



Office of the Conflict  
of Interest and Ethics  
Commissioner

Commissariat aux  
conflits d'intérêts et à  
l'éthique

## The 2012-2013 ANNUAL REPORT

in respect of the  
*CONFLICT OF INTEREST ACT*



June 11, 2013

Mary Dawson  
Conflict of Interest and  
Ethics Commissioner

## The 2012-2013 Annual Report

in respect of the  
*CONFLICT OF INTEREST ACT*

For additional copies of this publication, please contact:

Office of the Conflict of Interest and Ethics Commissioner  
Parliament of Canada  
66 Slater Street, 22<sup>nd</sup> Floor  
Ottawa, Ontario K1A 0A6

Telephone: (613) 995-0721  
Fax: (613) 995-7308  
Email: [ciec-ccie@parl.gc.ca](mailto:ciec-ccie@parl.gc.ca)

*Ce document est également publié en français.*

This publication is also available online at the following address: <http://ciec-ccie.gc.ca>

© Office of the Conflict of Interest and Ethics Commissioner, Parliament of Canada, 2013  
062013-38E





Commissariat aux conflits d'intérêts et à l'éthique  
Office of the Conflict of Interest and Ethics Commissioner

---

66, rue Slater Street  
22<sup>e</sup> étage / 22<sup>nd</sup> Floor  
OTTAWA, ONTARIO  
CANADA  
K1A 0A6

June 11, 2013

The Honourable Andrew Scheer, M.P.  
Speaker of the House of Commons  
Room 224-N, Centre Block  
Parliament of Canada  
Ottawa, Ontario K1A 0A6

Dear Mr. Speaker:

I am pleased to submit to you my 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, 2013.

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

Sincerely,

Mary Dawson  
Conflict of Interest and Ethics Commissioner





Commissariat aux conflits d'intérêts et à l'éthique  
Office of the Conflict of Interest and Ethics Commissioner

---

66, rue Slater Street  
22<sup>e</sup> étage / 22<sup>nd</sup> Floor  
OTTAWA, ONTARIO  
CANADA  
K1A 0A6

June 11, 2013

The Honourable Noël A. Kinsella  
Speaker of the Senate  
Room 280-F, Centre Block  
Parliament of Canada  
Ottawa, Ontario K1A 0A4

Dear Mr. Speaker:

I am pleased to submit to you my 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, 2013.

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

Sincerely,

Mary Dawson  
Conflict of Interest and Ethics Commissioner



## TABLE OF CONTENTS

<b>I.</b>	<b>INTRODUCTION .....</b>	<b>1</b>
<b>II.</b>	<b>OVERVIEW – A Pivotal Year .....</b>	<b>3</b>
<b>III.</b>	<b>APPLYING THE ACT .....</b>	<b>5</b>
	Initial Compliance.....	6
	Maintaining Compliance.....	9
	Ongoing Advice .....	9
	Annual Review.....	10
	Ongoing Reporting Requirements .....	12
	Compliance Measures, Conflict of Interest Screens and Recusals .....	15
	Administrative Monetary Penalties.....	16
	Post-Employment.....	17
<b>IV.</b>	<b>INVESTIGATIONS.....</b>	<b>19</b>
	Overview of Case Files .....	19
	Summary of Examination Reports Issued.....	20
	Referrals from the Office of the Public Sector Integrity Commissioner .....	22
	Discontinued Examinations .....	24
	Files Closed during this Reporting Period .....	25
<b>V.</b>	<b>FIVE-YEAR REVIEW OF THE <i>CONFLICT OF INTEREST ACT</i>.....</b>	<b>31</b>
<b>VI.</b>	<b>OUTREACH AND COMMUNICATIONS .....</b>	<b>37</b>
	Reaching out to Public Office Holders and Members of the House of Commons .....	37
	Parliamentary Activities.....	37
	Working with Others.....	39
	Inquiries from the Media and Members of the Public .....	39
<b>VII.</b>	<b>ADMINISTRATION .....</b>	<b>41</b>
	Accountability .....	41
	Human Resources Management .....	41
	Financial Management.....	42
<b>VIII.</b>	<b>LOOKING AHEAD.....</b>	<b>45</b>
	<b>APPENDIX A – SUMMARY LIST OF RECOMMENDATIONS .....</b>	<b>47</b>
	<b>APPENDIX B – ANNUAL REVIEW QUESTIONNAIRE .....</b>	<b>57</b>
	<b>APPENDIX C – FINANCIAL RESOURCES SUMMARY .....</b>	<b>61</b>





## I. INTRODUCTION

The Conflict of Interest and Ethics Commissioner administers the *Conflict of Interest Act* (Act) and the *Conflict of Interest Code for Members of the House of Commons* (Code). These two regimes hold public office holders and Members to standards that place the public interest above private interests.

The Act applies to current and former public office holders, including ministers, parliamentary secretaries, ministerial staff, ministerial advisers, deputy ministers and most full- and part-time Governor in Council appointees. There are approximately 3,000 public office holders subject to the Act, more than half of whom are part-time. The Act came into force in July 2007 and was amended in December 2011.

The Code applies to all 308 Members of the House of Commons. It was adopted by the House of Commons in 2004 and was amended in 2007, 2008 and 2009. The Code is appended to the *Standing Orders of the House of Commons*.

Most rules and procedures set out in the Act and the Code aim to minimize the possibility of conflicts arising between public and private interests. The rules of conduct also address a variety of other situations relating, for example, to preferential treatment and gifts and benefits. The Act also contains a number of post-employment rules.

While the focus of both the Act and the Code is on prevention, I am mandated to investigate alleged contraventions of either.

The main responsibilities of my Office are to:

- advise public office holders and Members on their obligations under the Act and the Code;
- receive and review confidential reports of assets, liabilities, income and activities of reporting public office holders and Members in order to advise on and establish appropriate compliance measures;
- maintain confidential files of required disclosures;
- maintain public registries of publicly declarable information;
- administer an administrative monetary penalty regime for failures to comply with certain reporting requirements; and
- conduct examinations and inquiries into alleged contraventions of the Act and the Code.



Under the Act, the Commissioner is also mandated to provide confidential advice to the Prime Minister about conflict of interest and ethics issues.

This is one of two annual reports issued by my Office. This report is made for the Act and the other report is made for the Code.



## II. OVERVIEW – A Pivotal Year

The past year will, I believe, prove to have been a pivotal one for my Office and the conflict of interest regimes that I administer.

I was appointed Commissioner on July 9, 2007, the day that the *Conflict of Interest Act* (Act) came into force and that my Office was established in its current form. Shortly before my appointment, the *Conflict of Interest Code for Members of the House of Commons* (Code) had undergone its last comprehensive review. In 2012-2013, Parliament launched comprehensive five-year reviews of both the Act and the Code. When the reviews are completed, the parliamentary committees that are conducting them will make recommendations to the House of Commons that could have implications for the two regimes going forward.

I was pleased to contribute to the reviews by sharing my observations and recommendations. I provided both committees with written submissions and appeared before them to discuss my recommendations. The recommendations for the Act are appended to this report as Appendix A. While my annual reports have flagged many issues relating to the administration of the Act and the Code, these five-year reviews provided an opportunity to consolidate into one comprehensive submission concerns previously identified, make recommendations of a more technical nature and provide detailed feedback on how the Act and the Code are working and how they might be improved.

In administering the Act and the Code, my focus is on helping to achieve and maintain compliance with the regimes. The past year has been marked by significant increases in the number of communications that my Office has had with public office holders and Members seeking information and advice. We have also had an increase in communications as a result of the questionnaires that my Office now includes in the annual review packages sent to reporting public office holders and Members.

The annual review process was also strengthened by my decision last year to request financial statements from all reporting public office holders. This has helped in identifying whether there have been changes in the financial situations of reporting public office holders.

We have continued to conduct a range of outreach activities aimed at educating and informing public office holders and Members. These activities include direct written communications, group presentations and the preparation of informational documents that are posted on my Office website.



In line with my focus on prevention, the information and advice provided by my Office seek to help public office holders and Members to fulfil their obligations under the Act and the Code. I recognize, however, the importance of enforcement in fulfilling my mandate and this is reflected in the investigative work conducted by my Office.

In the past year, my Office worked on 48 cases relating to possible contraventions of the Act and the Code and issued five public reports. In support of greater transparency, I have included in this report information about the three examinations that I had self-initiated under the Act and subsequently discontinued, and the case files that I closed without proceeding to an examination under the Act.

The activities of my Office in all areas of its operations are supported by internal processes and procedures that have been put in place over the past six years and which we continue to monitor, evaluate and improve. They are also supported by a strong policy framework in the area of human resources and a full staff complement of talented and hardworking employees.

As I look back on all that my Office has accomplished in the year just passed, I am grateful for the continued efforts of my staff and I thank them for their dedication.



### III. APPLYING THE ACT

The *Conflict of Interest Act* (Act) applies to about 3,000 government officials, defined in the Act as public office holders. These include ministers, parliamentary secretaries and ministerial staff, as well as Governor in Council appointees such as deputy ministers, heads of Crown corporations and members of federal boards, commissions and tribunals. My Office assists these individuals in achieving and maintaining compliance with the Act.

Around two-thirds of public office holders work on a part-time basis as members of federal boards, tribunals and commissions. These public office holders must comply with most of the rules of conduct, but are not subject to the Act's disclosure provisions.

The remaining third is defined as "reporting public office holders" under the Act. They are subject to all provisions of the Act, including the reporting obligations under which they must disclose to my Office detailed information about their assets, liabilities, outside activities and other interests. They may also be required to take additional compliance measures in order to meet their obligations under the Act. My Office guides and assists them in understanding their obligations and in undertaking all the necessary measures.

As of March 31, 2013, there were 2,976 public office holders. Table 3-1 shows a breakdown by category of public office holder comparing total numbers over the past three years.

Table 3-1: Number of Public Office Holders

	2010-2011	2011-2012	2012-2013
<b>Number of public office holders</b>	<b>2789</b>	<b>3059</b>	<b>2976</b>
Reporting public office holders	1108	1115	1094
Ministers and ministers of state	38	39	37
Parliamentary secretaries	27	28	27
Full-time ministerial staff	511	534	558
Full-time Governor in Council appointees	532	514	472
Non-reporting public office holders (Part-time Governor in Council appointees and ministerial staff)	1681	1944	1882

The number of reporting public office holders has remained quite stable over the past three years. There was a noticeable increase in the number of non-reporting public office holders from the 2010-2011 reporting period. As mentioned in my last annual report, the increase in 2011-2012 was due to the fact that I determined that honorary consuls and official receivers meet the definition of public office holder under the Act.



This year, many part-time positions with the Canada Pension Plan Review Tribunal, the Old Age Security Review Tribunal and the Employment Insurance Board of Referees are being eliminated. Those organizations were replaced by the new Social Security Tribunal, not all the members of which were appointed by the end of this reporting period. This explains in part the slight decrease in the overall number of non-reporting public office holders from last year.

## Initial Compliance

The Act sets out an initial compliance process that all reporting public office holders must complete within 120 days after appointment. The first step in this process is a confidential disclosure to my Office. A confidential report must be submitted within 60 days after appointment and contain detailed information on the reporting public office holder's assets, liabilities, outside activities and other interests.

My Office reviews this information and advises reporting public office holders on the measures they will need to take to meet their obligations under the Act. These measures may include, for example, publicly declaring certain assets, establishing a blind trust or a conflict of interest screen, or resigning from a corporate directorship. My Office may also provide advice at this time on managing potential conflicts of interest and, more generally, maintaining ongoing compliance with the Act.

The initial compliance process is complete when the reporting public office holder signs a statement summarizing the steps he or she has taken to comply with the Act.

My Office issues a series of reminders and provides assistance to individuals as the 60- and 120-day deadlines approach. Most of the 290 individuals appointed during the last fiscal year met both of these deadlines. However, despite the efforts of my Office to assist them, 46 new reporting public office holders did not meet the 60-day deadline and 11 did not meet the 120-day deadline. Table 3-2 compares these figures to those of the previous two years.

