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CONFLICT OF INTEREST CODES FOR PARLIAMENTARIANS: A LONG ROAD

Margaret Young
Law and Government Division

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INTRODUCTION

Conflict of interest is one aspect of public-sector ethics, and Canadian legislatures and governments have developed legislation and codes of conduct that illustrate a variety of approaches to the issue. Modern society accepts that individuals should be as free as possible to pursue their economic goals, but also expects that those in positions of public trust should not act in their public capacity on matters in which they have a personal economic interest. Even an appearance of a conflict affects the public's confidence in the political process and public office holders generally.

This paper will focus on the developments at the federal level. Although the emphasis here is on federal legislators, it should be remembered that other federal public officials – such as government appointees, public service workers and judges, as well as members of administrative agencies, tribunals and Crown corporations – are also affected by conflict of interest rules.

For many years, there were suggestions that Parliament should adopt more comprehensive rules covering conflict of interest. Arguments against the various proposals centred on privacy concerns and whether or not there was a real need to subject MPs and Senators who were not Ministers to detailed requirements.

The differing views explain why all four bills on this issue presented in the 33rd and 34th Parliaments died on the *Order Paper*, and why a parliamentary committee report in the subsequent Parliament was not acted upon at the time. In the fall of 2002, however, the matter became a government priority, and by mid-May 2005, the Senate and the House of Commons had each adopted a conflict of interest code.(1)

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(1) It should be noted that most jurisdictions in Canada, and many foreign jurisdictions with parliamentary systems comparable to Canada's, have such codes, and have had for some time. Parliament followed, not led, in this matter.

This paper will describe the concepts that underlie conflict of interest, provide some history of developments at the federal level, and briefly outline the parliamentary codes. A full chronology of events is provided at the end of the paper. For those interested in the lengthy history of reports and parliamentary action in this area, a full account may be found in the Appendix.

WHAT IS A CONFLICT OF INTEREST?

There are a number of possible definitions of conflict of interest. Mr. Justice W. D. Parker, who presided at the inquiry into conflict of interest allegations against the Honourable Sinclair Stevens some 20 years ago, canvassed the issue thoroughly. Although he reported in late 1987, his work remains of interest as the only public commission of inquiry ever to have been held concerning the interpretation of the federal *Conflict of Interest and Post-Employment Code for Public Office Holders*. Since 2004, Canada has had an Ethics Commissioner with a mandate to hold inquiries; but the inquiries are held in private, even though they result in public reports.

Justice Parker defined a *real* conflict of interest as a situation in which a person has knowledge of a private economic interest that is sufficient to influence the exercise of his or her public duties and responsibilities.[(2)] An *apparent* conflict of interest exists when there is a reasonable apprehension, which reasonably well-informed persons could properly have, that a conflict of interest exists. One might add that the preceding definition applies even when no conflict is found to *actually* exist. Some definitions concentrate on "decision-making" rather than "situations," while some regimes prefer to leave the term undefined.

The principles underlying conflict of interest rules are impartiality and integrity: a decision-maker cannot be perceived by the public as being impartial and acting with integrity if he or she could derive a personal benefit from a decision. The importance of public confidence

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(2) Mr. Stevens never accepted Justice Parker's 1987 findings that he had been in a conflict of interest, and challenged the report in court. Finally, in a decision rendered in December 2004, O'Keefe J. of the Federal Court set aside the Parker Report on the grounds of excess of jurisdiction and a failure to act in accordance with the principles of procedural fairness. The central difficulty, in Justice O'Keefe's view, was that the original order of reference had referred to the definition of conflict of interest contained in the relevant documents. Those documents, however, failed to contain any definitions. (There is still no direct definition.) Justice Parker had therefore used the ordinary understandings of the words in applying the facts to the obligations in the documents; moreover, Justice O'Keefe felt that fairness had been compromised because Justice Parker had failed to provide Mr. Stevens with a chance to respond to the definitions and conclusions before the report was released.

as the fundamental motivation for both of the parliamentary codes is clear from a number of key concepts found in the purposes and principles sections of each code. These include: "public confidence and trust"; the "integrity of members/Senators"; "the highest standards"; and "the public interest."

Today, governments intervene in virtually all sectors of the economy, either through direct control or through regulatory agencies, safety and health legislation, tariff and tax policies, federal subsidies, and so on. Thus, it is not unusual for legislation introduced in Parliament to affect the general economic interests of Members of Parliament as citizens in some way.

