



2. THE CODE IN PRACTICE¹

“You have to take responsibility because the world holds you accountable for what you do.”

Leonard Cohen, 2007

Last year’s Annual Report provided the reader with examples of scenarios in which some of the provisions of the *Conflict of Interest Code for Senators* would be engaged in order to demonstrate how the Code might apply to a particular set of facts and to highlight some of the considerations that might be relevant in a given set of circumstances.

In light of the interest expressed in, and the important educational value of, these brief summary cases, we have again provided a sample for illustrative purposes. It should be noted, however, that they are abbreviated and, as such, only highlight some of the key considerations in each fact scenario. Senators who require specific advice on the best course of action in a particular case are encouraged to contact the Senate Ethics Office in order to ensure that the matter is thoroughly examined and that all the relevant facts are considered before an official opinion is provided by the Senate Ethics Officer.

DEFINITION OF “CONFLICT OF INTEREST”, THE CANADIAN ENCYCLOPEDIA, 2006 (KENNETH GIBBONS, UNIVERSITY OF WINNIPEG)

Conflict of Interest may be defined as a situation in which politicians and public servants have an actual or potential interest (usually financial) that may influence or appear to influence the conduct of their official duties. Even when this conflict is not illegal, it may create doubts or suspicions concerning the integrity or fairness of decisions made by such officials, and over time recurring conflicts may increase the level of distrust and cynicism toward government....

...Whether in statute, guideline or code form, conflict of interest documents require that those covered, be they politicians or public servants or both, shall avoid behaviour which places their private interest ahead of the public interest. Typically, this may mean that they may be required to remove themselves from decisions where they have a financial interest, to avoid giving preferential treatment, to not use insider information or government property for personal benefit, to refuse gifts or other benefits of more than nominal value, or to avoid employment after leaving public office that takes improper advantage of their previous position.

¹ In this chapter, the sections of the *Conflict of Interest Code for Senators* refer to the Code as it existed from May 18, 2005 to May 28, 2008.



A. Activities Outside Official Parliamentary Duties

1. Issue

A senator was asked to sit on the Board of Directors of a public corporation and inquires as to whether the Code imposes any restrictions in this regard.

Considerations

Paragraph 5(c) of the Code explicitly authorizes senators, who are not ministers of the Crown, to participate in outside activities, including sitting on the boards of commercial corporations. However, any such positions must be publicly disclosed under paragraph 33(1)(a). In addition, a senator in such circumstances would be asked to comply with certain restrictions. For example, he or she would be required to refrain from making any representations on behalf of the corporation to federal officials in order to obtain financial assistance or contracts. This restriction would ensure that the senator not only complies, but appears to comply (paragraph 2(1)(c)), with section 11 of the Code. This provision prohibits senators from using or attempting to use their position to influence the decision of another in order to improperly further their own interests, those of their family members, or to improperly further another person's or entity's private interests, as defined under subsection 13(1). The senator would also be asked to refrain from being involved in any announcements of federal funding to the corporation. This addresses the perception that the funding was obtained because of the senator's involvement with the corporation.

2. Issue

A senator would like to engage in fundraising activities on behalf of a national political party. He or she asks whether there are any restrictions in this regard under the Code.

Considerations

A senator who is involved in political fundraising is advised that he or she should take certain precautions in order to avoid a real or apparent (paragraph 2(1)(c)) breach of section 10. First, the senator should not personally solicit political donations from any person with whom he or she has present or foreseeable future dealings in his or her capacity as a senator, or from any person who has dealings with a committee in which the senator is a member. This restriction is important in order to avoid the perception that a donation that was made by a person may be influencing a senator in the performance of his or her parliamentary duties and functions. Second, a senator would also be advised not to use Senate letterhead to solicit contributions to registered parties, candidates, nomination contestants, registered associations and leadership contestants in order to remain, and to appear to remain, in compliance with section 11 of the Code.



Finally, the senator would be cautioned that the Senate Ethics Officer's jurisdiction is limited to the rules contained in the *Conflict of Interest Code for Senators* but that there are other rules and laws that may also be relevant to the above question. For example, some of the internal rules of the Senate (the *Senate Administrative Rules*) relate to the proper allocation and use of Senate resources and, of course, the *Canada Elections Act* contains provisions governing electoral financing.