Table 3-2: Compliance with 60- and 120-day deadlines

	2010-2011	2011-2012	2012-2013
New reporting public office holders	300	299	290
Number of reporting public office holders that missed the 60-day deadline	45	53	46
Number of reporting public office holders that missed the 120-day deadline	9	16	11



The number of reporting public office holders who missed the 60-day deadline was slightly higher in 2011-2012 than it was in this reporting period or in 2010-2011. This is due to the fact that in 41 cases in 2011-2012, my Office was informed of the appointments more than 20 days after they had commenced employment. In this reporting period, there were fewer cases in which there were significant delays in our being informed of new reporting public office holders' appointments.

Twenty-six of the 46 individuals who missed the 60-day deadline this year filed their confidential reports within one week after the deadline. Another 13 individuals missed the deadline by more than a week because my Office was not notified until more than 30 days after the date of their appointments, delaying my initial letter to them. In four other cases, the deadline was missed because of delays in processing mail within the reporting public office holders' organizations. In the remaining three cases, where there were no extenuating circumstances, monetary penalties were issued for the failure to submit the confidential report in a timely way.

Out of the 11 individuals who missed the 120-day deadline, five had completed the initial compliance process within one week after that deadline. In three other cases, my Office had not been notified of the public office holders' appointments until approximately 60 days after their dates of appointment. Two separate cases required complex measures to be put in place in order to ensure compliance with the Act. In the remaining case, a monetary penalty was issued.

Administrative monetary penalties are discussed more generally later in this section.

### ***Divestment***

Section 17 of the Act prohibits reporting public office holders from holding controlled assets. Controlled assets include all investments that are publicly traded on a stock exchange or over-the-counter as well as commodities, futures and currencies that are traded on a commodities exchange. Section 27 of the Act sets out the appropriate procedure for divestment of controlled assets, either through sale at arm's length or through the establishment of a blind trust. The Act requires that this be completed within 120 days after the date of appointment.

The prohibition against holding controlled assets applies to all reporting public office holders, regardless of the likelihood that those assets could give rise to a conflict of interest in relation to their official duties and responsibilities. The Commissioner has the discretion to allow exemptions from this prohibition when controlled assets are of minimal value and pose no risk of a conflict of interest. This exemption does not apply to ministers, ministers of state or parliamentary secretaries.

Table 3-3 summarizes divestment arrangements currently in place, including those that were made during the past year.



Table 3-3: Divestment arrangements in place or made during the past year

	Number of reporting public office holders who had one or more blind trusts in place as of March 31, 2013	Number of reporting public office holders who established one or more blind trusts in 2012-2013	Number of reporting public office holders who divested by way of sale in 2012-2013	Number of reporting public office holders who were granted a minimal value exemption in 2012-2013
Reporting public office holders with significant decision-making power or access to privileged information*	15	1	1	4
Other ministerial staff members	6	1	3	19
Governor in Council appointees	37	3	6	8
<b>Total</b>	<b>58</b>	<b>5</b>	<b>10</b>	<b>31</b>

\*Ministers, parliamentary secretaries, deputy ministers, associate deputy ministers and chiefs of staff

Fifty-eight reporting public office holders had blind trusts at the end of this reporting period. This includes 45 reporting public office holders who established blind trusts since the *Conflict of Interest Act* came into force and 13 who established blind trusts before July 2007 under the former *Conflict of Interest and Post-Employment Code for Public Office Holders*. Twenty-six of the 58 reporting public office holders have established more than one blind trust, which increases the total number of blind trusts in place.

This year, the costs associated with reimbursing fees related to blind trusts totalled \$602,672. This is an increase over last year, when fees reimbursed totalled \$535,216. This is due in part to the costs associated with increased market value of existing trusts, as well as with the cost of dismantling blind trusts established by members of the Immigration and Refugee Board, who as a result of legislative changes are no longer reporting public office holders under the Act.

In the context of the five-year review of the Act, I recommended that the absolute prohibition be limited to those who have a significant amount of decision-making power or access to privileged information. I further recommended, for all other reporting public office





holders, that the controlled assets be subject to a conflict of interest test and the reporting public office holders be required to sell the controlled assets where a conflict of interest is identified in relation to their official duties and responsibilities.

I have determined that, if these recommendations had been in place from the beginning, 43 of the 58 reporting public office holders who held blind trusts at the end of this reporting period would not have been subject to the absolute prohibition on holding controlled assets. The number 43 includes four of the five reporting public office holders who established blind trusts during this reporting period. Their assets would have been subject to a conflict of interest test. It is likely that fewer than five of the 43 reporting public office holders who currently have blind trusts would have had to divest any of their controlled assets on the basis of a conflict of interest.

As well, nine of the ten reporting public office holders who divested by way of sale in this reporting period would not have been subject to the absolute prohibition on holding controlled assets and would have only been required to sell them if a conflict of interest had been identified.

This year there were twice as many divestments by way of sale than by way of blind trust.

### **Maintaining Compliance**

Beyond the initial compliance process, my Office assists reporting public office holders in meeting their obligations under the Act throughout their terms in office. This is done in part through formal mechanisms set out in the Act. These include the annual review process and the requirements that reporting public office holders report and publicly disclose material changes and gifts or other advantages received in their position as reporting public office holders. In addition, my Office regularly communicates with reporting public office holders to provide them with ongoing information and advice on the application of the Act.

### **Ongoing Advice**

In addition to the initial compliance and annual review processes, my Office provides ongoing information and advice to individual public office holders and their organizations as a whole on the application of the Act.

Table 3-4 summarizes the number of instances of advice or information being provided over the past three years.



Table 3-4: Advice or information provided to public office holders

	2010-2011	2011-2012	2012-2013
Total communications with public office holders providing advice regarding various obligations under the Act	1600	1550	1748
Advice provided regarding gifts	200	160	188
Advice provided regarding outside activities	79	72	98
Advice provided regarding post-employment obligations	76	66	155
All other advice provided	1245	1252	1307

As can be seen from the table, a large majority of the advice falls under the last category. These instances are very diverse and include a wide range of matters that are specific to individual public office holders or instances that do not occur often, such as advice on travel under section 12 of the Act. Only advice sought under the three categories identified—gifts, outside activities and post-employment obligations—can be easily grouped together.

We provided advice and information in almost 200 more instances than the previous year. The increase in requests for advice or information from public office holders can be attributed in part to a new questionnaire included in the annual review package, discussed in more detail below.

The Office only received 25 requests for advice or information this year from non-reporting public office holders. This is a very small proportion of the 1748 cases that we dealt with. Five of the 25 instances related to outside activities, three related to post-employment and the remaining 17 were general in nature.

## Annual Review

All reporting public office holders must review their compliance arrangements on an annual basis and update the information previously disclosed to my Office. Advisors from my Office



review any new information to determine whether new compliance measures are needed and often may provide additional confidential advice to reporting public office holders at this time.

As part of our continuing efforts to expedite all compliance processes under the Act, my Office has paid particular attention this year and last year to the annual review process. We have instituted the practice of sending reporting public office holders email reminders and then following up by phone. This has resulted in a more timely return of a greater number of annual reviews than in previous years. This year, my Office initiated 1,117 annual reviews and received 1,010 responses. As occurs each year, some responses are received from annual reviews initiated in the latter part of the previous year. The number of annual reviews initiated this year is an increase over last year, when we initiated 871 annual reviews and received 776 responses.

The Act does not provide a timeline for completing this process. I have recommended, within the context of the five-year review, that the Act provide for both a deadline and a penalty for a failure to meet this obligation. In the meantime, I have asked that reporting public office holders submit any updated information to me within 30 days.

In addition to the summary of information previously provided at the time of the annual review, my Office now includes a questionnaire with the annual review package to assist reporting public office holders. The questionnaire is intended to remind them of the information that was required during their initial disclosure and to prompt them to disclose any material change to their personal situation.

The questionnaire is achieving its intended purpose. Reporting public office holders contact my Office more regularly to obtain greater clarity on their obligations. In many cases, the questionnaire has prompted them to contact my Office where members of their families or friends have dealings with the federal government. This allows my Office to provide them with timely advice and prevent any possibilities of conflict of interest. Two conflict of interest screens were put in place for reporting public office holders during the annual review process as a result of information disclosed during this process. A copy of the questionnaire is provided in Appendix B.

As noted in last year's Annual Report, I have also adopted the practice of requesting financial statements for all accounts from all reporting public office holders during the annual review process. These statements assist my Office in ensuring that the information in our files relating to investments for those reporting public office holders is up to date and that they have not acquired any controlled assets.



## Ongoing Reporting Requirements

### *Material Change*

Reporting public office holders must inform my Office of any material change to their circumstances, within 30 days of that change. I have the discretion to impose an administrative monetary penalty when a reporting public office holder fails to meet this deadline.

After reviewing the financial statements requested during the annual review process, my Office learned that some reporting public office holders had invested in controlled assets in contravention of the Act.

This resulted in a significant increase in the number of administrative monetary penalties issued. I issued 18 notices of violation and imposed 13 penalties this fiscal year for failure to disclose a material change within 30 days. In two of the 18 cases, the reporting public office holders made representations to my Office and I determined, after reviewing the representations and the circumstances of these cases, that penalties were not warranted. Three notices of violation were still pending at the end of the reporting period.

### *Gifts and Other Advantages*

Gifts and other advantages offered to public office holders are subject to an acceptability test. Where a gift or other advantage could reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function it may not be accepted, regardless of its value. This test applies to gifts received by all public office holders, not only reporting public office holders.

There is an exception for gifts or other advantages that are received as a normal expression of courtesy or protocol, or that fall within customary standards of hospitality that normally accompany a public office holder's position. This exception will apply in a variety of circumstances. For example, token gifts offered in appreciation for a speech or presentation made by a public office holder, or a meal offered to a public office holder at a public event that he or she is attending in an official capacity are usually acceptable. Such gifts are, however, still subject to the Act's disclosure and public declaration requirements.

Gifts and other advantages that pass the acceptability test and are valued at \$200 or more must be disclosed by reporting public office holders to my Office and publicly declared. Multiple gifts from a single source whose total value exceeds \$200 within a 12-month period must also be disclosed to my Office.



Issues around the acceptability of gifts or other advantages continue to generate the most requests for advice. There is a specific question about gifts or other advantages in the questionnaire that is used for the annual review process that probably accounts for some of the increase of interactions between my Office and reporting public office holders relating to gifts over last year. Table 3-5 summarizes these interactions.

Table 3-5: Interactions with public office holders relating to gifts

	2010-2011	2011-2012	2012-2013
Total instances of advice provided regarding gifts	200	160	188
Number of reporting public office holders who publicly declared gifts	27	30	29
Publicly declared gifts over \$200	73	55	62
Publicly declared and forfeited gifts over \$1,000	11	8	10

This year, my Office provided advice relating to gifts in 188 instances to 75 individual reporting public office holders. In 72 instances, the gift was publicly declared and some of those were forfeited because their value was \$1,000 or more. In the remaining 116 cases, the gift was valued at under \$200, and therefore not publicly declared, or it was determined that the gift was unacceptable and the gift was either refused or returned.

Few non-reporting public office holders contact my Office seeking advice on gifts and none did so this year.

On one occasion this year, my Office became aware of a trade association organizing an annual dinner, to which chiefs of staff and policy directors in ministers' offices were invited. I noted that the organization had many active registrations to lobby numerous federal entities. I took this opportunity to send to the chiefs of staff a reminder of their obligations under the Act in relation to gifts and other advantages offered.



I advised them to exercise caution in accepting this invitation and asked them to consider whether the organization had official dealings with their department or federal organization, whether it was registered to lobby their department and whether it had recently met with them on current or future issues. I noted that, if they had answered yes to any of these questions, then the invitation to the dinner could reasonably be seen to have been given to influence them and they should not accept it.