Some conflicts are thus unavoidable. An *inherent conflict* arises out of a parliamentarian's position as an individual in society, e.g., as a homeowner, parent or consumer. Parliament continually deals with legislation affecting these interests and, as parliamentarians are affected like other citizens, there is a low risk of an adverse consequence. Also unavoidable is the *representative interest* conflict which arises when legislators share broad personal interests, for example in farming, fishing and resource development, with the constituency they represent. Other interests, however, may in some cases substantially affect the independence of a legislator, particularly when he or she enters Cabinet. Family businesses pose problems, but so do a wide range of assets, liabilities and financial interests. Conflict of interest rules generally deal with these latter kinds of interests.

TECHNIQUES OF DEALING WITH CONFLICTS OF INTEREST

A number of methods are available to control conflicts of interest.

- *Disclosure* requires that legislators reveal their assets, typically, in Canada, first confidentially to a designated official, and then in a more limited way publicly, so that a relevant personal interest becomes public knowledge and parliamentarians are inhibited from acting for their personal benefit. Public disclosure also informs the legislator's constituents and colleagues of the situation so that they can consider its implications.
- *Avoidance* requires legislators to *divest* themselves of interests that might impair their judgment, either by a sale at arm's length or by use of a trust administered by a trustee independently of the legislator; in the latter case, it must be ensured that the trust is beyond the parliamentarian's control.
- *Withdrawal* (also called *recusal*) requires parliamentarians to refrain from acting on matters in which they have personal financial interests.

Typically, conflict of interest regimes incorporate a combination of the above controls.

LONG-STANDING LAWS ALSO GOVERN CONFLICTS

In addition to the Senate and House of Commons conflict of interest codes, there are other statutes that affect parliamentarians' conduct. These are the *Criminal Code*, the *Parliament of Canada Act* and the *Canada Elections Act*. (The Prime Minister's *Conflict of Interest and Post-Employment Code for Public Office Holders* will be discussed below.)

Bribery, the most extreme form of conflict of interest, is a criminal offence. The *Criminal Code* provides for 14 years' imprisonment for a parliamentarian who accepts or attempts to obtain any form of valuable consideration for doing or omitting to do anything in his or her official capacity.(3) The *Parliament of Canada Act* also covers bribery, prohibiting a parliamentarian from receiving outside compensation for services rendered on any matter before the House, the Senate or their committees. The Act excludes persons with remunerated employment in the federal government and certain officials at the provincial level from being eligible to become Members of the House of Commons, although there are exceptions. It also makes a Member of a provincial legislative assembly ineligible to be a Member of the House of Commons. The *Canada Elections Act* also disqualifies from candidacy Members of the Council of the Northwest Territories or the Legislative Assembly of Yukon or Nunavut, and certain others (for example, those who have been convicted of a corrupt election practice).

Before the House of Commons and the Senate adopted their conflict of interest codes, the *Parliament of Canada Act* contained rules for each chamber on contracting with the Government of Canada. These rules, which were generally agreed to be confusing and antiquated, were replaced by contracting provisions in each Code.

THE *CONFLICT OF INTEREST AND POST-EMPLOYMENT CODE FOR PUBLIC OFFICE HOLDERS*

The *Conflict of Interest and Post-Employment Code for Public Office Holders*, on the order of the Prime Minister, applies to Cabinet Ministers, Parliamentary Secretaries and other senior public office holders.(4) It requires that, on appointment to the included offices, the office

(3) In addition, Standing Order 23(1) of the House of Commons states that it a "high crime and misdemeanour, and tends to subvert the Constitution" to offer a Member money or other advantage for promoting any matter in Parliament. Note that only an offer, not an acceptance, is covered. There are no instances where the House of Commons has found this rule to have been breached, although there have been several allegations to that effect.

(4) These include some 2,900 Order-in-Council appointees, and some 600 ministerial exempt staff.

holders are to arrange their private affairs so as to prevent real, potential or apparent conflicts from arising. With limited exceptions, they are not to solicit or accept money or gifts; not to assist individuals in their dealings with government in such a way as to compromise their own professional status; not to take advantage of information obtained because of their positions as insiders; and, after they leave public office, not to act so as to take improper advantage of having held that office. Beginning in 1994, information relating to the spouses and dependent children of Ministers, Secretaries of State and Parliamentary Secretaries became relevant, although such information is not made public.

