Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney

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SUBMISSIONS OF THE ATTORNEY GENERAL OF CANADA ON THE DRAFT RESEARCH REPORTS PREPARED IN RELATION TO PART II OF THE INQUIRY

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PART I – ISSUES

[1] The proceedings of the Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney (Commission) are divided in two parts. Part I, the Factual Inquiry, focuses on questions relating to the business and financial dealings between Mr. Schreiber and Mr. Mulroney. Part II, the Policy Review, focuses on questions set out in paragraph (a), sections 14 and 17 of P.C. 2008-1092, namely:

> 14. Are there ethical rules or guidelines which currently would have covered these business and financial dealings? Are they sufficient or should there be additional ethical rules or guidelines concerning the activities of politicians as they transition from office or after they leave office?
>
> 17. Should the Privy Council Office have adopted any different procedures [in handling Mr. Schreiber's correspondence to the Prime Minister]?

[2] In relation to Part II of the Inquiry, the Commission has appointed Professor Craig Forcese as the Director of Research and published a Public Consultation Paper on its website on December 15, 2008. Research studies were also commissioned from leading researchers. On April 6, 2009, following completion of the research, the Commission published three draft reports on its website: Lori Turnbull, "Regulations on Post-Employment: A Comparative Analysis"; Gregory J. Levine, "Employment and Post-Employment Restrictions on Prime Ministers and Members of Parliament in Canada"; and Paul G. Thomas, "Who is Getting the Message? Communications at the Centre of Government."

[3] The Commission has invited the parties who have standing for Part II of the Inquiry – the Attorney General of Canada, Democracy Watch, and Mr. Schreiber – to make submissions on these three draft reports in preparation for an Expert Policy Forum which is expected to take place between June 15 and 18, 2009. This factum contains the position of the Attorney General on the findings and recommendations made by the three independent researchers hired by the Commission.

PART II – POSITION

[4] This section is divided in three parts: (I) the Turnbull Report on Comparative Post-Employment Regulations; (II) the Levine Report on Domestic Post-Employment Regulations; and (III) the Thomas Report on PCO Correspondence Management Procedures. Each part outlines the main findings and recommendations made by the researchers as well as the position of the Attorney General with respect to these findings and recommendations.

I. TURNBULL REPORT ON COMPARATIVE POST-EMPLOYMENT REGULATIONS

[5] Professor Turnbull has conducted a comparative analysis of ethics regimes, with a particular focus on post-employment regulations, in Canada, the United States of America, the United Kingdom, and Australia.

[6] In her Report, she outlines the development of the ethics regime in Canada from a *soft law* approach, which relies on codes of conduct to encourage ethical behaviour, to a *hard law* approach, which uses legislation to discourage and penalize misconduct. This shift occurred following the adoption of the *Conflict of Interest Act* (COIA) as part of the *Federal Accountability Act* in 2006. The COIA substantially incorporated the 2006 version of the Conflict of Interest and Post-Employment Code for Public Office Holders, which did not have force of law, and added new provisions.

[7] Professor Turnbull notes that the post-employment restrictions set out in Canadian legislation are "comprehensive by international standards" and, in comparison with other countries, "Canada is considered one of the more highly regulated systems in terms of lobbying activities." In her view, Canada is among the "most" regulated regimes of the countries members of the Organisation for Economic Co-operation and Development.

> L. Turnbull, "Regulations on Post-Employment: A Comparative Analysis" at pp. 6 and 41.

[8] Turning to the allegations relating to the business relationship between Mr. Schreiber and Mr. Mulroney, Professor Turnbull concludes that, if the events had occurred after 2006, the current ethics regime *could* cover it and, if so, a person similarly situated to Mr. Mulroney would have *inter alia* the obligation to report to the Conflict of Interest and Ethics Commissioner (Ethics Commissioner) any serious offers of employment, disclose the alleged payments, avoid lobbying former colleagues for a five-year period, and refrain from working for a private entity with which he had direct and significant dealings as a public official.

> L. Turnbull, "Regulations on Post-Employment: A Comparative Analysis" at pp. 15-21.