### ***Outside Activities***

With limited exceptions, subsection 15(1) of the Act prohibits reporting public office holders from engaging in a range of outside activities, including employment or the practice of a profession, operating or managing a commercial activity, serving as a director or officer in a corporation or organization, holding office in a union or professional association, serving as a paid consultant and being an active partner in a partnership.

The exceptions to subsection 15(1) are outlined in subsections 15(1.1), (2) and (3) of the Act. The Commissioner must be of the opinion that an outside activity is not incompatible with the public duties of the reporting public office holder for an exception to be made. Acting as a director or officer in an organization of a philanthropic, charitable or non-commercial character is the most common example of an exception that is allowed. All exceptions granted by the Commissioner are publicly declared in the public registry.

In most cases, even those where there is no exception, the activities in which reporting public office holders are engaged outside their public office do not raise any issues of conflict of interest with their official duties and functions. The prohibition applies regardless of whether participating in those activities would place reporting public office holders in a conflict of interest or be incompatible with their public duties. As part of my recommendations in the context of the five-year review of the Act, I suggested giving the Commissioner the authority in all cases, not only in those covered by the exceptions in section 15, to permit reporting public office holders to engage in outside activities where it would not be incompatible with their public duties to do so.

Table 3-6 summarizes interactions relating to outside activities that my Office has had with reporting public office holders over the past three years.

Table 3-6: Interactions with reporting public office holders relating to outside activities

	2010-2011	2011-2012	2012-2013
Advice provided regarding outside activities	79	72	98



## **Compliance Measures, Conflict of Interest Screens and Recusals**

Under section 29 of the Act, the Commissioner may determine appropriate compliance measures in consultation with public office holders by which they are to comply with the Act.

The most common of these measures is a conflict of interest screen, whereby arrangements are made with a reporting public office holder and his or her organization to ensure that he or she has no involvement with files, decisions or discussions that could result in situations involving conflicts of interest. These arrangements can be made during the initial compliance process, the annual review process or as a result of a material change to a public office holder's situation.

Conflict of interest screens are generally used if reporting public office holders are in positions where there is a significant possibility that they will be involved in discussions or decision-making that could affect a relative or friend. In some cases, the possibility of a reporting public office holder being involved in such discussions or decision-making is remote, and therefore the risk of a conflict of interest is very low. In those cases a conflict of interest screen is not established, but reporting public office holders are advised that, if any such situation should arise, they should recuse themselves in accordance with section 21 and inform my Office within 60 days of the recusal.

This year, 11 reporting public office holders entered into 12 compliance measures under section 29. Seven of these compliance measures have been made public, including four that involved conflict of interest screens. The remaining five were not made public in light of legitimate privacy issues relating to family members where there was no public interest in making them public.

### ***Section 30 Compliance Orders***

Under section 30 of the Act, I may order a public office holder to take any compliance measure that I determine is necessary to comply with the Act. Compliance orders are placed on the public registry.

I issued three compliance orders during the last reporting period after I learned that a minister and two parliamentary secretaries wrote letters of support to the Canadian Radio-television and Telecommunications Commission on behalf of constituents seeking broadcasting licences from that body. Section 9 of the Act prohibits public office holders from using their positions to seek to influence decision-making where to do so would improperly further the private interests of another person.



In the case of the minister, I concluded that it was improper for him to have written the letter and ordered him to refrain from writing any similar letters in the future without seeking approval from my Office. I also referred in my order to the rules contained in Annex H of *Accountable Government: A Guide for Ministers and Ministers of State (2011)*. Although the guide is not administered by my Office, but rather by the Privy Council Office, Annex H expressly states that ministers should not intervene in the decision-making functions of administrative or quasi-judicial tribunals.

In the case of the parliamentary secretaries, I noted that their positions entailed official government duties and functions and that the Canadian Radio-television and Telecommunications Commission is meant to operate at arm's length from the government with respect to its decision-making. I therefore concluded that it was improper for them, as well, to have written the letters and ordered them to refrain from writing any similar letters in the future without seeking approval from my Office.

Although I could have initiated an examination in each of these cases, I felt that the facts were clear and that section 30 provided me with a mechanism to address a situation that was already in the public domain in a timely and transparent manner. I therefore determined that an examination was unnecessary.

### **Administrative Monetary Penalties**

The Act establishes an administrative monetary penalty scheme that gives the Commissioner discretion to impose penalties on reporting public office holders. The regime generally only covers failures to report certain matters within established deadlines.

I imposed 17 penalties in this reporting period. This is a significant increase over the previous two reporting periods. This was due mainly to the increase in penalties relating to material changes that was discussed earlier.

Table 3-7 summarizes the number of administrative monetary penalties that I have imposed over the last three reporting periods.



Table 3-7: Administrative Monetary Penalties

	2010-2011	2011-2012	2012-2013
Failure to meet the 60- and 120-day deadlines for initial compliance	0	1	4
Failure to report an outside activity	1	0	0
Failure to report a material change	4	6	13
<b>Total</b>	<b>5</b>	<b>7</b>	<b>17</b>

## Post-Employment

Public office holders continue to have obligations under the Act once they leave office. Some of these obligations are ongoing, such as a general prohibition against taking improper advantage of one's previous public office.

Other obligations only apply during a cooling-off period, but only to reporting public office holders. The cooling-off period lasts two years for ministers and one year for all other reporting public office holders. During this time certain prohibitions apply, including contracting with, or making representations to, an entity with which the former reporting public office holder had direct and significant official dealings in the year before leaving office.

My Office is often called upon to provide advice to determine what constitutes direct and significant official dealings. An information notice was published on our website that sets out the considerations that are taken into account when making this determination. I also encourage current and former reporting public office holders to seek further guidance from my Office as necessary.

Table 3-8 summarizes the number of public office holders who have left office over the last three years as well as the interactions with my Office regarding post-employment obligations.



Table 3-8: Public office holders in the post-employment period

	2010-2011	2011-2012	2012-2013
Non-reporting public office holders who left office	100	68	333
Reporting public office holders who left office	322	292	311
Advice provided regarding post-employment obligations to public office holders	76	66	155
Offers of employment disclosed	24	15	49

My Office provided advice on 155 occasions regarding post-employment obligations during this reporting period. In 21 of these 155 cases the advice was sought after the public office holder had left office. The Act also requires that a reporting public office holder disclose to my Office all firm offers of employment within seven days. During this reporting period, there was a significant increase in the number of firm offers of employment disclosed to my Office. This can be attributed in part to the fact that there were structural changes to the Immigration and Refugee Board this year as a result of new legislation and many of the members of that Board contacted my Office.

I have the discretion under section 39 of the Act to waive or reduce the post-employment cooling-off period. When waiving or reducing this cooling-off period, I consider, among other things, whether the public interest in granting the waiver or reduction outweighs the public interest in maintaining the prohibition.

There are only a few instances where I have granted a waiver or reduction of the cooling-off period. Two reductions were granted this reporting period, none last year and two in the 2010-2011 reporting period.

## IV. INVESTIGATIONS

My Office administers two investigative regimes, one under the Conflict of Interest Act (Act) and the other under the Conflict of Interest Code for Members of the House of Commons (Code). An examination under the Act can be initiated after receiving a request from a Senator or a Member of the House of Commons, or on my own initiative. An inquiry under the Code can be initiated after receiving a request from a Member, upon resolution of the House of Commons or on my own initiative.

When a Member or Senator makes a request under the Act, or a Member makes a request under the Code, he or she must, among other requirements, set out reasonable grounds for believing that a contravention has occurred. If the requirements are met, the Commissioner must, in the case of the Act, conduct an examination or, in the case of the Code, conduct a preliminary review to determine whether an inquiry is warranted.

Information concerning possible contraventions of the Act and Code also comes to my attention in a variety of other ways, such as media reports and communications from the general public. In those instances, the information is reviewed to determine whether the concerns fall within the mandate of this Office and whether I have reason to believe a contravention of the Act or Code has occurred. In most cases, this requires preliminary fact-finding, after which I determine whether an examination or inquiry is warranted or whether any other action should be taken.

### Overview of Case Files

Over the past year, my Office worked on 48 cases. Twelve of these cases resulted from requests from Members, 10 relating to the Act and two relating to the Code. Thirty-six resulted from information received from other sources. No requests for an examination were made by Senators over the past year. Most of the 48 cases were related to the obligations of public office holders under the Act, 22 of which concerned ministers or parliamentary secretaries.

Table 4-1: Comparison of investigative activity over the past three reporting periods

Cases opened or carried over from past years				Cases closed or carried forward to next year			
	2010-2011	2011-2012	2012-2013		2010-2011	2011-2012	2012-2013
Opened	33	30	32	Closed	28	25	33
Carried over	6	11	16	Carried forward	11	16	15
<b>Total</b>	<b>39</b>	<b>41</b>	<b>48</b>	<b>Total</b>	<b>39</b>	<b>41</b>	<b>48</b>



Table 4-1 compares the case load over the past three years. The number of files opened by my Office annually has remained stable. The 15 files that remained open at the end of this fiscal year include three for which an examination has been initiated and one suspended examination.

Of the 48 files that my Office worked on in this reporting period, 11 were examinations initiated under the Act, some of which had been commenced in the previous year.

I issued five public reports during this reporting period: *The Raitt Report*, *The Sullivan Report*, *The Hill Report*, *The Heinke and Charbonneau Report* and *The Clement Report*. The first three of these reports resulted from examinations, and the last two reports resulted from three referrals from the Public Sector Integrity Commissioner that did not result in examinations. I also released one examination report shortly after the end of this reporting period, *The Fonberg Report*, which also resulted from a referral from the Public Sector Integrity Commissioner. These reports are summarized below.

Three examinations were discontinued when I determined that, after reviewing the cases, I did not have reason to believe that a contravention of the Act had occurred. These cases are also summarized below.

Three examinations are ongoing. One other examination, relating to the post-employment obligations of former reporting public office holder Mr. Bruce Carson, remains suspended while criminal proceedings are pending.

There were no inquiries under the Code this year, although there were a small number of files dealt with by my Office relating to Members' obligations under the Code. These cases are dealt with in more detail in this year's annual report under the Code.

## **Summary of Examination Reports Issued**

### ***The Raitt Report***

Early in this reporting period, on April 26, 2012, I released a report that examined allegations that the Honourable Lisa Raitt, in her position as Minister of Labour, had accepted a complimentary upgrade to executive class on an Air Canada flight, authorized by a senior executive of Air Canada. I found that Ms. Raitt did not contravene the Act since the upgrade was obtained using one of Ms. Raitt's frequent flyer credits, which therefore did not constitute a gift or other advantage. As this report was issued early in the fiscal year, it was covered in more detail in my last annual report.



### ***The Sullivan Report***

I released a report on October 17, 2012, into the conduct of Mr. Loyola Sullivan, former Canadian Ambassador for Fisheries Conservation. My self-initiated examination sought to determine whether, after leaving office, Mr. Sullivan contravened the post-employment obligation set out in subsection 35(2) that prohibits reporting public office holders from making representations for or on behalf of another entity to any department, organization, board, commission or tribunal with which they had direct and significant official dealings during the period of one year before leaving office.

After consulting with my Office, Mr. Sullivan accepted the position of Vice President of Resource Management and Sustainability at Ocean Choice International in June 2011. During his one-year post-employment cooling-off period, he had several interactions with Fisheries and Oceans Canada and Foreign Affairs and International Trade Canada related to matters of interest to Ocean Choice International. I found that some of these interactions amounted to representations, and therefore that Mr. Sullivan had contravened subsection 35(2) of the Act.

### ***The Hill Report***

On March 26, 2013, I released a report into the conduct of the Honourable Jay Hill, a former cabinet minister, in relation to his post-employment obligations under the Act.

Mr. Hill left office on August 6, 2010. In late May 2011, Mr. Hill contacted three ministers to inform them of an agreement between Progress Energy Resources Corporation and Petronas, the national oil company of Malaysia. He spoke to two ministers and the chief of staff of the third. At the time, his spouse was working for a public relations firm retained to assist Progress Energy Resources Corporation with communicating the agreement.