The Code suggests that public office holders, in order to reduce the risk of conflict of interest, should, depending on the asset or interest in question, use avoidance, a confidential report, a public declaration, divestment, or recusal. Divestment can include making an asset subject to a trust or management agreement. In relation to outside activities, the public office holder is not to engage in the practice of a profession, actively manage or operate a business or commercial venture, retain or accept directorships or offices in a financial or commercial corporation, hold office in a union or professional association, or serve as a paid consultant. The Code also deals with public office holders after they leave office, proscribing Ministers for two years and others for one year from certain activities in order to ensure impartiality while in office and to avoid preferential treatment upon leaving office. There are, however, no penalties for breaking the post-employment rules.

Prior to May 2004, the Code was administered by the Office of the Ethics Counsellor, an office often criticized because it was not independent from the government. With the passage of *An Act to Amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer)* (Bill C-4),[5] the Prime Minister's Code is administered by the Ethics Commissioner (who also administers the House of Commons Code). The Commissioner's statutory base, secure tenure and new powers of inquiry make the office significantly different from that of the former Ethics Counsellor.

The Conservative government elected in January 2006 made some revisions to the Code, although they were not extensive. In the past, the final authority for approving the compliance arrangements of Ministers was the Prime Minister; this changed to the Ethics Commissioner. The post-employment provisions were extended to preclude former Ministers,

(5) S.C. 2004, c. 7.

senior public servants, and specified ministerial staff from lobbying activities for five years, a period that the Ethics Commissioner may not abridge. Other changes include making it clear that no public office holder may initiate contact with the manager of a trust, and *vice versa*.

THE HOUSE OF COMMONS AND THE SENATE CONFLICT OF INTEREST CODES

A. The House of Commons Code

With the introduction of the *Conflict of Interest Code for Members of the House of Commons*(6) at the beginning of the 38th Parliament, MPs were, for the first time, required to disclose publicly certain financial and other interests, as well as those of their spouses and dependent children. (In the latter case, the onus is on the Member to make reasonable efforts to provide the required information.) In cases of possible conflict, Members are precluded from participating in House and committee proceedings, and from voting. There are rules about the acceptance of gifts and sponsored travel. In the case of sponsored travel, the new rules replace the former, more limited, provisions in the *Standing Orders*. There are also rules precluding the furthering of Members' private interests, or the improper furthering of the private interests of others. The Code is administered and enforced(7) by the Ethics Commissioner established by the *Parliament of Canada Act* pursuant to the amendments introduced by Bill C-4.(8)

The first Ethics Commissioner to be appointed was Dr. Bernard J. Shapiro, a noted academic with provincial government experience who was the former Principal and Vice-Chancellor Emeritus of McGill University. His first year was not an easy one. Appointed just before the 2004 federal election was called for June, he had to draft forms and ready his office for the return of Members of the House of Commons and the coming into force of the Code that October. In addition, he was responsible to two parliamentary committees.(9)

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(6) The House of Commons Code is an Appendix to the *Standing Orders*.

(7) In the case of enforcement, although the Ethics Commissioner conducts inquiries in specified cases, and may recommend sanctions to the House, it is the House of Commons that retains the final decision.

(8) The Web site of the Ethics Commissioner may be found at: http://www.parl.gc.ca/oec/en/.

(9) The Standing Committee on Procedure and House Affairs, in relation to the House Code, and the Standing Committee on Access to Information, Privacy and Ethics, in relation to the Prime Minister's Code.

The first request for an inquiry came early, in November 2004. It concerned the conduct of a Minister, the Honourable Judy Sgro, involved a significant degree of fact finding, and raised some difficult issues that caused the report to be delayed. In the end, the Minister was by and large personally exonerated, although her staff was criticized for placing her in a conflict of interest by their actions.

By early 2006, Dr. Shapiro had also completed three inquiries relating to private Members. In one case, that of Mr. Gurmant Grewal, the Commissioner found that the Member's actions had placed him in an apparent conflict of interest, although he declined to recommend a sanction on the basis that the errors had been the result of inadvertence or an error in judgment made in good faith. In the second case, that of Mr. David Smith, the Member was exonerated. In the third case, one that involved Mr. Grewal tape-recording a conversation with Mr. Dosanjh without the latter's knowledge, the Commissioner found that all the parties were presented in an especially unattractive light and, in particular, found Mr. Grewal's actions entirely inappropriate and deserving of reproach.(10)

The handling of another complaint concerning a Member of the House of Commons, Mr. Deepak Obhrai, resulted in Mr. Obhrai raising a question of privilege in the House. The Speaker found there to be a *prima facie* case of breach of privilege and referred the matter to the Standing Committee on Procedure and House Affairs. Following testimony and consideration, the Committee found the Commissioner to be in contempt of the House, but declined to recommend sanctions or a penalty.(11)

In addition to publishing two annual reports in June 2005, in October Dr. Shapiro issued a supplementary document entitled *Issues and Challenges 2005*. The document discussed issues that had arisen in the first year of operation, concentrating in particular on recusal in relation to Cabinet Ministers, but including as well some recommendations for changes to the Act and the two codes.

