339)</u></b>

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

## Statement of Cash Flow (Unaudited)

For the year ended March 31  
(in dollars)

	<u>2008</u>	<u>2007</u>
<b>Operating activities</b>		
<i>Net cost of operations</i>	<b>5,837,364</b>	6,216,881
Non-cash items:		
Amortization of tangible capital assets	<b>(283,356)</b>	(253,897)
Services provided without charge by other government departments (Note 7)	<b>(689,004)</b>	(552,445)
	<b>4,865,004</b>	5,410,539
Decrease in accounts receivable and advances	<b>(107,257)</b>	(8,705)
Decrease (increase) in liabilities	<b>688,806</b>	(996,643)
<b>Cash used by operating activities</b>	<b><u>5,446,553</u></b>	<b><u>4,405,191</u></b>
<b>Capital investment activities</b>		
Acquisitions of tangible capital assets	<b><u>41,385</u></b>	<u>98,953</u>
<b>Cash used by capital investment activities</b>	<b><u>41,385</u></b>	<b><u>98,953</u></b>
<b>Financing Activities</b>		
<b>Net cash provided by Government of Canada</b>	<b><u><u>5,487,938</u></u></b>	<b><u><u>4,504,144</u></u></b>

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

# Notes to the Financial Statements (Unaudited)

## 1. Authority and Objectives

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

The Office of the Conflict of Interest and Ethics Commissioner (the Office) began its operations on July 9, 2007, with the coming into force of the *Conflict of Interest Act*. It replaced the Office of the Ethics Commissioner and was given an expanded mandate.

The objective of the Office is to enhance confidence and trust in government and parliamentary institutions, and to assure Canadians that members of the government are held to standards that place the public interest above their private interests. The role of the Office is to administer the *Conflict of Interest Act* and the *Conflict of Interest Code for Members of the House of Commons*. The Office provides advice to public office holders and MPs on their obligations under the Act and the Code; it receives and maintains on file confidential reports of assets, liabilities and activities; it maintains a public registry for publicly declarable information; and, it conducts examinations or inquiries into alleged contraventions of the Act or Code respectively.

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

**Communications** - This program activity defines the strategic direction for the Office of the Conflict of Interest and Ethics Commissioner's liaison with the House of Commons, parliamentary committees, Members of Parliament and Public Office Holders, as well as external stakeholders.

**Operations** - This program activity is three-fold: compliance, provision of confidential advice and opinion and investigation.

**Policy Development** - The objective of this program activity is to develop appropriate policies and practices in order to provide sound and consistent advice to clients with respect to the application of the *Conflict of Interest Act* and the *Conflict of Interest Code for Members of the House of Commons*.

## 2. Summary of Significant Accounting Policies

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

Significant accounting policies are as follows:

**(a) Parliamentary appropriations** – The Office of the Conflict of Interest and Ethics Commissioner is financed by the Government of Canada through Parliamentary appropriations. Appropriations provided to the Office do not parallel financial reporting according to generally accepted accounting principles since appropriations are primarily based on cash flow requirements. Consequently, items recognized in the statement of operations and the statement of financial position are not necessarily the same as those provided through appropriations from Parliament. Note 3 provides a high-level reconciliation between the bases of reporting.

## 2. Summary of Significant Accounting Policies (continued)

**(b) Net Cash Provided by Government** – The Office of the Conflict of Interest and Ethics Commissioner operates within the Consolidated Revenue Fund (CRF) which is administered by the Receiver General for Canada. All cash received by the Office is deposited to the CRF and all cash disbursements made by the Office are paid from the CRF. Net cash provided by Government is the difference between all cash receipts and all cash disbursements including transactions between departments of the federal government.

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

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

- i. Vacation pay and compensatory leave are expensed as the benefits accrue to employees under their respective terms of employment.
- ii. Services provided without charge by other government departments for accommodation and the employer's contribution to the health and dental insurance plans are recorded as operating expenses at their estimated cost.

**(e) Employee future benefits**

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

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

**(g) Foreign currency transactions** – Transactions involving foreign currencies are translated into Canadian dollar equivalents using rates of exchange in effect at the time of those transactions. Monetary assets and liabilities denominated in a foreign currency are translated into Canadian dollars using the rate of exchange in effect on March 31.