My self-initiated examination sought to determine whether, in making the calls to the three ministers, including a former ministerial colleague, Mr. Hill had contravened section 33, subsection 35(3) or section 37 of the Act.

Section 33 prohibits former public office holders from taking improper advantage of their previous public office. I found that Mr. Hill took advantage of his former status and position to facilitate access to the ministers for his spouse, her employer and its client, in contravention of section 33.



Subsection 35(3) prohibits former ministers from making representations to former ministerial colleagues during a cooling-off period of two years following their departure from public office. I was unable to conclude that Mr. Hill's communication with a former ministerial colleague constituted a representation made in order to influence the official actions of that minister.

Section 37 requires former reporting public office holders to report to the Commissioner certain communications and meetings arranged with current public office holders during their post-employment cooling-off period. I found that the content of the communications would not have required him to submit a report to my Office under section 37.

I therefore concluded that Mr. Hill contravened section 33, but did not contravene subsection 35(3) or section 37 of the Act.

### **Referrals from the Office of the Public Sector Integrity Commissioner**

As mentioned above, I released two reports that were the result of information referred to me by the Public Sector Integrity Commissioner: *The Heinke and Charbonneau Report* and *The Clement Report*. I also released one report shortly after the end of the reporting period, *The Fonberg Report*. Subsection 24(2.1) of the *Public Servants Disclosure Protection Act* requires that the Public Sector Integrity Commissioner refer to my Office any disclosures received, the subject matters of which, in his or her opinion, fall within my mandate. When I receive such a referral, section 68 of the *Conflict of Interest Act* requires that I issue a report setting out the facts in question as well as my analysis and conclusions.

Although section 68 of the Act requires a report, I do not interpret section 68 to require a complete examination in respect of every referral. In my view, I must deal with information I receive from the Public Sector Integrity Commissioner in the same way as I would any information received from any member of the public about a possible contravention of the Act.

Where information provided to my Office from the public or in a referral under the *Public Servants Disclosure Protection Act* provides me with reason to believe that a contravention has occurred, I may self-initiate an examination under section 45 of the Act. In order to determine whether an examination is warranted, I may, where appropriate, seek further information, including from the individual who made the disclosure, the individual who is the subject of the disclosure or anyone else who may have relevant information.



Even if I ultimately decide not to proceed to an examination in a case referred to me by the Public Sector Integrity Commissioner, I must nonetheless write a report setting out my reasons for not pursuing the matter further. I believe this requirement should be reconsidered and have recommended in my submission to the House of Commons Standing Committee on Access to Information, Privacy and Ethics in the context of the five-year review of the *Conflict of Interest Act*.

### ***The Heinke and Charbonneau Report***

On May 18, 2012, I released *The Heinke and Charbonneau Report*. This report addressed two separate referrals that I received from the Public Sector Integrity Commissioner. As this report was issued early in the fiscal year, it was covered in more detail in my last annual report.

It was alleged that two members of the Canada Industrial Relations Board were in a conflict of interest because of past associations with Air Canada and one of its unions. After reviewing the information provided and after gathering further information, I found no evidence that Mr. Heinke or Mr. Chabonneau had contravened the Act and I did not commence a self-initiated examination in this case.

### ***The Clement Report***

On July 18, 2012, I released a report on three matters related the conduct of the Honourable Tony Clement, Member of the House of Commons for Parry Sound–Muskoka, when he was Minister of Health and Minister of Industry.

The first matter concerned Mr. Clement's participation in a promotional video for Lord & Partners Ltd. in which he identified himself as a minister of the federal government. The second related to the awarding of three contracts to that company. The third concerned the appointment of Mr. George Young, producer of the promotional video, to the Canadian Tourism Commission. It was alleged that Mr. George Young and Mr. Barry Young, president of Lord & Partners, were friends of Mr. Clement.

After seeking further information, I determined that I did not have reason to believe that Mr. Clement was friends with either Mr. Barry Young or Mr. George Young within the meaning of the Act, and that there was no reason to believe a contravention had occurred. Therefore, I did not commence a self-initiated examination in this case.

### ***The Fonberg Report***

On April 30, 2013, shortly after the end of this reporting period, I released a report on my examination into the conduct of Mr. Robert Fonberg, while he was Senior Associate Secretary of the Treasury Board.



It was alleged that Mr. Fonberg contravened the Act in 2007 by participating in discussions between the Treasury Board Secretariat and the Department of Foreign Affairs and International Trade about the process for approving funding for the Forum of Federations, on the alleged grounds of a personal relationship with the Forum's then-President and CEO, Mr. George Anderson. The matter was referred to me by the Office of the Public Sector Integrity Commissioner in September 2011.

Based on the information received, I initiated an examination in this case in relation to three provisions of the Act. Subsection 6(1) prohibits public office holders from participating in decisions that they know or should reasonably know would place them in a conflict of interest. Section 7 prohibits them from extending preferential treatment to any person or organization based on the identity of the person or organization that represents it. Section 21 requires public office holders to recuse themselves from discussions and decisions on any matter in respect of which they would be in a conflict of interest.

I found that Mr. Fonberg and Mr. Anderson were not "friends" within the meaning of the Act. The Treasury Board Secretariat was already considering the approval process for the funding proposal before Mr. Fonberg became involved. Mr. Fonberg did not seek a particular outcome on behalf of Mr. Anderson and the Forum of Federations. I therefore found that Mr. Fonberg did not contravene the Act.

### **Discontinued Examinations**

During this reporting period I commenced three self-initiated examinations that were subsequently discontinued. I may discontinue an examination where, having regard to all the circumstances, I no longer have sufficient grounds to continue. I did not issue reports in any of these three cases. When I decide to discontinue a self-initiated examination under the Act, I do not normally issue a report. Issuing a report in relation to an alleged contravention that is unfounded could have an unfair deleterious effect on the reputation of the individual concerned.

One of these cases involved an allegation that a former Governor in Council appointee had breached the Act by accepting work during her one-year post-employment cooling-off period with an organization with which she had had direct and significant official dealings during her last year in public office. The matter was brought to my attention by a member of the public. My examination was discontinued after I gathered evidence demonstrating that the member of the public who brought the matter to my attention had received incorrect information from the government and that the former Governor in Council appointee had not, in fact, accepted prohibited employment during her cooling-off period.





The second case involved a minister who was alleged to have assisted a friend in obtaining a government contract. The matter came to my attention as the result of media reports. I gathered statements and documents from several witnesses before determining that I no longer had reason to believe that the minister and the contractor were friends and that, in any case, the evidence indicated that the minister had taken no steps to influence the contracting decision.

The third case involved a ministerial staff member. It was alleged that he had been lobbied on several occasions by representatives of a business in which a friend had an interest. The friend owned shares in the company and sat on its board of directors. My Office gathered documents and interviewed several witnesses. My examination was discontinued after I was satisfied that the ministerial staff member had not made any decisions or recommendations, or taken any actions, in relation to his discussions with the company that had lobbied him.

### Files Closed during this Reporting Period

As noted earlier in Table 4-1, my Office closed 33 cases in this reporting period. This includes the three examinations that resulted in a public report that was issued during the 2012-2013 fiscal year (*The Raitt Report*, *The Sullivan Report*, *The Hill Report*) and the three discontinued examinations discussed above. It also includes three cases brought to my attention by the Public Sector Integrity Commissioner that were addressed in two reports issued during that same period (*The Clement Report* and *The Heinke-Charbonneau Report*), also summarized above. The remaining 24 files were closed without initiating an examination or inquiry and without issuing a report.

Cases closed during this reporting period	
Reports issued following an examination	3
Discontinued examinations	3
Cases resulting from a referral by the Public Sector Integrity Commissioner	3
Files closed without proceeding to an examination, inquiry or public report	24
<b>Total</b>	<b>33</b>

These 24 cases were closed after my Office had reviewed them to determine whether the matter fell within the mandate of this Office, whether I had reason to believe a contravention of the Act or Code had occurred and whether an examination or inquiry was warranted or any other action should be taken. I undertook, during an appearance before the Standing Committee on Access to Information, Privacy and Ethics, to shed more light on these cases and have attempted to do so below.

Where appropriate, my Office informs the subject of the case that concerns have been raised. My Office may also follow-up with the individual who raised the matter once the file has been closed, to inform him or her of how the matter was resolved.



Table 4-2 breaks down these 24 cases according to how the matters were raised with my Office and whether they involved a minister or parliamentary secretary, another public office holder or a Member of the House of Commons.

Table 4-2: Files closed during this reporting period without proceeding to an examination, inquiry or report

	Involving a minister or parliamentary secretary	Involving another public office holder	Involving a Member	<b>Total</b>
Raised by Members	3	1	0	<b>4</b>
Raised in the media	6	1	1	<b>8</b>
Raised by the public	2	5	4	<b>11</b>
Raised internally	1	0	0	<b>1</b>
<b>Total</b>	<b>12</b>	<b>7</b>	<b>5</b>	<b>24</b>

### *Cases Involving Ministers or Parliamentary Secretaries*

Of the 12 cases involving ministers or parliamentary secretaries, three related to letters of support sent to the Canadian Radio-television Telecommunications Commission. While I had reason to believe that the Act had been contravened in each of these cases, I decided to issue and make public a compliance order under section 30 of the Act, instead of initiating an examination under the Act. I refer to these three cases in more detail in the section titled Applying the Act.

The remaining nine cases involving ministers or parliamentary secretaries dealt with a variety of issues and are summarized below:

1. I received what appeared to be financial statements listing assets held by a minister that had not been disclosed to my Office as required. I spoke to the minister who said he did not hold those assets. I contacted the two financial institutions named in the statements. One told me the statements were not authentic. The other was unable to confirm or verify their legitimacy. Based on this information I did not pursue the matter further.
2. Media reports alleged that a parliamentary secretary had raised funds from businesses that were stakeholders of the department to which he was assigned. I reviewed the list of invitees and spoke to the parliamentary secretary involved. I was satisfied that he had not personally solicited funds and had had only minimal dealings with one of the stakeholders. I therefore concluded I did not have reasonable grounds to pursue the matter further.

3. My Office received information suggesting a parliamentary secretary may have used his position to further the interests of a friend who was a former business partner. The allegations did not clearly articulate how the private interests had been furthered or provide supporting evidence. Therefore I did not pursue the matter.
4. Information from the media suggested that a minister may have used his position to further the business interests of a family member. My Office conducted research into the matter and spoke to the minister concerned. Based on the information gathered I was satisfied that there was no evidence that the minister had taken any actions to assist the family member.
5. A minister resigned because he had written a letter of support on behalf of a constituent to the federal tax court. At the time of the resignation, neither the letter nor any details of the case had been made public. I obtained a copy of the letter and discussed the matter with the minister. I was satisfied that no further actions were warranted on the part of my Office.
6. A Member of Parliament wrote to my Office alleging that a minister had given preferential treatment to an individual in order to further the private interests of a business that the individual was representing. It was alleged that the preferential treatment was the result of the relationship between them. The Member did not, however, provide details of any specific actions on the part of the minister that would demonstrate reasonable grounds to believe the Act had been contravened. I therefore did not pursue the matter.
7. A member of the public raised concerns with my Office relating to a video on the website of a Member. According to the email, the video offered season's greetings along with a public service message and included a logo from an industry association. My Office was not able to find the video on the website. In addition, we had previously issued an advisory opinion on what would appear to have been a similar matter. We provided the member of the public with a copy of the advisory opinion and did not pursue the matter further.
8. A Member of Parliament wrote to my Office requesting that I investigate whether a minister gave preferential treatment to six individuals during the process of their appointment to a quasi-governmental public authority because of their relationship with another minister. The member did not describe any actions taken by either minister that would indicate that the appointments were made for this reason. My Office conducted additional research on the concerns raised, but ultimately concluded that there were no reasonable grounds to pursue the matter further.