[9] The reason why Professor Turnbull states that the current regime *could* – instead of *would* – cover the business dealings between Mr. Schreiber and Mr. Mulroney stems from the fact that certain key terms in the COIA have not been legislatively defined and, as a result, are subject to interpretation by the Ethics Commissioner. She identifies the following examples:

- A sitting public office holder must report any firm offer of outside "employment" to the Ethics Commissioner within seven days from receiving them (s. 24(1) of the COIA);

- A former public office holder cannot take "improper advantage" of his or her previous public office (s. 33 of the COIA);

- A former public office holder cannot enter into a contract with or accepting a position or appointment from any private entity with which he had "direct and significant official dealings" during his last year of public employment (s. 35(1) of the COIA);

- A former public office holders cannot make representations on behalf of any person or entity to any department, organization, board, commission or tribunal with which he had "direct and significant official dealings" during the last year of their public employment (s. 35(2) of the COIA).

> L. Turnbull, "Regulations on Post-Employment: A Comparative Analysis" at pp. 15-21.

[10] To this date, the Ethics Commissioner, who has discretion and expertise in determining what constitutes a breach of the COIA, has not had the opportunity to act on a complaint involving the post-public employment regulations. As suggested by Professor Turnbull, to the extent that terms like "employment", "improper advantage", "direct and significant official dealings" need to be clarified, it is the role of the Ethics Commissioner under the COIA to interpret and apply the provisions of the legislation.

> L. Turnbull, "Regulations on Post-Employment: A Comparative Analysis" at p. 21.

[11] After carefully examining the legislation, Professor Turnbull gives a quite positive assessment of the current ethics regime in Canada. In her view, it would be ill-advised to create a longer list of prohibited activities considering that "heavier regulations would not increase the ability of current ethics legislation to meet its objectives."

> L. Turnbull, "Regulations on Post-Employment: A Comparative Analysis" at pp. 6 and 41.

[12] Professor Turnbull explains that "over-regulation ought to be resisted" because the "existence of the rules does not guarantee compliance with them", "non-compliance with the rules will not necessarily be detected or punished", and "even most comprehensive ethics regime will not necessarily enhance public trust in the integrity of political actors and institutions."

> L. Turnbull, "Regulations on Post-Employment: A Comparative Analysis" at p. 42.

[13] Conversely, the alternative to the current ethics regime, i.e. a return to a true soft law approach that relies on voluntary compliance, would also, in her view, be inappropriate as it "would be interpreted as a sign a regression by critics and members of the attentive public who pressure the government to be 'tough' on political misconduct."

> L. Turnbull, "Regulations on Post-Employment: A Comparative Analysis" at p. 7.

[14] The Attorney General concurs with Professor Turnbull's findings and conclusions about the soundness of the current ethics regime in Canada, and the essential role of the Ethics Commissioner with regard to the interpretation as well as the application of the legislation to current and former public office holders.

II. LEVINE REPORT ON DOMESTIC POST-EMPLOYMENT REGULATIONS

[15] Mr. Levine's Report examines the same issues discussed in Professor Turnbull's Report, namely post-employment restrictions, with a particular focus on the 1985 Conflict of Interest and Post-Employment Code for Public Office Holders (1985 Conflict of Interest Code), the Conflict of Interest Code for Members of the House of Commons (Members' Code), the COIA, and the *Lobbying Act*. Commenting on the differences between the 1985 Conflict of Interest Code and the COIA, he notes:

> There are considerable differences between the 1985 Code and the current *Conflict of Interest Act*. The creation of a statutory Code with an independent Conflict of Interest and Ethics Commissioner who oversees and monitors the Code and reports to Parliament is a very important and interesting change. The creation of administrative monetary penalties creates a preliminary order power for the ethics commissioner, and that in turn may lead to further transformation of the ethics system. At present these penalties relate to disclosure requirements. Though significant, that authority is clearly restricted. The ethics commissioner does not have the power to make orders respecting major prohibitions and ethics rules embedded within the statute. Nevertheless, as the first power of its kind in a model for a Canadian ethics commissioner, it is important and it may lead to broader order powers. For the purposes of this study, the key positive changes between the Code and the Act are the enhanced prohibitions around contracting. There are now more expressly prohibited actions respecting contracting than there were previously.
>
> G.J. Levine, "Employment and Post-Employment Restrictions on Prime Ministers and Members of Parliament in Canada" at pp. 45-6.