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(10) All four reports, *The Sgro Inquiry: Many Shades of Grey*; *The Grewal Inquiry*; *The Smith Inquiry*; and *The Grewal-Dosanjh Inquiry*, may be found on the Commissioner's Web site.

(11) The report of the Committee may be found at: http://www.parl.gc.ca/committee/CommitteePublication.aspx?COM=8988&Lang=1&SourceId=136386.

B. The Senate Code

The Senate Code[12] is similar to that for the House of Commons, with a number of key differences. Senators also have to publicly disclose certain private interests and positions. Family members, however, need to disclose only contracts with the Government of Canada. In the case of a possible conflict in the Senate or in committee, Senators are required to make a declaration but, in contrast to the rules for MPs, they may participate in the proceedings (although they may not vote). Senators, too, have rules regarding gifts, sponsored travel, furthering their private interests and contracting with the government.

The Senate Code is administered by the Senate Ethics Officer, with a much more significant role played by a five-person Senate committee than in the House.[13] Mr. Jean Fournier was appointed the Senate's first Ethics Officer, following a distinguished career in senior positions in the federal public service, including an appointment as High Commissioner to Australia.[14] As of the end of 2005, Mr. Fournier had publicly released one document relating to an individual Senator. It dealt with certain holdings and positions of Senator Paul Massicotte in a real estate investment trust that does business with the government. Although finding that the Senator was not in a real or apparent conflict of interest, Mr. Fournier did recommend certain steps that the Senator should take in order to comply with his obligations under the Senate Code.[15]

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(12) The Senate Code is a stand-alone document.

(13) The House of Commons oversight committee is the Committee on Procedure and House Affairs, which has numerous other responsibilities. The Senate committee, the Committee on Conflict of Interest for Senators, has oversight as its sole responsibility. Moreover, the Senate Code mandates a closer working relationship between the Officer and the Committee.

(14) The Web site of the Senate Ethics Officer may be found at: http://sen.parl.gc.ca/seo-cse/home.html.

(15) The opinion may be found on the Senate Ethics Officer's Web site.

CHRONOLOGY

17 July 1973 –	The Green Paper entitled "Members of Parliament and Conflict of Interest" was tabled in the House of Commons.
18 July 1973 –	Prime Minister Pierre Trudeau revealed guidelines for Cabinet Ministers in a statement in the House of Commons. Ministers would be required to resign certain corporate positions, sever business associations, and dispose of certain financial interests while placing others in a trust.
18 December 1973 –	Conflict of interest guidelines for public service workers were outlined in the House of Commons by Prime Minister Trudeau.
10 June 1975 –	The House of Commons Standing Committee on Privileges and Elections tabled its report on the Green Paper, generally endorsing the provisions but recommending some changes.
29 June 1976 –	The Standing Senate Committee on Legal and Constitutional Affairs tabled its report recommending amendments to the Green Paper proposals.
26 June 1978 –	Bill C-62, the Independence of Parliament Act, was introduced in the House of Commons along with Proposed Standing Orders of the House and Rules of the Senate. The bill died on the *Order Paper*.
16 October 1978 –	The Independence of Parliament Act was reintroduced with minor amendments, as Bill C-6. The Proposed Standing Orders of the House and Rules of the Senate were tabled in the Commons on 30 October 1978. The bill was referred to committee on 8 March 1979 but died on the *Order Paper* when Parliament was dissolved on 26 March 1979.
1 August 1979 –	New conflict of interest guidelines applicable to Cabinet Ministers, their spouses and dependent children were issued by Prime Minister Joe Clark. Personal assets and those of a non-commercial nature (e.g., residences, savings bonds, works of art) were exempt; assets considered to be non-conflicting (e.g., family businesses, farms, corporate securities not publicly traded) were to be publicly disclosed. Other assets had to be sold or placed in a blind trust, and certain professional, corporate and commercial activities were prohibited altogether.

1 May 1980 – Conflict of interest guidelines for Cabinet Ministers were tabled by the Liberal government of Prime Minister Trudeau (Sessional Paper No. 321-7/3). The guidelines were similar to those of August 1979 but did not specifically apply to spouses and dependent children; however, Ministers were not to transfer their assets to their spouses or dependent children to avoid the guidelines.