9. I received a letter from a Member of Parliament outlining concerns that several public office holders had contravened the Act by providing preferential treatment to an individual and his business. The information contained in the correspondence had previously been sent to my Office by a member of the public. I had already commenced and later discontinued an examination into the conduct of one of the public office holders because I had found no evidence of preferential treatment. With respect to the other public office holders, the Member had not provided reasonable grounds to believe that the Act had been contravened and I therefore did not commence an examination.

### ***Cases Involving Public Office Holders other than Ministers or Parliamentary Secretaries***

My Office closed seven investigation files involving public office holders other than ministers or parliamentary secretaries. These dealt with a variety of issues and are summarized below:

1. In one case, I learned through media reports that a reporting public office holder had attended a sporting event allegedly at the invitation of a private corporation in relation to which he later oversaw an important decision-making process. After raising the matter with the reporting public office holder and the corporation, I was satisfied that the corporation had neither invited nor paid for the public office holder to attend. In addition, the public office holder could not have known at that time that he would be involved in that decision-making process. I therefore did not pursue the matter further.
2. I received two letters alleging that a current reporting public office holder was openly campaigning for political office. The Act does not restrict the political activities of public office holders and I therefore referred the matter to the Privy Council Office, which has developed rules relating to such matters.
3. Concerns about hiring practices in a federal organization were brought to my attention by a member of the public. I raised the matter with the organization in question and the information gathered suggested a possible impropriety on the part of individuals within that organization, but they were not public office holders covered by my Act. I therefore forwarded the request to the appropriate oversight body.
4. A member of the public raised concerns with my Office about a decision made by a federal regulatory body, alleging that the head of the organization was in a conflict of interest. My Office contacted the member of the public to discuss his concerns. He was unable to provide my Office with any information indicating that the head had been involved in the matter in any way that might suggest a contravention of the Act. I therefore did not pursue the matter further.



5. A Member of the House of Commons raised concerns with my Office that a ministerial staff member had been given a complimentary seat upgrade on a commercial flight. I spoke to the ministerial staff member and requested documents from the airline. The information gathered indicated that the upgrade had been purchased using frequent flyer points, but that, because the flight had been cancelled and rebooked, the ministerial staff member's account had not been debited until several weeks later. I therefore did not commence an examination.
6. Information from a member of the public, which was referred to me by another oversight body, raised numerous issues apparently relating to a labour dispute, human rights issues and an allegation of bias on the part of a federal administrative tribunal. The information did not articulate any specific allegations of conflict of interest or identify any individuals subject to the Act. I therefore did not pursue the matter further and advised the oversight body accordingly.
7. A member of the public sent me an email raising concerns that a ministerial staff member who was preparing to leave the government for a job in the private sector had shared insider information with his future employer. I sought additional information from both the member of the public and the ministerial staff member. As a result of further research, I discovered that the information in question was publicly available and I therefore did not pursue the matter further.

### ***Cases involving Members of the House of Commons***

My Office closed five investigation files related to Members of the House of Commons regarding matters covered by the Code. My annual report under the Code provides a brief description of these cases.





## **V. FIVE-YEAR REVIEW OF THE *CONFLICT OF INTEREST ACT***

The *Conflict of Interest Act* (Act) came into force on July 9, 2007. Section 67 of the Act provides for a comprehensive review of its provisions and operation to be undertaken by Parliament within five years after the coming into force of that section. In January 2013, the House of Commons Standing Committee on Access to Information, Privacy and Ethics (Committee) launched a review of the Act.

I was asked to contribute to the review by sharing with the Committee my observations and recommendations based on my experience in administering the Act since it came into force. I provided the Committee with a comprehensive and detailed written submission, including detailed recommendations. Many of the recommendations reflect suggestions that I have previously made in my annual reports under the Act. A summary list of my recommendations is included as Appendix A and my written submission to the Committee is available on our website.

I appeared before the Committee three times: near the start of the review, on February 11, 2013; as its last scheduled witness, on March 18; and *in camera* on May 6, to provide clarification on certain matters.

As outlined in my opening statement during my February appearance, while the structure of my submission largely mirrors that of the Act, many of my individual recommendations fall within eight broad priority areas.

### **Increasing Transparency around Gifts and other Advantages**

There is a need for greater transparency around gifts and other advantages, and I believe that could be achieved through increased disclosure and public declaration.

The rule in the Act is that no public office holder, or member of his or her family, may accept any gift that may reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function.

In addition, the Act requires that reporting public office holders disclose to my Office and publicly declare any gifts with a value of \$200 or more that are accepted. This is simply a reporting threshold and has nothing to do with whether or not a public office holder may accept a gift, whatever its value.

There is a commonly held misconception that gifts worth less than \$200 are automatically acceptable. This is because many public office holders confuse the idea of a reporting threshold with an acceptability threshold. There is no acceptability threshold and I did not propose one.



Because of the ongoing confusion between the acceptability of gifts and the requirement to report them, I recommended lowering the \$200 reporting threshold to a minimal amount, such as \$30.

A lower reporting threshold would require reporting public office holders to contact my Office in relation to a greater number of gifts, which in turn would allow us to advise them as to whether a gift is acceptable and enhance transparency where they are made public. They would still not be able to accept a gift that could reasonably be seen to have been given to influence them, regardless of its value.

### **Strengthening the Act's Post-employment Provisions**

The general absence of reporting obligations for former public office holders makes it difficult to enforce the Act's post-employment rules that seek to prevent them from taking advantage of their previous public office.

Before leaving office, reporting public office holders are required to disclose to the Commissioner, within a prescribed timeframe, any firm offer of outside employment or any acceptance of an offer. However, once they leave public office, they have no obligation to report on any of their post-employment activities, with one exception. They are required to report certain activities identified in the *Lobbying Act*, but I have received only one such report from a former reporting public office holder. In most cases, former reporting public office holders do not have any contact with my Office during their one-year or two-year post-employment cooling-off period.

In my written submission to the Committee, I recommended requiring former reporting public office holders to report to the Commissioner during the cooling-off period any firm offers of employment received during that period, including offers of service contracts, appointments to boards of directors and partnerships, and also to report on their duties and responsibilities in relation to their new employment.

### **Narrowing the Overly Broad Prohibition against Engaging in Outside Activities**

With limited exceptions, the Act prohibits reporting public office holders from participating in a range of outside activities, such as engaging in employment or the practice of a profession, serving as a director or officer in a corporation or organization, and holding office in a union or professional association.

The prohibition applies regardless of whether participation in those activities would place a reporting public office holder in a conflict of interest or be incompatible with his or her public duties. There are limited exceptions for officers and directors of Crown Corporations. However,





there are none for other public office holders. For example, summer students working in ministers' offices cannot maintain part-time jobs they depend on during the school year, and a reporting public office holder cannot operate a hobby farm that sells a small amount of produce. The Commissioner has no authority to waive the prohibition.

I recommended that the Commissioner be given the discretion to grant exceptions to the prohibition against engaging in outside activities if the activities in question are not incompatible with the reporting public office holder's official duties. All authorized outside activities would still have to be publicly declared.

### **Limiting the Prohibition against Holding Controlled Assets**

The Act prohibits reporting public office holders from holding controlled assets, regardless of whether doing so could place them in a conflict of interest.

I recommended that the absolute prohibition against holding controlled assets be restricted to those who have a significant amount of decision-making power or access to privileged information, such as ministers, ministers of state, parliamentary secretaries, chiefs of staff and deputy ministers. The prohibition, and the related requirement to divest, would only apply to other reporting public office holders if holding the controlled assets would constitute a risk of conflict of interest. I note that the enabling legislation for a number of government organizations already provides for divestment of those assets that could be affected by a decision of that organization.

A witness with direct experience with ministers' offices suggested to the Committee that the absolute prohibition should continue to apply to ministerial staff, who are frequent targets of lobbying. I indicated during my March 18 Committee appearance that I would not object to the absolute prohibition applying to ministerial staff because they have access to a broad range of privileged information. I noted that many ministerial staff, especially those in junior positions, tend not to hold controlled assets, so divestment would rarely be required in these cases. Summer students and interns could, as suggested by one witness, be excepted from the absolute prohibition.

### **Introducing Some Disclosure and Public Reporting Requirements for Non-reporting Public Office Holders**

Public office holders who are not reporting public office holders have no reporting obligations, but are subject to a number of rules under the Act. In order to help ensure compliance with the Act, I recommended introducing some limited reporting obligations for non-reporting public office holders.



I believe that all public office holders should be subject to the same disclosure and public reporting requirements in relation to outside activities, recusals, and gifts and other advantages. This would help anticipate and proactively address potential conflicts of interest. I do not suggest, however, that non-reporting public office holders be required to adhere to all reporting obligations, such as disclosure of assets and liabilities.

### **Addressing Misinformation Put into the Public Domain in relation to Investigative Work**

Members of the House of Commons sometimes make public statements about an examination under the Act that they have requested or about other allegations raised in the public domain. On several occasions, those statements have included misinformation. There have also been situations where the subject of an allegation has claimed erroneously that he or she had already raised a specific matter with my Office in the past and been told that there were no ethical concerns related to it.

I generally refrain from making public comments about an ongoing examination, choosing instead to correct any misinformation once the examination is completed and a report is issued. However, if I do not conduct an examination or if I discontinue an examination without issuing a report, I do not necessarily have an opportunity to correct the public record. As well, it is sometimes desirable to correct misinformation even if an examination has been initiated.

I therefore recommended giving the Commissioner express authority to comment, where appropriate, especially in order to correct misinformation.

### **Extending the Administrative Monetary Penalty Regime**

Administrative monetary penalties of up to \$500 may be imposed under the Act for failures to meet certain reporting deadlines or other procedural requirements, but not for breaches of the substantive provisions of the Act, such as accepting a gift that does not meet the acceptability test, engaging in a prohibited outside activity and holding controlled assets.

I recommended extending the penalty regime to cover clear breaches of the Act's substantive provisions. This would provide a means of dealing with clear substantive contraventions under the same expedited process that exists for procedural contraventions where an examination under the Act is not warranted, generally because the facts are undisputed.

I recognize that there are differences of opinion on whether it is necessary or desirable to impose penalties in cases where an examination has been completed and has revealed that the Act has been contravened. My view is that issuing a public report in which a contravention is found is itself a significant adverse result, and that the imposition of monetary penalties would not generally be necessary in those cases.



## **Harmonizing the Act and the Code**

The Act and the *Conflict of Interest Code for Members of the House of Commons* (Code) have similar provisions, but there are substantive and procedural differences between them. Those differences have led to a lack of clarity for individuals who are subject to both regimes, namely Members who are also ministers or parliamentary secretaries.

I therefore recommended harmonizing the Act and the Code, where appropriate, in order to ensure consistency of language and processes.

One example where I believe that harmonization would be desirable involves the processes for launching an investigation. Unlike the Code, which provides for a preliminary review stage before an inquiry is launched, the Act requires me to launch an examination immediately upon receiving a written request to do so from a Senator or Member. I suggested that the Act also provide for a preliminary review of examination requests so the Commissioner can determine whether an examination is warranted before proceeding.

As the Code is also under review by the House of Commons Standing Committee on Procedure and House Affairs, it would appear to be timely to examine both instruments for opportunities to harmonize the two regimes.

## **Fundraising**

The Act allows all public office holders, including ministers and parliamentary secretaries, to personally solicit funds if it does not place them in a conflict of interest.

Given the potential for current and future conflicts of interest when ministers and parliamentary secretaries engage in fundraising, I recommended that a stronger fundraising rule be established for ministers and parliamentary secretaries.

Some witnesses who appeared before the Standing Committee on Access to Information, Privacy and Ethics suggested that an absolute prohibition might be appropriate for ministers and parliamentary secretaries. I indicated that I would support this approach. I also noted that I would not recommend any change to the existing rule for other public office holders.