[16] In a section of his Report entitled "Strengthening the Current Legislation", Mr. Levine suggests a number of amendments to the COIA and the Members' Code with the aim of eliminating ambiguities and enhancing the current ethics scheme:

(a) Amend the COIA in order to: (i) include a statement about "apparent conflict of interest"; (ii) place a requirement on either the Privy Council Office or Cabinet to monitor contracting by former reporting office holders; (iii) define "employment", "improper advantage", "direct and significant official dealings"; and (iv) extend the sanction powers of the Ethics Commissioner.

(b) Amend the Members' Code in order to: (i) give it a legislative status; (ii) articulate the notion of "apparent conflict of interest"; and (iii) add post-employment restrictions for Parliamentary secretaries and Heads of Committee.

G.J. Levine, "Employment and Post-Employment Restrictions on Prime Ministers and Members of Parliament in Canada" at pp. 45-53.

1. Amending the COIA

[17] *(i) Apparent conflict of interest.* Mr. Levine notes that one rule that appeared in the 1985 Conflict of Interest Code and is reflected in the Members' Code, but which has not found its way into the COIA, is the obligation on public office holders to avoid "apparent conflicts of interest." As such, in his view, the COIA is deficient and should be amended to include a statement about "apparent conflicts of interest."

> G.J. Levine, "Employment and Post-Employment Restrictions on Prime Ministers and Members of Parliament in Canada" at pp. 45-9.

[18] This issue was debated in the Senate Committee on Legal and Constitutional Affairs when the *Federal Accountability Act* was under consideration. The Senate Committee proposed amendments that purported to prevent public office holders "from being in an actual, apparent or potential conflict of interest" and provided a definition of "apparent conflict of interest." The amendments were rejected by the House of Commons. The House of Commons Legislative Committee on Bill C-2 was not comfortable with prohibiting and defining in legislation (hard law), as opposed to a code of conduct (soft law), the notion of "apparent conflict of interest." In respect to that issue, the House of Commons sent a message to the Senate stating that:

> [the proposed amendments] would undermine the ability of public office holders to discharge their duties and substitute the Conflict of Interest and Ethics Commissioner for Parliament or the public as the final arbitrer of an appearance of conflict by expanding the definition of "conflict of interest" under the *Conflict of Interest Act* to include "potential" and "apparent" conflicts of interest.
>
> *Standing Senate Committee on Legal and Constitutional Affairs*, Fourth Report of the Committee (Bill C-2), October 26, 2006.
>
> *Journal of the Senate*, Message from the House of Commons, 1st Session, 39th Parliament, November 21, 2006 at p. 771.

The Senate ultimately accepted the position of the House of Commons on this matter and passed the legislation without the proposed amendments.

[19] *(ii) Monitoring of contracting by former reporting office holders*. Mr. Levine also suggests that the monitoring of contracting by former reporting public office holders, such as Ministers of the Crown, should not be left solely to the Ethics Commissioner, but rather should be placed on either the Privy Council Office or Cabinet itself.

> G.J. Levine, "Employment and Post-Employment Restrictions on Prime Ministers and Members of Parliament in Canada" at p. 49.

[20] Former reporting public holders are subject to post-employment restrictions as per ss. 33-38 of the COIA and ss. 10.11-10.12 of the *Lobbying Act*. Parliament has given the power to monitor and administer post-employment restrictions to two independent and expert administrative bodies, namely the Ethics Commissioner and the Commissioner of Lobbying. To confer similar powers to the Privy Council Office or Cabinet which are neither independent nor expert in these matters would not only create duplication and a risk of conflicting decisions, but could also undermine the overall integrity of the post-employment enforcement scheme. In addition, neither the Privy Council Office nor the Cabinet is an oversight body with the role or capacity to monitor and enforce rules.

[21] *(iii) Definition of terms*. Mr. Levine points out that key terms such as "employment", "improper advantage", and "direct and significant official dealings", are

ambiguous. For this reason, he recommends that these concepts be clarified or defined by Parliament in the COIA.

> G.J. Levine, "Employment and Post-Employment Restrictions on Prime Ministers and Members of Parliament in Canada" at pp. 49-51.