7 July 1983 – Appointment of a Task Force on Conflict of Interest by the federal government, chaired by the Honourable Michael Starr and the Honourable Mitchell Sharp, to undertake a major review of the policies and procedures on conflict of interest, their evolution, and whether new approaches to this problem should be devised.

May 1984 – Release of the Report of the Task Force on Conflict of Interest entitled *Ethical Conduct in the Public Sector* (the Starr-Sharp Report).

9 September 1985 – Establishment by the government of the *Conflict of Interest and Post-Employment Code for Public Office Holders.*

26 March 1986 – Report to the House of Commons of the Standing Committee on Management and Members' Services on the Register of Members' Interests.

7 May 1986 – Report of the Standing Senate Committee on Standing Rules and Orders on the Register of Senators' Interests.

15 May 1986 – Appointment of the Honourable William Parker as a Commissioner to inquire into and report on the allegations of conflict of interest relating to the Honourable Sinclair Stevens.

3 December 1987 – Release of the report of the Parker Commission of Inquiry on Conflict of Interest.

24 February 1988 – First reading of Bill C-114, the Members of the Senate and House of Commons Conflict of Interests Act, introduced by the government of Prime Minister Brian Mulroney.

21-22 September 1988 – The Legislative Committee on Bill C-114 held three meetings but was unable to complete deliberation on the bill prior to dissolution of Parliament on 1 October 1988.

9 November 1989 – First reading of Bill C-46, the Members of the Senate and House of Commons Conflict of Interests Act. (This bill was essentially the same as Bill C-114, with a few minor changes.) The bill died on the *Order Paper* when Parliament was prorogued on 12 May 1991.

22 November 1991 – First reading of Bill C-43, the Members of the Senate and House of Commons Conflict of Interests Act. (This bill was virtually the same as Bill C-114 and Bill C-46.) On the same date, the subject matter of the bill was referred to a Special Joint Committee of the Senate and the House of Commons.

10 June 1992 – Report of the Special Joint Committee on Conflict of Interests.

11 March 1993 – First reading of Bill C-116, the Conflict of Interests of Public Office Holders Act, which included amendments to the *Parliament of Canada Act*.

30 March 1993 – Second reading of Bill C-116 in the House and its referral to a Special Joint Committee similar to the committee that had reported in June 1992.

3 June 1993 – Report of the Special Joint Committee to the House of Commons recommended that Bill C-116 not be proceeded with. A similar report was made to the Senate on the same day. Both Bill C-43 and Bill C-116 died on the *Order Paper* when the 34th Parliament was dissolved on 8 September 1993.

18 January 1994 – The Throne Speech announced that an ethics counsellor (to replace the former Assistant Deputy Registrar General) would be appointed to advise Ministers and public office holders and to examine the need for legislation.

16 June 1994 – Howard Wilson was appointed Ethics Counsellor, in charge of registration of lobbyists and conflict of interest. A new code, little changed from its predecessor, was also released.

June-July 1995 – The House and Senate passed motions to establish a Special Joint Committee to develop a code of conduct.

20 March 1997 – The Special Joint Committee on a Code of Conduct tabled its proposed Code of Official Conduct, the Oliver-Milliken Report.

17 October 2000 – The Auditor General of Canada recommended that parliamentarians revisit the issue of conflict of interest/code of conduct.

23 May 2002 – Prime Minister Jean Chrétien announced that the Oliver-Milliken Report would form the basis of a code of conduct for Members of Parliament and Senators, to be developed that fall.

23 October 2002 – A draft bill to establish the position of Ethics Commissioner and a proposed Code of Conduct for parliamentarians were tabled in Parliament.

10 April 2003 – The House of Commons and Senate committees to which the draft bill had been referred reported to their chambers.

30 April 2003 – Bill C-34, an Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence, received first reading in the House of Commons.

1 October 2003 – Bill C-34 passed the House of Commons.

2 October 2003 – Bill C-34 was given first reading in the Senate.

30 October 2003 – The Standing Committee on Procedure and House Affairs presented its 51st Report to the House; it contained a proposed Conflict of Interest Code for Members of the House of Commons.

7 November 2003 – Bill C-34 was amended by the Senate at third reading and a message sent to the House to that effect.

12 November 2003 – Parliament was prorogued and Bill C-34 died on the *Order Paper*.

11 February 2004 – Bill C-34 was reintroduced in the House of Commons as Bill C-4, deemed passed and referred to the Senate.