## **Investigations into Similar Circumstances under the Conflict of Interest and Lobbying Regimes**

Some witnesses who appeared before the Committee suggested that the Lobbying Commissioner and I have made contradictory findings in related investigations. I explained to the Committee that we have two different regimes that regulate the behaviour of two different groups of people, public office holders and lobbyists.



Our respective investigations of one particular case cited by witnesses—the involvement of lobbyists in a political fundraising event—looked at the same set of facts but under different rules. My focus was on whether a minister had contravened the gift rule by accepting the volunteer services and monetary contributions provided by the lobbyists. The Lobbying Commissioner focussed on the conduct of the lobbyists and whether their actions placed the same minister in an actual, potential or apparent conflict of interest. The gift rules in the *Conflict of Interest Act* do not involve the concept of “conflict of interest”. There was no existing “conflict of interest” under the *Conflict of Interest Act* in that case, although there was the potential for a future conflict of interest situation. This matter was addressed and conflict of interest screens were established by the minister as a preventive measure.

Another area of confusion arises because the Lobbying Commissioner has, in the context of determining whether there is a conflict of interest, interpreted private interest to consist of such things as political advantage. I have found, in an unrelated case, that given the wording and structure of the *Conflict of Interest Act*, political interests are not captured within the Act’s concept of “private interest”. In order for political interests to be covered, the Act would have to be amended.

## Summary

The recommendations that I presented for the consideration of the House of Commons Standing Committee on Access to Information, Privacy and Ethics seek to increase the Act’s effectiveness in preventing conflicts between public and private interests. I believe that they would help clarify the rules, ensure transparency and fairness and, above all, strengthen the means by which the Act’s objectives might be achieved.

It is my hope that the Committee will see fit to recommend that Parliament adopt some or all of my recommendations for improvements to the *Conflict of Interest Act*. I look forward to its report and the government’s response.



## **VI. OUTREACH AND COMMUNICATIONS**

I continue to look for ways to strengthen communications with all stakeholders. Outreach and communications activities are directed toward informing and educating public office holders and Members of the House of Commons so they are better able to fulfill their obligations under the *Conflict of Interest Act* (Act) and the *Conflict of Interest Code for Members of the House of Commons* (Code). They also play a role in increasing public awareness of Canada's federal conflict of interest regimes.

### **Reaching out to Public Office Holders and Members of the House of Commons**

#### ***Public Office Holders***

During the past year, my staff and I have given a number of presentations to organizations whose members have obligations under the Act as public office holders, including ministerial chiefs of staff, ministers' offices, the Security Intelligence Review Committee, the Canadian Broadcasting Corporation's board of directors, the Social Security Tribunal and the Belledune Port Authority.

My Office continues to issue a variety of documents to help public office holders understand their obligations under the Act and to contribute to public education. In the past year, I issued an information notice on the subject of outside activities, and an updated backgrounder on conflict of interest screens and other compliance measures.

#### ***Members of the House of Commons***

I have established a tradition of offering annual presentations to the caucuses of all recognized parties in the House of Commons. In February, we offered presentations to all parties with official status in the House of Commons and individual meetings to other party caucuses and to independent Members of the House of Commons.

In November 2012, under the authority provided in subsection 26(4) of the Code to publish opinions for the guidance of Members, I issued an advisory opinion regarding the obligation to publicly disclose gifts received in connection with travel.

### **Parliamentary Activities**

#### ***Reports to Parliament***

My reporting relationship with Parliament is at the heart of the parliamentary activities conducted by my Office. My reports to Parliament include my annual reports in respect of the Act and the Code, the annual list of sponsored travel by Members, and my reports on examinations under the Act and inquiries under the Code.



During this reporting period, I issued eight reports. These included my annual reports in respect of the Act and the Code, which I released in June 2012, and the *List of Sponsored Travel 2012*, which I submitted to the Speaker of the House of Commons in March 2013 for tabling that same month. The other five reports were examination reports under the Act: *The Raitt Report* (April 2012), *The Heinke and Charbonneau Report* (May 2012), *The Clement Report* (July 2012), *The Sullivan Report* (October 2012) and *The Hill Report* (March 2013). These are discussed in the Investigations section of this report.

### ***Committee Appearances***

I am occasionally invited to testify before parliamentary committees about my Office and its work. I appear most frequently before two committees of the House of Commons. One is the Standing Committee on Access to Information, Privacy and Ethics, which has oversight responsibility for my Office and reviews its annual spending estimates, as well as matters related to my reports pursuant to the Act. The other is the Standing Committee on Procedure and House Affairs, which has responsibility for the Code and, with my input, may recommend changes to the Code.

In May 2012, I appeared before the Standing Committee on Procedure and House Affairs, which is conducting a five-year review of the Code, to discuss the recommended amendments that I set out in my detailed written submission to that Committee. I hope to have another opportunity to appear before that Committee before it completes the review.

In February and again in March 2013, I appeared before the Standing Committee on Access to Information, Privacy and Ethics, which is conducting a five-year review of the Act, to discuss the recommendations for amendments that I detailed in my written submission to that Committee. These are discussed in a separate section of this report.

I note that, in the earlier years of my mandate, I was invited to appear before the Standing Committee on Access to Information, Privacy and Ethics to discuss my annual reports under the Act, and before the Standing Committee on Procedure and House Affairs to discuss my annual reports under the Code. I was last invited to do so in 2010, in respect of my 2009-2010 annual reports.

In February 2013, I also testified before the House of Commons Standing Committee on the Status of Women in the context of its study on sexual harassment in the federal workplace.



### ***Other Parliamentary Activities***

My Office again participated in the Parliamentary Officers' Study Program in May 2012 and March 2013, presenting information about the Act and the Code and answering questions from the international participants.

### **Working with Others**

Domestically, I continue to fulfill a coordination role in the Canadian Conflict of Interest Network (CCOIN), which is made up of federal, provincial and territorial conflict of interest commissioners. My Office is responsible for gathering and disseminating within this network information and materials acquired or developed in the various jurisdictions within Canada. In September 2012, I attended the CCOIN annual meeting in Fredericton, New Brunswick. I am looking forward to hosting the 2013 annual meeting in Ottawa this September.

External speaking engagements last fall included a speech at a luncheon seminar of the Ontario Bar Association in Toronto, and two presentations to University of Ottawa law students.

I have also continued to welcome international delegations. During the past fiscal year, delegations from Korea (May 2012) and Tanzania (June 2012), and a group of students from Ukraine (October 2012), visited my Office to listen to presentations about my role and mandate and how my Office fits into Canada's broad ethical landscape. In November, my Office responded to a survey from the Organisation for Economic Co-operation and Development on managing conflicts of interest in the legislative branch.

### **Inquiries from the Media and Members of the Public**

My Office has continued to receive and respond to a growing number of requests for information from journalists and members of the public.

In the 2012-2013 fiscal year, we received and responded to 185 media inquiries, an increase of 80 per cent from the 2011-2012 total, which in turn had more than doubled from the year before. This continues a growth trend that has been evident since 2008-2009, when we received and responded to 28 media requests. In 2012-2013 we also received a number of requests for media interviews, eight of which were accepted.

I attribute this significant increase to the growing awareness in the number of issues on which journalists may be inclined to seek comment from my Office, as well as to our approach to media relations, which seeks to foster awareness of my mandate and encourage accurate reporting of my Office's work.



The number of inquiries that we receive from members of the public has also continued on an upward trend. In the past fiscal year we received, via email, telephone, fax and letter mail, over 800 such communications, up from approximately 600 in 2011-2012. I believe that their growing volume is indicative of increased public awareness about my Office.

Inquiries related to my mandate that we received from members of the public include requests for information about the application of the Act and the Code, requests for documents issued by my Office, and requests for information about ongoing investigations or compliance issues. My Office also receives information from members of the public about possible contraventions of the Act or the Code.

Many of the inquiries from members of the public that we received in the past fiscal year consisted of requests for information, action or assistance that were not related to my mandate. In keeping with my objective of increasing public awareness about the administration of the Act and the Code, whenever we receive requests about matters that fall outside my mandate, my Office provides information clarifying my mandate. Where possible, we also refer the correspondents to other bodies that are better suited to respond to the issues raised.





## VII. ADMINISTRATION

### Accountability

As an entity of Parliament, my Office operates under the *Parliament of Canada Act*. It is not subject to most Treasury Board policies and guidelines. In addition, most legislation governing the administration of the public service, such as the *Public Service Employment Act*, the *Access to Information Act* and the *Privacy Act*, do not apply to my Office.

As part of its commitment to good stewardship, my Office has invested considerable efforts towards establishing an internal management framework based on the principles of sound resource management followed in the public service. In addition, I have adopted a number of practices used in the public service to publicly disclose accountability information. Annual financial statements, quarterly financial reports and status reports on travel, conference and hospitality expenses are easily accessible through the Office's website. Internal controls are being documented and annual financial statements are audited. We are also in the process of developing a performance measurement framework to enhance our ability to measure and report on results.

My Office has negotiated a number of shared services arrangements with the House of Commons (information technology and security), the Library of Parliament (accounts payable and reporting) and Public Works and Government Services Canada (compensation). These arrangements provide greater efficiency and one more level of scrutiny in the management of resources.

### Human Resources Management

I continue to enjoy a high level of stability in the area of staffing. With the exception of one employee who retired, there was no employee turnover in 2012-2013 and only 2 per cent in 2011-2012. This impacts positively on our ability to deliver services in a consistent manner.

In order to ensure that employees benefit from the best possible workplace conditions, we monitor results of collective bargaining taking place in Parliament and in the public service and, where appropriate, amend the *Terms and Conditions of Employment* of our employees. In this context, our current *Terms and Conditions of Employment*, which came into effect on April 1, 2013, include changes made to leave provisions and severance pay. With the cessation of severance pay accumulation, we offered the same options to our employees as were offered to employees in the public service.

We have already put in place a strong policy framework in the area of human resources management and are therefore able to focus at this point on more specific matters.



A joint labour relations committee consisting of representatives of both management and employees plays an instrumental role in the development of policies and guidelines related to human resources management. In addition to providing insight and initial comments on draft documents, the committee consults employees and recommends the necessary changes to proposed policies and guidelines. This process has proven to be very valuable in ensuring the effective adoption of new policies and guidelines.

A guideline on job shadowing came into effect on January 1, 2013 in an effort to support and encourage the career development of our employees.

A policy on workforce adjustment also came into effect on January 1, 2013 to ensure the equitable treatment of employees, should a workforce adjustment situation arise at the Office. The options presented in this policy are based on those in the public service and in Parliament, but take into consideration the challenges faced by a small organization, especially as they relate to a reasonable job offer. Two information sessions were held to explain the content of this policy to employees.

Other policies and guidelines are in various stages of development and include topics such as occupational health and safety, disability and duty to accommodate, and management of other leave.

While I consider that the low employee turnover in recent years and the absence of formal grievances and complaints are strong indicators of a healthy workplace at the Office, I plan to validate assumptions with actual feedback. I have therefore decided to proceed with an employee satisfaction survey in the 2013-2014 fiscal year. The survey, which will be conducted in a completely confidential manner by an independent third party, will be similar to the one used in the public service, but adapted to the context of the Office.

## **Financial Management**

I have maintained the same operating budget of \$7.1 million for the past five years. In accordance with the commitment made in my previous report, a spending review was conducted in 2012-2013 and opportunities for efficiencies were identified. Some examples are the use of emails rather than standard mail services to communicate with some of our many stakeholders, the removal of many individual printers and the consolidation of certain administrative functions, such as the procurement of goods. As a result of this exercise, and by reducing the reserve set aside to cover unexpected situations, I was able to apply a three per cent cut to the 2013-2014 budget allocated to my Office, with an additional one per cent in 2014-2015. I have, however, asked that salary budgets be adjusted to reflect the economic increases that will take effect in 2013-2014.



For the second consecutive year, the annual financial statements for my Office, which are available on the Office website, were audited by an independent auditor. Again, these statements received a very positive opinion from the auditor. This year, the services of Ernst and Young were retained to perform the audit.