3. Issue

A senator asks whether his or her directorship in a private corporation, which has recently become inactive but has not yet been officially dissolved, must continue to be publicly disclosed.

Considerations

Paragraph 33(1)(a) of the Code requires the public disclosure of “any corporations” in which a senator is a director or officer. This provision does not exclude inactive corporations from its operation. Indeed, an inactive corporation remains a legal entity until it is officially dissolved. Consequently, a senator's directorship, in these circumstances, must continue to be made public.

4. Issue

A senator inquires whether he or she may accept a position as Honorary Chairperson of a fundraising committee of a not-for-profit organization where the duties and functions of the position would require the senator to personally solicit funds.

Considerations

Under section 5 of the Code, senators are permitted to engage in outside activities, including holding official positions in organizations, as long as they are able to fulfill their obligations under the Code. However, senators would be asked to comply with certain conditions depending upon the circumstances. In this particular case, the senator would be asked to refrain from making any representations on behalf of the organization to the Government of Canada or any federal agency or body in order to obtain financial assistance. The senator would also be asked to refrain from being involved in any announcements of federal funding to the organization. These restrictions would address the perception that might be created that any federal financial assistance was obtained due to the senator's involvement with the organization in question (section 11 and paragraph 2(1)(c) of the Code). In addition, the senator would be advised to use the letterhead of the organization – not that of the Senate – in carrying out his or her responsibilities on the fundraising committee, and to ensure that any fundraising is carried out in his or her capacity as the Honorary Chairperson of the organization's fundraising committee, not in his or her



capacity as a senator. Finally, the senator's honorary position would have to be publicly disclosed under paragraph 33(1)(b) of the Code.

SECTION 5 OF THE SENATE CODE

Section 5 provides that senators may engage in outside activities unless, in doing so, they are unable to fulfil their obligations under the Code. It reads:

5. Senators who are not ministers of the Crown may participate in any outside activities, including the following, as long as they are able to fulfil their obligations under this Code:

- (a) engaging in employment or in the practice of a profession;
- (b) carrying on a business;
- (c) being a director or officer in a corporation, association, trade union or not-for-profit organization; and
- (d) being a partner in a partnership.

A similar provision is also found in the *Conflict of Interest Code for Members of the House of Commons*. These provisions are intended to reflect the principle that conflict of interest rules should not discourage qualified people from diverse backgrounds and who have had successful business and professional careers from entering public life. Indeed, senators are expected to remain members of their communities and regions and to continue their activities in those communities and regions while serving the public interest. However, where a senator's public duties come in conflict with his or her private interests, the conflict must always be resolved in favour of the public interest. Conflict of interest rules are aimed at ensuring this result.

5. Issue

A senator would like to send a letter using Senate letterhead, not only to his or her Senate colleagues, but also to individuals and organizations outside the Senate in order to solicit funds on behalf of a not-for-profit organization. The senator does not hold an official position within it.

Considerations

The Code would not preclude a senator from sending out such a letter. Section 11 provides that a senator shall not use or attempt to use his or her position as a senator to influence the decision of another person in order to further the senator's private interests, or those of a family member, or to improperly further another person's or entity's private interest. The word "improperly" suggests that the Code permits the furthering of another person's or entity's private interest in some



circumstances, but not all. Indeed, senators play a key role in advocating for, and championing, important social causes. Since the senator does not hold an official position in the organization in question, it cannot be said that he or she is “improperly” furthering its private interests by writing a letter to promote the organization’s goals and to solicit the funding necessary for it to achieve those goals. The senator would, however, be cautioned that the Senate Ethics Officer’s jurisdiction is limited to the rules contained in the *Conflict of Interest Code for Senators* and that some of the *Senate Administrative Rules* may also be relevant to the above question, most notably the rules pertaining to the use of Senate resources.

B. Sponsored Travel

6. Issue

A not-for-profit organization requests that a senator, who sits on the Board of Directors of the organization, attend an event abroad as its representative. The organization has offered to pay the senator’s travel and accommodation expenses.

Considerations

The senator may accept the offer of the organization to pay his or her travel and related benefits. Moreover, there is no requirement for a public declaration in this regard since the sponsored travel and related benefits fall outside section 20 of the Code. The reason for this is that they relate to the senator’s professional outside activities, not his or her parliamentary duties and functions. Subsection 20(1), which requires the public disclosure of certain sponsored travel that exceeds \$500 in value, only pertains to travel and related benefits that arise from or relate to a senator’s position.