[22] Insofar as terms referred to in the COIA may appear ambiguous, it is within the mandate of the Ethics Commissioner to give them meaning if and when she will be called to investigate whether a particular behaviour would breach the COIA. This could occur in the following circumstances:

- A public office holder can seek confidential advice from the Ethics Commissioner with respect to his or her obligations under the COIA (s. 43(b) of the COIA);

- A member of the Senate or the House of Commons who has reasonable grounds to believe that a current or former public office holder has contravened the COIA may request that the Ethics Commissioner examine the matter. Also, a member of the public has the opportunity, through either a member of the Senate or the House of Commons, to bring a complaint against a public office holder (s. 44(1) of the COIA); and,

- The Ethics Commissioner may examine the matter of her own initiative if she has reason to believe that a current or former public office holder has contravened the COIA (s. 45(1) of the COIA).

[23] It would not be advisable to define, in the abstract, "employment", "improper advantage", and "direct and significant official dealings." Over time, when appropriate cases are brought to her attention, the Ethics Commissioner will have the opportunity to interpret and apply the provisions of the COIA thus bringing more clarity to the legislative scheme as necessary. As such, the recommendations for additional legislative definitions of these terms are unwarranted at the moment.

> L. Turnbull, "Regulations on Post-Employment: A Comparative Analysis" at p. 21.

[24] *(iv) Sanction powers.* Mr. Levine asserts that "Parliament should consider having an ethics commissioner with a wider array of direct sanction powers."

> G.J. Levine, "Employment and Post-Employment Restrictions on Prime Ministers and Members of Parliament in Canada" at p. 53.

[25] Pursuant to ss. 52-62 of the COIA, the Ethics Commissioner has the power to impose some administrative monetary penalties in certain circumstances. Mr. Levine did not, in support of his recommendation, fully articulate why the powers actually conferred to the Ethics Commissioner under the COIA are insufficient and which additional powers, if any, should be conferred in order to strengthen the legislation. The power to dismiss a Minister of the Crown, including for non-compliance with the obligations under the COIA, is a prerogative of the Prime Minister and was always intended to remain in the political realm.

[26] It should be noted that the COIA will be subject to a comprehensive review by a committee of the Senate, the House of Commons, or both Houses of Parliament within a period of five years following the coming into force of its s. 67. Therefore, at that time, issues pertaining, for example, to the scope of the COIA, the meaning of certain terms, or the powers of the Ethics Commissioner will be further examined. The committee undertaking the review will then submit a report to Parliament, including a statement of any changes that the committee recommends.

2. Amending the Members' Code

[27] Mr. Levine has recommended that amendments be made to the Members' Code. Whilst it is within the sole discretion of the House of Commons to review and take position on these recommendations, the Attorney General can provide general comments on the status of the Members' Code, the notion of "apparent conflict of interest", and the application of post-employment restrictions to members of the House of Commons.

[28] *(i) Status of the Members' Code.* Mr. Levine notes that because the Members' Code is a code of conduct rather than a statute, it is non-justiciable. In his view, the "time has come for Parliament to legislate its code."

> G.J. Levine, "Employment and Post-Employment Restrictions on Prime Ministers and Members of Parliament in Canada" at p. 51.

[29] Before adopting the Members' Code on April 27, 2004, the members of the House of Commons had considered and rejected the idea of enacting a statute in lieu of a code of conduct. The rationale for that decision was based on the necessity to protect parliamentary privilege and prevent outside bodies, such as the courts, to pass judgment on internal matters. The adoption of a code of conduct, as an appendix to the Standing Orders of the House of Commons, allowed the members to establish an ethics regime for themselves whilst, at the same time, preserving the unfettered control of the House of Commons over its own proceedings.

> *House of Commons Debates*, Volume 139, Number 44, 3rd Session, 37th Parliament at p. 2549.

[30] *(ii) Apparent conflict of interest.* Unlike the COIA, s. 2(b) of the Members' Code contains a statement that members of the House of Commons are expected to "fulfill their public duties with honesty and uphold the highest standards so as to avoid real or *apparent conflicts of interests*, and maintain and enhance public confidence and trust in the integrity of each Member and in the House of Commons." Mr. Levine suggests that the standard of "appearances", which is not defined in the Members' Code, be more clearly articulated.