30 March 2004 – Bill C-4 was passed by the Senate and given Royal Assent the following day (S.C. 2004, c. 7). Because the Senate had not finalized its Code, the provisions dealing directly with the appointment and mandate of the Senate Ethics Officer were delayed. (They came into force on 17 May 2004.)

26 April 2004 – The House of Commons Standing Committee on Procedure and House Affairs adopted the 51st Report of the 2nd session of the 37th Parliament – the Conflict of Interest Code – as the Committee's report in the 3rd session and presented it in the House the following day.

26 April 2004 – The House of Commons Standing Committee on Procedure and House Affairs recommended that the House ratify the appointment of Bernard Shapiro to the position of Ethics Commissioner. The House of Commons approved his appointment three days later, and he began his duties on 17 May 2004.

29 April 2004 – The House of Commons concurred in the 25th Report of the Standing Committee on Procedure and House Affairs, thus ensuring that the *Conflict of Interest Code for Members of the House of Commons* would be appended to the *Standing Orders* of the House, to come into force at the beginning of the 38th Parliament, on 4 October 2004.

December 2004 – Sinclair Stevens was successful in having Mr. Justice Parker's 1987 Report set aside.

24 February 2005 – The Senate, following consideration of the matter in Committee of the Whole, approved the appointment of Mr. Jean T. Fournier as the first Senate Ethics Officer.

1 April 2005 – Mr. Fournier began his duties as the Senate Ethics Officer.

11 May 2005 – The Standing Senate Committee on Rules, Procedures and the Rights of Parliament tabled its Third Report, containing as appendices a proposed Code and consequential changes to the *Rules of the Senate*.

18 May 2005 – The Senate adopted the Third Report, bringing the *Conflict of Interest Code for Senators* into effect immediately.

18 November 2005 – The House of Commons Standing Committee on Procedure and House Affairs presented its 51st Report to the House, finding Ethics Commissioner Bernard Shapiro in contempt of the House of Commons.

February 2006 – The new government of Prime Minister Stephen Harper released a slightly revised Code for public office holders.

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APPENDIX

APPENDIX

A LONG HISTORY OF REPORTS

THE TASK FORCE ON CONFLICT OF INTEREST, 1984

The Task Force on Conflict of Interest, chaired by the Honourable Michael Starr and the Honourable Mitchell Sharp, was appointed by the federal government and charged with devising a regime dealing with conflict of interest whereby public confidence would be ensured and the integrity of the political process protected; at the same time, the Task Force had to recognize the need to attract candidates of high calibre to public office. The Task Force's report identified nine activities as involving conflicts of interest and recommended that these forms of conduct be dealt with, depending on the severity of the conflict, by: the use of a code of conduct; legal or quasi-legal procedures; or the implementation of additional codes of procedure, general or specific to the agency in question. The Task Force recommendations would have applied only to Cabinet Ministers and Parliamentary Secretaries, not to private Members or Senators.

The procedures to minimize conflicts of interest would have been in the form of regulations made by the Governor in Council. A major recommendation was the creation of the Office of Public Sector Ethics, which would have had an advisory, administrative, investigative and educational role. Although the Task Force also made recommendations governing the post-employment period, it acknowledged the difficulty of enforcing such rules after a parliamentarian's departure from office.

RECOMMENDATIONS OF THE PARKER COMMISSION

In his 1987 report regarding the allegations of conflict of interest involving the Honourable Sinclair Stevens, Mr. Justice William Parker suggested discontinuation of the use of blind trusts to satisfy conflict of interest guidelines. He declared that in some instances the "blindness" of such trusts was a fiction and that their use could be subject to abuse. He recommended that conflict of interest guidelines require public disclosure. Assets, interests and activities should be clearly set out, as should the assets of spouses. He also suggested that, in the interest of protecting privacy, certain personal assets would not have to be disclosed. These could include a residence, automobiles, cash and savings.

The disclosure statement would have been placed in a public registry and made available to the general public. Judge Parker also favoured divestment by a Minister of his or her private assets where these could lead to obvious conflicts of interest, and recusal in situations where, despite preventive measures, a conflict arose.

PARLIAMENTARY ACTION: 1973-1993

For over 30 years, various attempts were made in the parliamentary context to deal with conflict of interest issues at the federal level. In 1973, the government issued a Green Paper entitled "Members of Parliament and Conflict of Interest," which proposed to consolidate and extend the existing rules. The Green Paper was studied by committees in both the House of Commons and the Senate, each of which made numerous recommendations. In 1978, the government tabled the Independence of Parliament Act, which would have extended the provisions in the Green Paper and incorporated some of the recommendations of the two committee reports. The bill received second reading but died on the *Order Paper* when Parliament was dissolved in 1979.