7. Issue

A senator inquires as to whether the Code prohibits a senator from accepting an offer by the sponsor of a conference to pay for the travel costs and accommodation for two nights for the senator. He or she is taking part in a symposium as a guest speaker in his or her capacity as a senator.

Considerations

Since the travel arises from or relates to the performance of the senator’s parliamentary duties and functions, it falls within subsection 20(1) of the Code. This provision provides that such travel is acceptable but that where the costs exceed \$500 and the trip does not fall within an explicit exception, the senator must file a statement of sponsored travel with the Senate Ethics Office within 30 days after the end of the trip. The declaration must include the name of the person or organization paying for the trip, the destination, the purpose and length of the trip and the



general nature of the benefits received (subsection 20(2)). This declaration is then placed on the public record pursuant to paragraph 33(1)(i) of the Code.

8. Issue

A senator is invited by a foreign government to attend a series of meetings abroad as part of his or her parliamentary duties and functions. The host country is offering to pay the travel and accommodation costs. The senator inquires whether he or she may accept the offer under the Code.

Considerations

Under subsection 20(1), sponsored travel that arises from or relates to a senator's position is acceptable. However, since the cost of the travel exceeds \$500, the senator would be required to file a statement of sponsored travel with the Senate Ethics Office within 30 days after the end of the trip. This statement would include the name of the government paying for the trip, the purpose and length of the trip, as well as a general description of the benefits received (subsection 20(2)). This information would then be placed on the senator's public file under paragraph 33(1)(i) of the Code.

9. Issue

A senator is asked to travel to the United States for the Canada-United States Inter-Parliamentary Group's annual meeting. The senator inquires as to whether this trip must be publicly declared.

Considerations

Subsection 20(1) of the Code provides, in part, that any travel that is paid through a program for international and interparliamentary affairs of the Parliament of Canada need not be publicly declared. The Canada-United States Inter-Parliamentary Group is a parliamentary association that is funded through the Joint Interparliamentary Council (JIC). JIC operates under the authority of the Senate Standing Committee on Internal Economy, Budgets and Administration and the Speaker of the House of Commons as the Chair of the House of Commons Board of Internal Economy and it determines the level of funding to be distributed to each association. Since the travel is funded by the Senate and the House of Commons rather than by an outside party, there is no requirement for a public declaration in these circumstances.

C. Gifts and Other Benefits

10. Issue

A senator inquires whether he or she may accept certain benefits which are offered by a commercial corporation in recognition of the senator's past service as a member



of its Board of Directors. The corporation does not have present dealings with the Senate, nor will it have any dealings with the Senate in the foreseeable future.

Considerations

These benefits fall outside the ambit of section 19 of the Code since they relate to the senator's previous professional outside activities. As such, the senator may accept these benefits. Moreover, there is also no requirement that they be publicly disclosed.

11. Issue

A senator asks whether he or she may accept a gift as an expression of appreciation for delivering a speech at a conference in which he or she participated in his or her capacity as a senator.

Considerations

The gift is acceptable under subsection 19(2) of the Code since it is "a normal expression of courtesy or protocol" and is "within the customary standards of hospitality that normally accompany [a] senator's position". However, if the value of the gift exceeds \$500, a declaration must be filed with the Senate Ethics Office within 30 days after the receipt of the gift, in accordance with subsection 19(3) of the Code. This declaration must then be filed in the senator's public file under paragraph 33(1)(i).

12. Issue

A senator inquires as to whether he or she may request that, instead of accepting a gift offered as a token of appreciation for having given the keynote address at an event, a donation be made to a charitable organization of the senator's choice. The senator is participating in the event as part of his or her parliamentary duties and functions.

Considerations

The senator may make such a request provided he or she does not receive any benefit, directly or indirectly, from the donation (subsection 19(1) of the Code). The donation should be given directly by the event organizer to the charitable organization and any income tax receipt should be provided to the sponsor of the conference, not the senator.

13. Issue

A senator inquires whether he or she may accept a gift from a foreign government during a trip abroad where the senator is part of an official Canadian delegation.



Considerations

The gift may be accepted under subsection 19(2) of the Code since it was received as a “normal expression of courtesy or protocol” and is “within the customary standards of hospitality that normally accompany [a] senator’s position”. However, if the value of the gift exceeds \$500, a declaration must be filed with the Senate Ethics Officer within 30 days after the receipt of the gift pursuant to subsection 19(3) of the Code and this declaration will then form part of the senator’s public record (paragraph 33(1)(i)).