## 2. Summary of Significant Accounting Policies (continued)

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

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

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

**(i) Measurement uncertainty** – The preparation of these financial statements in accordance with Treasury Board accounting policies which are consistent with Canadian generally accepted accounting principles for the public sector requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses reported in the financial statements. At the time of preparation of these statements, management believes the estimates and assumptions to be reasonable. The most significant items where estimates are used are the liability for employee severance benefits and the useful life of tangible capital assets. Actual results could differ from those estimated. Management's estimates are reviewed periodically and, as adjustments become necessary, they are recorded in the financial statements in the year they become known.

## 3. Parliamentary Appropriations

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

### **(a) Reconciliation of net cost of operations to current year appropriations used**

	<u>2008</u>	<u>2007</u>
<b>Net cost of operations</b>	<b>5,837,364</b>	<b>6,216,881</b>
Adjustments for items affecting net cost of operations but not affecting appropriations:		
Add (Less):		
Amortization of tangible capital assets	(283,356)	(253,897)
Services provided without charge by other government departments	(689,004)	(552,445)
Decrease (increase) in vacation pay and compensatory leave	(33,691)	3,088
Increase in employee severance benefits	(73,180)	(106,205)
Adjustments to prior year payables	53,133	
Adjustments for items not affecting net cost of operations but affecting appropriations:		
Add (Less): Acquisitions of tangible capital assets	41,385	98,953
<b>Current year appropriations used</b>	<b><u>4,852,651</u></b>	<b><u>5,406,375</u></b>

### 3. Parliamentary Appropriations (continued)

#### *(b) Appropriations provided and used*

	<u>2008</u>	<u>2007</u>
Vote 15 - Operating expenditures	5,249,000	4,986,000
Statutory amounts	518,166	455,716
Less:		
Lapsed appropriations: Operating	(914,515)	(35,341)
<b>Total appropriations used</b>	<b><u>4,852,651</u></b>	<b><u>5,406,375</u></b>

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

	<u>2008</u>	<u>2007</u>
Net cash provided by Government	5,487,938	4,504,144
Change in net position in the Consolidated Revenue Fund		
Variation in accounts receivable and advances	107,257	8,705
Variation in accounts payable and accrued liabilities	(795,677)	893,526
Other adjustments	53,133	
	<u>(635,287)</u>	<u>902,231</u>
<b>Current year appropriation used</b>	<b><u>4,852,651</u></b>	<b><u>5,406,375</u></b>

### 4. Accounts Receivable and Advances

The following table presents details of receivables and advances

	<u>2008</u>	<u>2007</u>
Receivables from other Government departments and agencies	56,607	163,864
Employee advances	500	500
<b>Total</b>	<b><u>57,107</u></b>	<b><u>164,364</u></b>



## 5. Tangible Capital Assets

Capital Asset Class	Cost			Accumulated amortization			2008 Net Book Value	2007 Net Book Value
	Opening balance	Acquisitions	Closing Balance	Opening Balance	Amortization	Closing Balance		
Machinery & equipment	13,719	3,162	16,881	2,521	1,398	3,919	12,962	11,198
Other equipment	315,611	1,806	317,417	63,497	31,576	95,073	222,344	252,114
Computer equipment	210,514	28,036	238,550	102,194	71,636	173,830	64,720	108,320
Computer software	141,796	8,381	150,177	76,175	47,498	123,673	26,504	65,621
Leasehold Improvements	447,123		447,123	262,720	131,248	393,968	53,155	184,403
<b>Total</b>	<b>1,128,763</b>	<b>41,385</b>	<b>1,170,148</b>	<b>507,107</b>	<b>283,356</b>	<b>790,463</b>	<b>379,685</b>	<b>621,656</b>

Amortization expense for the year ended March 31, 2008 is \$283,356 (total for 2007 - \$253,897)

## 6. Employee Benefits

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

Both the employees and the Office contribute to the cost of the Plan. The 2007-2008 expense amounts to \$377,743 (\$335,862 in 2006-2007), which represents approximately 2.6 times the contributions by employees.

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

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

	<u>2008</u>	<u>2007</u>
Accrued benefit obligation, beginning of year	653,540	547,335
Expense for the year	73,180	117,908
Benefits paid during the year		(11,703)
	<u>726,720</u>	<u>653,540</u>
Accrued benefit obligation, end of year		

## 7. Related Party Transactions

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

### ***(a) Services provided without charge***

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

	<u>2008</u>	<u>2007</u>
Accommodation	485,358	318,965
Employer's contribution to health and dental insurance plan	203,646	233,480
<b>Total</b>	<b><u>689,004</u></b>	<b><u>552,445</u></b>

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

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

	<u>2008</u>	<u>2007</u>
Accounts receivable from other government departments and agencies	56,607	163,864
Accounts payable to other government departments and agencies	69,519	222,113