A. Register of Members' Interests

On 25 November 1985, the House of Commons Standing Committee on Management and Members' Services was asked to consider matters related to the establishment of a Register of Members' Interests. The Committee was to look at whether Members should disclose their remunerated directorships of public and private companies and other remunerated positions, offices, trades and professions. This matter was also referred to the Standing Senate Committee on Standing Rules and Orders.

After consultation with Members of all parties, the House Committee concluded that a Register of Members' Interests was not warranted and that the current law relating to conflict of interest for Members was adequate. Furthermore, the Committee concluded that such a Register would accomplish little more than intrude into Members' privacy. In contrast, the Senate Committee recommended a complete review of conflict of interest as it applied to parliamentarians.

B. Members of the Senate and House of Commons Conflict of Interests Act

Four bills to regulate conflict of interest for federal legislators were introduced in the 33rd and 34th Parliaments; all of them died on the *Order Paper*. (See the earlier chronology for the legislative history of the bills.) The proposed legislation, which was similar to that being pioneered in a number of provinces, would have provided for an annual declaration of the private interests of Senators, Members of the House of Commons, and their spouses and dependent children(1) to an independent three-member Conflict of Interests Commission.(2) The Commission would have had extensive discretionary power to advise parliamentarians on their financial holdings, require public declarations of assets, provide opinions on appropriate conduct, and hold inquiries in response to allegations that the rules had been breached. Proposed penalties for non-compliance ranged from fines to loss of the Member's or Senator's seat, but their imposition would have remained in the hands of the parliamentarian's chamber.

C. The Special Joint Committee on Conflict of Interests (the Blenkarn-Stanbury Report)

In late November 1991, the government introduced the third of the bills, Bill C-43. Without proceeding to second reading, the subject matter of the bill was immediately referred to a Special Joint Committee of the Senate and the House of Commons for a comprehensive review.

The Special Joint Committee tabled its report on 10 June 1992. The Committee's views differed in a number of respects from the policy choices reflected in Bill C-43. Instead of a three-member Commission, the report recommended the appointment of a "Jurisconsult" to serve as advisor and investigator. As in Bill C-43, public disclosure of financial interests would have been required, although disclosure of monetary values would not. Spousal disclosure would have been potentially greater under the Committee's proposed regime than under that

(1) Although common in the provinces, the requirement for spouses and dependent children to disclose their interests to the Commission proved controversial.

(2) The full public disclosure that had been recommended by the Parker Commission was not included in the bills; instead, an official called the Registrar of Interests would have prepared a summary of the confidential information disclosed to the Commission. This format resembled the provincial model, and foreshadowed the Codes ultimately adopted by the House and the Senate.

proposed in Bill C-43, and there were a number of other matters on which the Committee and the government differed. Since no solution could be agreed on, the bill[3] died on the *Order Paper* when Parliament was dissolved on 8 September 1993.

PARLIAMENTARY ACTION: 1993-2005

The election of October 1993 brought a change of government. The Throne Speech in January 1994 stressed that integrity and public trust were essential to the government and that an independent ethics counsellor would be appointed, as had been promised during the election campaign. The counsellor would advise Ministers and public office holders on their ethical responsibilities and would examine the need for legislation.

On 16 June 1994, the government announced that the new Ethics Counsellor would be Howard Wilson, then Assistant Deputy Registrar of Canada and as such responsible for the administration of the previous Code. His mandate was expanded to cover lobbying. At the same time, a revised Code for public office holders was released. It differed little from the previous Code, although spouses and dependants were now included explicitly, rather than by additional directives as had formerly been the case.[4] In relation to conflict of interest, the Ethics Counsellor continued to report to the Prime Minister, continued to be under the general direction of the Clerk of the Privy Council, and had no independent investigatory powers.

In June 1995, the House passed a motion to establish a Special Joint Committee of the House and Senate to develop a Code of Conduct. The following month, the Senate passed a similar motion. In March 1997, the Committee presented to Parliament its proposed Code of Official Conduct, which came to be known as the Oliver-Milliken Report. The Committee emphasized the following as important goals for the Code: the maintenance of public trust and confidence in Parliament, and the provision of guidance for parliamentarians in how to reconcile their private interests with their public duties. Specific rules were proposed for parliamentarians that would have prohibited them from furthering their own private interests or those of their families, and from using insider information; the rules would also have regulated the receipt of gifts and personal benefits, sponsored travel and contracting with the government.