14. Issue

A senator inquires whether he or she may accept free hockey tickets from a friend under the Code.

Considerations

Subsection 19(1) of the Code prohibits the acceptance of gifts and benefits that could reasonably be considered to relate to a senator’s position, with some limited exceptions. If the gift or benefit is not related to a senator’s parliamentary duties and functions – for example, if it is provided on the basis of a friendship – it may be accepted depending upon the particular circumstances. Both the nature of the relationship, and whether the senator’s judgment could be influenced in the performance of his or her official duties in the particular circumstances, are key. The questions that would require some consideration include the following: (1) whether there were any exchanges of gifts and benefits between the two parties in the past; (2) whether the relationship existed prior to the senator’s appointment to the Senate; (3) whether social meetings between the senator and the donor took place in which Senate business was not discussed; (4) whether the donor has, at present or in the foreseeable future, any official dealings with the Senate or any of its committees; and (5) whether the donor is a registered lobbyist. In other words, the particular circumstances will determine whether the relationship between the donor and the senator in question can be characterized as a “friendship” and whether the gift may be accepted under the Code.

D. Declarations of Private Interests

15. Issue

A senator inquires whether he or she is required to make a second declaration of a private interest under subsection 14(1) of the Code in respect of a bill that is before a committee of the Senate where he or she had already made such a declaration regarding this measure during the previous parliamentary session.



Considerations

The senator should make a further declaration of a private interest under subsection 14(1) of the Code if the bill in question is reintroduced in the new session. During a prorogation or dissolution of Parliament, all bills die on the *Order Paper* and most parliamentary committees cease to exist. When Parliament resumes, any bills that are reintroduced would be renumbered. In addition, committees are reconstituted and, consequently, there may be changes in their membership. In light of these circumstances, a further declaration in the new Parliament or the new session makes sense in order to ensure that the public record is clear and that there is no confusion regarding which measure may pose a conflict for the senator in question.

16. Issue

A bill before the Senate concerns a sector of the economy (for example, agriculture), which is also the sector of operation of a corporation in which a senator has an interest. The senator inquires whether he or she must make a declaration of a private interest in the Senate, pursuant to subsection 14(1) of the Code, regarding the matter.

Considerations

Since the bill involves a matter that is of general application and one which affects the corporation as one of a broad class, a declaration of a private interest is not required in these circumstances (paragraphs 13(2)(a) and (b)). A declaration would be required if the bill in question specifically related to the corporation or a competitor of the corporation.

E. Disclosure Requirements

17. Issue

A senator inquires as to what he or she is required to disclose to the Senate Ethics Officer in the nature of income.

Considerations

Paragraph 30(1)(c) of the Code requires a senator to disclose the nature of any source of income over \$2,000 that the senator has received in the preceding 12 months and is likely to receive during the next 12 months. Under this provision, each and every individual source that has generated income over \$2,000 or that the senator anticipates will generate income over \$2,000 must be reported. Sources of income would include, for example, the name of a particular stock, the name of an employer, a business or profession and the name of a party with whom a contract has been concluded. With respect to investments, each investment must be reported as a separate source, rather than all investments being reported as a single source of investment income.



As to the nature of the income, it includes, for example, dividends, capital gains, director's fees, wages, professional fees for services rendered, interests from investments, or any amount received as a result of an interest in the shares of a private corporation, including a holding company.

It should be noted, however, that only the nature and source of the income must be reported, not the income itself.

18. Issue

A senator inquires about what he or she is required to disclose to the Senate Ethics Officer under the Code in the nature of assets.

Considerations

Senators are required to provide information regarding the nature, but not the value, of any assets and liabilities over \$10,000 under paragraph 30(1)(g) of the Code.

Some examples of the types of assets that must be reported include, but are not limited to, farms, lands, rental or real property for commercial operations, interests in partnerships, interests in private corporations including holding corporations, publicly traded securities of corporations or foreign governments such as stocks, bonds, stock market indices, trust units, units of mutual funds, commercial papers, stock options and similar instruments.

In the case of publicly traded securities, the name of a particular asset that has a value greater than \$10,000 must be disclosed. In this regard, a list of the names of those specific assets or, alternatively, a statement of account from a financial institution or a broker, may be provided, although the value of the assets may be excluded.