A table broadly outlining the financial information for the Office for the 2012-2013 fiscal year is provided in Appendix C under the heading Financial Resources Summary. Detailed financial information can be found on our website.

I continue to rely on the House of Commons and the Library of Parliament to provide shared administrative services in the area of information technology, security and financial services.

My Office also has a shared services agreement with Public Works and Government Services Canada for compensation services and makes use of this agreement on an ad hoc basis for specific situations related to human resource management that require third-party expertise.

In the context of internal control, I am pleased to report that, with the assistance of the financial team at the Library of Parliament, we have documented our internal financial management processes, identified potential risks, determined which internal controls are in place to address these risks, and conducted sample testing to ensure that the internal controls are being applied consistently. Preliminary results of the sample testing were very useful and we have already followed up on a few recommendations that were made by the Library of Parliament to further improve our internal processes. These include formalizing the monthly financial review process by directors and making adjustments to our internal forms.

As reported in last year's annual report, a new integrated case management system was launched on April 1, 2012. This new application has led to significant improvements in the electronic management of operational cases. As can be expected with any new application, we identified minor problems throughout the year and have further improved the system. The technical team at the House of Commons assisted my Office in addressing these issues.

We also invested resources in the development of a new application to manage the content of our website because the current application has reached its full capacity.





## VIII. LOOKING AHEAD

Within this next year, I expect that the five-year reviews of both the *Conflict of Interest Act* (Act), by the Standing Committee on Access to Information, Privacy and Ethics, and the *Conflict of Interest Code for Members of the House of Commons* (Code), by the Standing Committee on Procedure and House Affairs, will be completed. I have already contributed to those reviews by providing the committees with written submissions detailing my recommended amendments to the Act and the Code, and by appearing before them to discuss those recommendations and answer their questions. I would be pleased to participate in any further consultations if this is required. I am also prepared to undertake the implementation of any changes as required either by the government in relation to the Act or the House of Commons in relation to the Code.

I will also continue to work with these committees on other matters related to the administration of the two regimes.

As I look forward to the next year, I am conscious of the fact that I am approaching the final year of my mandate. Over the past six years I have developed a strong organization with dedicated employees and established clear procedures to ensure the effective and efficient administration of the Act and the Code. We review and refine these procedures as needed, but the underlying emphasis on preventing conflicts from arising remains the same.

My Office will continue to focus on providing timely and expert advice to help public office holders and Members meet their obligations under the Act and the Code.

We will undertake outreach initiatives as appropriate to promote awareness and understanding of the Act and the Code for those subject to the regimes, as well as members of the public. These initiatives will continue to be complemented by tools that explain our mandate and activities. Furthermore, we will enhance our communications efforts with the launch of an Office Twitter account, in conjunction with the release of this year's annual reports.

The area of investigations continues to be active, and we expect to report on the outcome of several ongoing investigations over the course of the coming year.

As well, we continue to pursue several other priorities, including the implementation of a performance measurement framework to effectively measure and report on results, in line with the approach used throughout the federal public sector but tailored to our own context.



I look forward to the results of the first employee survey, which was conducted in the Office in the spring of 2013. This survey will provide me with useful information about employee satisfaction levels in a variety of areas, including job responsibilities, workplace environment, resources and developmental opportunities.

Finally, I will be hosting the annual conference of members of the Canadian Conflict of Interest Network, scheduled to take place in Ottawa this coming September. This annual event provides an invaluable opportunity for conflict of interest commissioners from federal, provincial and territorial jurisdictions to exchange experiences and best practices.

I believe that my Office plays an important role in Canada's ethical landscape, upholding and maintaining the trust of Canadians in Parliament and its institutions. As always, my staff and I will focus our efforts in the coming year on ensuring that the way in which the Act and the Code are administered meets the expectations of Canadians and Parliamentarians with regard to transparency, integrity and accountability.

## APPENDIX A – SUMMARY LIST OF RECOMMENDATIONS (from page 3 and 31)

[Excerpt from: *The Conflict of Interest Act: Five-Year Review – Submission to the Standing Committee on Access to Information, Privacy and Ethics*]

### Chapter 1: Introduction and General Observations

- Recommendation 1-1: That the Act be amended to establish certain disclosure and public reporting requirements for non-reporting public office holders in relation to outside activities, recusals and gifts or other advantages. See also Recommendations 4-22 to 4-27.
- Recommendation 1-2: That Parliament take steps to harmonize the *Conflict of Interest Act* and the *Conflict of Interest Code for Members of the House of Commons* to provide consistency in their language and processes, where appropriate.

### Chapter 2: Purpose Clause and Definitions

- Recommendation 2-1: That paragraph 3(a) of the Act be amended to reflect the overarching objective for the Act along the following lines:
- 3. The purpose of this Act is to*
- a) establish clear conflict of interest and post-employment rules for public office holder in order to maintain and enhance public confidence and trust in the integrity of public office holders as well as confidence in the objectivity and impartiality of the decision-making process in the government.*
- Recommendation 2-2: That the Act be amended to add a definition of “conflict of interest” in section 2, the interpretation section of the Act, based on the wording of the current section 4.
- Recommendation 2-3: That the definition of “conflict of interest” be expanded to cover “entities” as well as “persons” as follows: “or to improperly further the private interest of another person or entity”.
- Recommendation 2-4: That the definition of ministerial staff be amended to make it clear either that the definition covers individuals working on behalf of the minister on contract or as volunteers, or that it is limited to individuals appointed under section 128 of the *Public Service Employment Act*.



- Recommendation 2-5: That the definition of “ministerial adviser” be amended to remove the condition that they occupy a position in the office of a minister and to clarify who is intended to be included as a ministerial adviser.
- Recommendation 2-6: That the Act be amended to list the agents of Parliament who are intended to be included in or excluded from the application of the Act.
- Recommendation 2-7: That prothonotaries of the Federal Court be excluded from the definition of public office holder and the application of the Act.
- Recommendation 2-8: That the *Conflict of Interest Act* expressly exempt from the definition of public office holder and the application of the Act members of the Canada-Newfoundland and Labrador Offshore Petroleum Board and the Canada-Nova Scotia Offshore Petroleum Board.
- Recommendation 2-9: That the definition of “public office holder” expressly exclude individuals appointed by Governor in Council to perform a designated power on a part-time basis if they remain employees of the Public Service of Canada.
- Recommendation 2-10: That the definition “public office holder” be broadened to include all individuals whose appointments are approved by the Governor in Council.
- Recommendation 2-11: That the definition of “reporting public office holder” expressly exclude interns and summer students who are ministerial staff and have terms of less than six months. They would continue to meet the definition of “public office holder”.
- Recommendation 2-12: That the definition of “reporting public office holder” expressly exclude individuals appointed by Governor in Council in an acting capacity on a temporary basis for six months or less, or for a term of six months or less. They would continue to meet the definition of “public office holder”.

### **Chapter 3: Rules of Conduct—Part 1 (Sections 4–19)**

- Recommendation 3-1: That a new general section 4 be included in Part 1 of the Act that would prohibit public office holders from exercising an official





power, duty or function if they know or reasonably should know that they would be in a conflict of interest.

- Recommendation 3-2: That section 7 be amended as follows:
- to remove the limiting words “based on the identity of the person or organization that represents the first-mentioned person or organization”; and
  - to substitute the word “entity” for the word “organization”.
- Recommendation 3-3: That the concluding words of section 8 be broadened to include a reference to improperly furthering or seeking to improperly further the private interests of an “entity” as well as a “person”.
- Recommendation 3-4: That the concluding words of section 9 be broadened to include a reference to improperly furthering the private interests of an “entity” as well as a “person”.
- Recommendation 3-5: That section 10 be amended to expressly include contracts of service, appointments to boards of directors and partnership relationships as well as employment relationships.
- Recommendation 3-6: That section 11 include references to the other provisions relating to gifts, namely section 23 and subsection 25(5).
- Recommendation 3-7: That the reporting requirements relating to travel on non-commercial aircraft under subsection 25(6) be referred to in section 12.
- Recommendation 3-8: That the Commissioner be given the authority to permit reporting public office holders to engage in outside activities prohibited by subsection 15(1) where this would not be incompatible with the reporting public office holder’s public duties or obligations as a public office holder.
- Recommendation 3-9: That section 15(3) be amended to include references to both concepts, “non-commercial character” and “not for profit”, in the French and English versions to describe the types of organizations referred to in subsection 15(3).



- Recommendation 3-10: That a more stringent rule with respect to fundraising than the current one in section 16 be established for ministers and parliamentary secretaries.
- Recommendation 3-11: That section 17 of the Act be amended to prohibit reporting public office holders who have a significant amount of decision-making power or access to privileged information, such as ministers, ministers of state, parliamentary secretaries, chiefs of staff and deputy ministers, from holding controlled assets, and to prohibit all other reporting public office holders from holding controlled assets only where to do so would place them in a conflict of interest.
- Recommendation 3-12: That section 17 be amended to cover cases where controlled assets are held indirectly as well as directly.

#### **Chapter 4: Compliance Measures—Part 2 (Sections 20–32)**

- Recommendation 4-1: That the definition of “exempt assets” in the English version of section 20 be amended to include the words “but not limited to” to make it clear that the list of examples is not exhaustive.
- Recommendation 4-2: That paragraphs (n) and (o) be amended to exempt all moneys, whatever the amount, owed by relatives, whether or not under a mortgage or hypothec.
- Recommendation 4-3: That the definition of “controlled assets” in section 20 be limited to publicly traded securities traded on a stock exchange or over-the-counter, including such assets within self-administered registered accounts, and to commodities, futures and currencies that are traded on a commodities exchange.
- Recommendation 4-4: That the Act be amended to include a definition of “declarable assets” in section 20 that would include, but not be limited to, the following assets:
- ownership interests in businesses, private corporations and commercial farms;
  - investments in limited partnerships that are not publicly traded;
  - rental property;
  - personal loans of \$10,000 or more receivable from persons other than the public office holder’s relatives; and



- money owed under a mortgage or hypothec with an outstanding balance of \$10,000 or more from persons other than the public office holder's relatives.

Recommendation 4-5: That section 21 be amended to provide expressly for the establishment of conflict of interest screens by public office holders in consultation with the Commissioner where a conflict of interest could very likely arise.

Recommendation 4-6: That section 22 be amended to include the following technical amendments:

- paragraph 22(2)(b) should require that the description of liabilities under that paragraph specify the nature, source and amount of the liabilities;
- it should be made clear that child and spousal support payments and court judgments are included under paragraph 22(2)(b);
- paragraph 22(2)(d) and (e) should require that the activities referred to in those paragraphs be reported if they are engaged in on or after appointment as well as those engaged in during the two-year period before appointment;
- paragraph 22(2)(f) should only require the reporting of activities as trustee, executor or liquidator of a succession or holder of a power of attorney that occur on or after the day of appointment.

Recommendation 4-7: That subsection 22(5), dealing with the reporting of material changes, become a separate section following section 22 to make it clear that this is an ongoing obligation.

Recommendation 4-8: That the threshold for disclosing gifts or other advantages accepted from any one source be reduced to a minimal amount (such as \$30, individually or cumulatively).

Recommendation 4-9: That section 24 be amended to require reporting public office holders to disclose, in addition to firm offers of employment, firm offers relating to contracts of service, appointments to boards of directors and partnership relationships.

Recommendation 4-10: That the wording of section 25 be amended to make it clear that the deadlines currently established are deadlines for reporting



public office holders to make the related disclosures to the Commissioner for the purposes of public examination.