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(3) The Committee had included a draft bill in its report; the government then countered with yet another bill in response.

(4) Their assets were of relevance only to the situation of the public office holder and did not become public. That remains the case to the present, although there is a conflict between that and the Members' Code, which does make those assets public.

As with all of the previous proposals in this area, the heart of the Committee's report was its proposal that all parliamentarians should disclose their financial assets, liabilities, sources of income, and positions. The interests of spouses and dependants would also be included. Disclosure would be made confidentially, after which a summary would be prepared and made public. The summary would not include small interests, purely personal interests, or interests unlikely to result in any conflict of interest.

Similar to its predecessor committee in 1992, the Committee recommended the creation of the position of Jurisconsult, a parliamentary officer who would be appointed jointly by the Senate and the House of Commons upon the recommendation of the Speakers, following consultation with the leaders of all recognized parties. The Jurisconsult would receive parliamentarians' confidential disclosures, prepare the public disclosure statements, and advise parliamentarians on the interpretation of the Code. Upon receiving a complaint, the Jurisconsult would investigate; matters requiring a full inquiry would be referred to a new joint committee of the Senate and House, which would also have general oversight of the Jurisconsult and the Code. Foreshadowing later developments, the Committee recommended against a legislated approach.

In the 36th Parliament, the government took no action on the report. In that Parliament, and in the 37th, several private Members' bills were introduced to provide for a Code of Conduct for all parliamentarians, or for Ministers alone. None were proceeded with.

In the Auditor General of Canada's October 2000 Report, one chapter was entitled "Values and Ethics in the Federal Public Sector." After summarizing the history of unsuccessful attempts to develop a code of conduct for parliamentarians, the Auditor General recommended that parliamentarians try again, arguing that it was important to show ethical leadership for the public sector as a whole.

In May 2002, in the course of a debate in the House of Commons on ethics in government, Prime Minister Chrétien announced that the government would introduce an ethics initiative in the fall that would include a Code of Conduct for Members of Parliament. That initiative was tabled in draft form in both chambers of Parliament in October 2002 and consisted of two parts. The first part was a draft bill to amend the *Parliament of Canada Act* to establish an Ethics Commissioner, whose jurisdiction would encompass members of Cabinet and Parliamentary Secretaries, Members of Parliament, and Senators. The second part of the initiative was a proposed Code of Conduct, modelled closely on that recommended in the Oliver-Milliken Report of 1997.

Committees of each chamber reviewed the draft bill and proposed changes to it in early April 2003. Most of their recommendations were accepted, one of the most important of which from the Senate's perspective was that it have its own oversight official. Later in that month the government tabled Bill C-34, an Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer). The House passed the bill at the beginning of October 2003. Although the bill was dealt with expeditiously by the Senate committee to which it was referred (the Standing Senate Committee on Rules, Procedures and the Rights of Parliament), during third reading debate in the Senate it became clear that there was considerable opposition to the bill. Senators from both sides passed an amendment, thus sending the bill back to the House. Parliament was prorogued a few days later and the bill died on the *Order Paper*.

The bill was reintroduced in identical form as Bill C-4 at the beginning of the 3rd session and referred immediately to the Senate. This time, proposed amendments failed and the Senate passed the bill.

As for the proposed Code of Conduct based on the Oliver-Milliken Report, at an early point it was clear that each chamber was to have its own Code, just as each was to have its own officer to enforce it: the Ethics Commissioner for the House, and the Senate Ethics Officer for the Senate. The House of Commons Committee on Procedure and House Affairs studied the proposed Code, and in October 2003 it tabled its final report on the Code in the House. It recommended that it be adopted as a Conflict of Interest Code, although because of the demise of Bill C-34 and prorogation, this did not happen. The report was, however, readopted, tabled and concurred in as the 25th Report in the 3rd session. The Code came into force at the beginning of the 38th Parliament, in October 2004.

In the Senate, the proposed bill was extensively debated in the chamber before referral to the Standing Senate Committee on Rules, Procedures and the Rights of Parliament, and so the Committee study of the proposed Code was not far advanced when the 2nd session ended. Work resumed in the 3rd session but was not completed when the 37th Parliament ended.

Work on the Senate Code continued on an informal basis between Parliaments and was taken up as a priority by the Standing Senate Committee on Rules, Procedures and the Rights of Parliament in the 38th Parliament. Following much deliberation and study, the Committee presented its Code to the Senate in mid-May 2005; the Senate adopted it on 18 May and it came into force immediately, 32 years after the first efforts by Parliament to regulate conflict of interest in a systematic way.