F. Federal Contracts

19. Issue

A senator is asked to become a partner in a partnership that is a party to a contract with the federal government. The senator inquires regarding any prohibition or restrictions in this regard under the Code.

Considerations

Section 24 of the Code prohibits senators from having an interest in a partnership or in a private corporation that is a party, directly or through a subcontract, to a contract or other business arrangement with the Government of Canada or any federal agency or body unless the Senate Ethics Officer is of the opinion that: (1) the



contract or business arrangement is in the public interest due to special circumstances; or (2) the Senate Ethics Officer is of the opinion that the contract or other arrangement is unlikely to affect the senator's obligations under the Code.

With respect to the first exception, it has to date never been cited. Turning to the second exception, if the senator complies with certain conditions prior to accepting a position as a partner, his or her circumstances would fall thereunder. For example, if the senator agrees to recuse himself or herself from any involvement in negotiations and discussions with federal officials on matters relating to the contract in question, any renewal or extension of it, and any future contracts with the federal government, the senator would remain in compliance with section 11 of the Code, notwithstanding his or her interest in the partnership and the existence of the contract in question. This recusal would also address the appearance of a conflict under section 11; the appearance of conflicts is addressed in paragraph 2(1)(c) of the Code.

In such circumstances, the senator might also be advised to send a letter of direction to a senior official of the organization setting out his or her obligations under the Code with respect to government contracts. This would ensure that the organization understands that the senator is to be kept at arms length from any negotiations and discussions with federal officials regarding these matters. A copy of this letter would be included in the senator's public disclosure file, in addition to letters of confirmation from the partnership that it will respect these arrangements.

The Senate Ethics Officer's written opinion confirming the senator's compliance with the Code would be placed in the senator's public file and would be made available for public inspection, pursuant to paragraph 33(1)(e) of the Code.

Finally, the senator's position as a partner would be publicly disclosed as part of the senator's public disclosure summary in accordance with paragraph 33(1)(a) of the Code.

“The test is not the legal requirement. It is beyond that; it is about what is right. It is not about doing the minimum or working around the problems; it is about setting an example. It is not about complacency... it is about going the extra distance that makes the difference. We need to ensure ourselves in our every day actions that we do not accept or tolerate ambiguity when dealing with these subjects. It leads to uncertainty, speculation, lack of trust, and frustration, all of which are non-productive uses of people's energy that gets us into problems.”

Alain Belda
CEO, Alcoa, 1999



KEY OBLIGATIONS OF SENATORS UNDER THE CONFLICT OF INTEREST CODE

- Senators may not act in any way to **further their private interests**, or those of their family members, or to improperly further another person's or entity's private interests when performing parliamentary duties and functions (section 10).
- Senators may not use their position to **influence** a decision of another person in order to further their own private interests, or those of their family members, or to improperly further another person's or entity's private interests (section 11).
- Senators may not use **information** that is generally not available to the public to further their own private interests, or those of their family members, or to improperly further another person's or entity's private interests (section 12).
- Senators are expected to make a **declaration**, orally or in writing, when they, or their family members, have a private interest that might be affected by a matter that is before the **Senate** or a **committee** of the Senate in which they are members (section 14). Senators may **not vote**, but may abstain (section 16).
- Senators may not accept, nor may a family member accept, any **gift** or other **benefit** that could reasonably be considered to relate to their position, except as permitted under the Code. Gifts, benefits and sponsored travel that are acceptable under the Code must be declared to the Senate Ethics Officer if they exceed \$500.00 in value (sections 19 and 20) and these must be publicly declared pursuant to paragraph 33(1)(i).
- Senators may not be parties to, or have interests in corporations or partnerships that are parties to, **contracts with the Government of Canada** under which they receive a benefit, unless specifically authorized by the Senate Ethics Officer (sections 22-28).
- Senators are expected to **disclose** their private interests to the Senate Ethics Officer on an annual basis. Those interests required to be publicly disclosed under the Code are then placed on the public record (sections 29-35).
- Senators must report to the Senate Ethics Officer any **material change** to the information in their confidential disclosure statements, within the prescribed time (subsection 30(4)).
- Senators must cooperate with the Senate Ethics Officer with respect to any **inquiry** (subsection 44(12)).