- Recommendation 4-11: That, if Recommendation 4-5 is accepted, subsection 25(1), relating to disclosures of recusals, be amended to include conflict of interest screens.
- Recommendation 4-12: That, if Recommendation 3-8 in Chapter 3 is not accepted, subsection 25(4) be amended to include public reporting of any exception granted under subsection 15(1.1).
- Recommendation 4-13: That subsection 25(5) be amended to reduce the value of \$200 to a lower amount, if a lower amount is established pursuant to Recommendation 4-8.
- Recommendation 4-14: That subsection 25(6) be amended to add ministerial advisers and ministerial staff to those required to make a public declaration in respect of travel on non-commercial aircraft that has been accepted in accordance with section 12.
- Recommendation 4-15: That section 26 be amended to require that reporting public office holders finalize all initial compliance measures under the Act within 120 days after the date on which they were appointed and that a summary statement be made available on the public registry once this is completed.
- Recommendation 4-16: That the Act be amended to require that material changes be publicly declared if such a change affects a current declaration or if a public declaration would have been required had this information been disclosed at the time of the initial disclosure process.
- Recommendation 4-17: That the Act be amended to explicitly provide the Commissioner with the discretion to extend all deadlines for disclosures where appropriate.
- Recommendation 4-18:
- That subsection 27(1) be amended to apply only to those reporting public office holders with a significant amount of decision-making power or access to privileged information, such as ministers, ministers of state, parliamentary secretaries, chiefs of staff and deputy ministers; and



- That section 27 be amended to require that the controlled assets of all other reporting public office holders be subject to a conflict of interest test. Where there is a conflict of interest, these reporting public office holders would be required to sell those controlled assets in an arm's length transaction.

Recommendation 4-19:	If Recommendation 4-18 is accepted, subsection 27(10), which sets out a minimal value exception, would become largely irrelevant and could be repealed.
Recommendation 4-20:	That the Act be amended to establish a 30-day deadline for the completion of the annual review process commencing on the date of the letter initiating the annual review process.
Recommendation 4-21:	That section 32 be amended to require a departing public office holder to inform the Commissioner of his or her departure as soon as the departure date is determined.
Recommendation 4-22:	That paragraph 22(2)(d) of the Act be amended to extend to non-reporting public office holders the requirement to disclose to the Commissioner a description of outside activities referred to in subsection 15(1).
Recommendation 4-23:	That subsection 22(5) of the Act also be amended to require non-reporting public office holders to disclose to the Commissioner material changes in relation to outside activities referred to in subsection 15(1).
Recommendation 4-24:	That section 25 of the Act be amended to require that a public declaration be made in relation to all outside activities referred to in subsection 15(1) engaged in by non-reporting public office holders.
Recommendation 4-25:	That subsection 25(1) be amended to require that non-reporting public office holders, as well as reporting public office holders, disclose any recusal to the Commissioner within 60 days of the recusal taking place and that a public declaration be made.
Recommendation 4-26:	That section 23 of the Act, relating to the disclosure to the Commissioner of gifts or other advantages, be amended to apply to all public office holders.



Recommendation 4-27: That subsection 25(5), relating to the public declaration of gifts or other advantages, be extended to apply to all public office holders, where the gifts or other advantages relate to their duties as public office holders.

### **Chapter 5: Post-employment—Part 3 (Sections 33–38)**

Recommendation 5-1: That the prohibition in subsection 35(1) be expanded to include direct and significant official dealings that a reporting public office holder had during his or her last year in office, not only “with” entities, but also “in relation to” entities.

Recommendation 5-2: That subsection 35(1) be amended to include partnership relationships as well as contracts of service, appointments to boards of directors and employment.

Recommendation 5-3: That subsections 35(1) and (2) be amended to prohibit former reporting public office holders from participating indirectly in any of the activities that are directly prohibited by those subsections.

Recommendation 5-4: That the Act be amended to reflect exceptions from the general rules in section 35 to allow for movement within the federal public sector and from a minister’s office to the office of a political party.

Recommendation 5-5: That the reference to paragraphs 5(1)(a) and (b) of the *Lobbying Act* in section 37 be replaced by a list of the activities that are intended to be covered and that a deadline of seven days be added to report such activities.

Recommendation 5-6: That the Act be amended to require former reporting public office holders to report any firm offers of a contract of service, an appointment to a board of directors, a partnership relationship or employment during their cooling-off period, within seven days of the offer.

Recommendation 5-7: That the Act be amended to require former reporting public office holders to report on their duties and responsibilities in relation to their new contracts of service, appointments to boards of directors, partnership relationships or employment during their cooling-off period, including a description of their duties and responsibilities

and information on any measures taken to ensure compliance with the Act. A deadline of 30 days from the start date of their new position would also be required.

## **Chapter 6: Administration and Enforcement—Part 4 (Sections 43–62)**

- Recommendation 6-1: That the Act be amended to include a requirement for all public office holders to participate in a training session on the Act within a reasonable period after their appointment.
- Recommendation 6-2: That the Act be amended to provide for a process that would allow for the Commissioner to undertake a preliminary review of a request for an examination, including any response from the subject of the request, before the Commissioner determines whether an examination is warranted.
- Recommendation 6-3: That the Commissioner be expressly permitted to comment publicly to correct misinformation, or to explain his or her reasons for not pursuing a matter that has been raised in the public domain, where doing so is in the public interest or serves to clarify the mandate of the Office.
- Recommendation 6-4: That the Act be amended to require that a Senator or Member of the House of Commons requesting an examination refrain from commenting publicly on the request until the Commissioner has confirmed that he or she has received the request and has notified the person who is the subject of that request.
- Recommendation 6-5: That section 68 of the Act be repealed.
- Recommendation 6-6: That the Act be amended to ensure that the Commissioner is given direct and timely access to any document requested in the course of conducting an examination under the *Conflict of Interest Act*, including Cabinet confidences and documents in the possession of the House of Commons.
- Recommendation 6-7: That Part 5 be amended to include a provision allowing for certification of a summons or compliance order issued by the Commissioner that would be enforceable by the Federal Court.
- Recommendation 6-8: That the Act be amended to provide that no examination can be initiated in relation to any activity in respect of which written advice was provided by the Commissioner unless new information



relating to that activity is brought to the attention of the Commissioner.

- Recommendation 6-9: That subsection 51(1) be amended to require that all compliance orders issued under section 30 be publicly declared.
- Recommendation 6-10: That, if Recommendation 4-10 is accepted, an amendment be made to paragraph 51(1)(a) to refer to disclosures made under section 25 rather than public declarations made under that section.
- Recommendation 6-11: That, if Recommendation 4-20 is accepted, section 52 be amended to require that a failure to meet the deadline for completing an annual review be subject to an administrative monetary penalty.
- Recommendation 6-12: That the Act be amended to extend the administrative monetary penalty regime to apply during post-employment to cover failures to meet reporting deadlines.
- Recommendation 6-13: That section 52 be amended to provide for penalties for substantive contraventions of the Act where an examination is not warranted because it is clear that a contravention has occurred. These could be applied, for example, in relation to gifts (section 11), prohibited activities (section 15), holding controlled assets (section 17) and failures to recuse (section 21). Penalties relating to sections 11 and 21 should apply to non-reporting public office holders as well as reporting public office holders.
- Recommendation 6-14: That consideration be given as to whether it would be desirable to impose a penalty where an examination results in the finding of a contravention.
- Recommendation 6-15: That the Act be amended to provide for a retention period for information collected by the Office of 10 years following the last activity related to an individual's position as a public office holder, or, in the case of a reporting public office holder, 10 years following his or her cooling-off period.





## APPENDIX B – ANNUAL REVIEW QUESTIONNAIRE (from page 11)

### **CONFIDENTIAL WHEN COMPLETED**

«SalutationEn» «First Name» «Last Name»

**Please answer the following questions in order to meet your annual review obligations under the *Conflict of Interest Act*.**

#### **ASSETS**

1. Did you open a new account (such as, but not limited to: investment account, registered retirement savings plan, tax-free savings account, registered education savings plan)?

☐ Yes

☐ No

**If you answered “Yes”, please provide a recent and complete financial statement.**

2. Did you change investment brokers or portfolio managers?

☐ Yes

☐ No

☐ Not applicable

**If you answered “Yes”, please provide a recent and complete financial statement.**

3. Did you acquire any assets that are not listed in the enclosed *Summary of Confidential Report* (Summary) (such as real property, vacant land, business, etc.), or did you receive an inheritance?

☐ Yes

☐ No

**If you answered “Yes”, please provide details.**

#### **OTHER INCOME AND SOURCE**

4. Have you received, or will you receive any other income that is not listed in your Summary, other than your salary as a public office holder (such as contracts, royalties, rent, pension, etc.)?

☐ Yes

☐ No

**If you answered “Yes”, please provide details.**

#### **LIABILITIES**

5. Do you have any liabilities (such as mortgage, car loan, credit card debt, etc.) that are not listed in your Summary?

☐ Yes

☐ No

**If you answered “Yes”, please provide details (nature and financial institution).**



## ACTIVITIES

6. Do you have other activities that are not listed in your Summary, such as:

- other employment;
- commercial activity;
- position of office in a corporation or organization (whether political, charitable or non-commercial, for example: a parish, a condominium board or association);
- memberships;
- involvement, participation or volunteer work in philanthropic, charitable or non-commercial activities?

☐ Yes

☐ No

**If you answered “Yes”, please provide details.**

## GIFTS AND OTHER BENEFITS

7. Did you receive any gifts or other advantages that have a value of \$200 or more, other than from your friends and relatives that you have not already disclosed to the Office?

☐ Yes

☐ No

**If you answered “Yes”, please provide details.**

## OTHER MEASURES UNDER THE *CONFLICT OF INTEREST ACT*

8. To your knowledge, do any of your relatives, friends, business partners or associates or the organizations with which they are associated engage in lobbying activities or seek any grants, contributions or other financial benefits from any federal government entity?

☐ Yes

☐ No

**If you answered “Yes”, please provide details.**

9. Have you been named as a trustee, executor or liquidator of a succession? Have you been called upon to act as a trustee, executor or liquidator of a succession, or to exercise a power of attorney?

☐ Yes

☐ No

**If you answered “Yes”, please provide details.**

10. In the exercise of your duties, did you recuse, withdraw or abstain from any decision, discussion or vote that you have not already disclosed to the Office?

☐ Yes

☐ No

**If you answered “Yes”, please provide details.**



11. Is there any other information that should be disclosed to the Office?

☐ Yes

☐ No

**If you answered “Yes”, please provide details.**

---

**Signature: «FirstName» «LastName»**

---

**Date**





## APPENDIX C – FINANCIAL RESOURCES SUMMARY (from page 43)

	(thousands of dollars)				
Program Activity	2011-2012 Actual Spending	2012-2013			Alignment to Government of Canada Outcomes
		Main Estimates	Total Authorities	Actual Spending	
Administration of the <i>Conflict of Interest Act</i> and the <i>Conflict of Interest Code for Members of the House of Commons</i>	5,894	6,338	6,338	5,698	Government Affairs
Contributions to Employee Benefit Plans	744	794	794	755	
<b>Total Spending</b>	6,638	7,132	7,132	6,453	
Plus: Cost of services received without charge	1,016	n/a	n/a	1,035	
<b>Net Cost of Department</b>	7,654	7,132	7,132	7,488	

The budget process for the Office of the Conflict of Interest and Ethics Commissioner is established in the *Parliament of Canada Act*. The Speaker of the House considers the estimates for the Office and transmits them to the President of the Treasury Board for inclusion in the estimates of the Government of Canada. The Standing Committee on Access to Information, Privacy and Ethics has within its mandate the role to review and report on the effectiveness, management and operations together with the operational and expenditure plans relating to the Office.

Since 2008-2009, the budget for the Office has remained at \$7.1 million, 74 per cent (or \$5.3 million) of which is dedicated to salaries and employee benefits. Of the remaining \$1.8 million, approximately \$700,000 is used to cover the cost of shared services provided by the House of Commons, the Library of Parliament and Public Works and Government Services Canada in the area of information technology, finance and compensation, respectively.

Complete financial statements can be found on our website at [www.ciec-ccie.gc.ca](http://www.ciec-ccie.gc.ca).