> G.J. Levine, "Employment and Post-Employment Restrictions on Prime Ministers and Members of Parliament in Canada" at p. 51.

[31] The Ethics Commissioner, an Officer of Parliament, was chosen to administer the Members' Code. When the Ethics Commissioner will be called to interpret and apply the notion of "appearances", she will have access to an existing body of law to help her articulate what is the meaning of that concept in the Members' Code. One of the possible

sources she would have access to is British Columbia's *Members Conflict of Interest Act* which states that "a member has an apparent conflict of interest if there is a reasonable perception, which a *reasonably well informed person* could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest." This statement as to the applicable standard is consistent with the one developed by Commissioner Parker in the Report of the Commission of Inquiry into the Facts of Allegations of Conflict of Interest Concerning the Honourable Sinclair Stevens.

> *Members Conflict of Interest Act*, R.S.B.C. 1996, c. 287, s. 2(2).
>
> Report of the Commission of Inquiry into the Facts of Allegations of Conflict of Interest Concerning the Honourable Sinclair Stevens (Ottawa: Ministry of Supply and Services, 1987).

[32] *(iii) Post-employment restrictions.* Mr. Levine further recommends that some form of post-employment restrictions be enacted for influential members of the House of Commons such as parliamentary secretaries and heads of committees.

> G.J. Levine, "Employment and Post-Employment Restrictions on Prime Ministers and Members of Parliament in Canada" at p. 52.

[33] It should be noted that parliamentary secretaries are included in the definition of "public office holder" as well as "reporting public office holder" in s. 2 of the COIA. As such, they are subject to the post-employment restrictions found in Part 3 of the COIA. With regard to heads of committees, Mr. Levine has not explained why they should be subject to any post-employment restrictions.

III. THOMAS REPORT ON PCO CORRESPONDENCE MANAGEMENT PROCEDURES

[34] Professor Thomas' Report examines the processing, assessment, and responses to communications involving the centre of government, i.e. the Privy Council Office (PCO) and the Prime Minister's Office (PMO). He analyses the procedures for handling the Prime Minister's correspondence within a broader context that includes government communications, access to information and record management.

[35] The Attorney General notes that, in the context of the policy review, question 17 of the Terms of Reference limits the mandate of the Commissioner to the examination of whether the "Privy Council Office [should] have adopted any different procedures" in processing Mr. Schreiber's correspondence to the Prime Minister.

[36] The following comments will be restricted to the specific issue of correspondence management and not government communications, access to information and record management in general. The Attorney General expects that any Expert Policy Forum organised by the Commission will focus strictly on the examination of correspondence management by the PCO.

[37] In his Report, Professor Thomas reviews the procedures pertaining to the management of correspondence addressed to the Prime Minister by the Executive Correspondence Unit (ECU) of the PCO and states:

> To an outsider, the correspondence operations of the ECU appear to be highly systematic, refined, and professional. Manuals, guidelines, criteria, established procedures, and state-of-the-art information and records management systems are used to receive, sort, analyze, store, track, and respond to communications of all kinds. Incoming postal mail addressed to the prime minister is scanned for security reasons before it is sent to the ECU. The ECU uses WebCIMS, the Correspondence and Issues Management System, to perform the following functions: scan incoming correspondence, record relevant details, assign to appropriate personnel, track progress, and generate analysis of correspondence-related issues. WebCIMS appears to be state-of-the-art software, which is ISO certified and counts among its users more than 15 departments and agencies of the Government of Canada as well as several departments in the Government of the United States.
>
> P.G. Thomas, "Who is Getting the Message? Communications at the Centre of Government" at pp. 30-1.

[38] Professor Thomas' comparative analysis of other jurisdictions did not disclose any structural or procedural arrangements that are distinctive and would represent an improvement to the system of the PCO. In terms of the information-processing systems

for handling postal and e-mail correspondence, "the PCO's system seems to be state-of-the-art and comparable to or better than those in other countries."

> P.G. Thomas, "Who is Getting the Message? Communications at the Centre of Government" at pp. 47-8.

[39] Professor Thomas' research determined that the communications function in the public sector should be approached in a manner that is "appropriate to the external and internal environments of particular governments." He goes on to note that "[o]ver time, the Government of Canada has refined its communications structures, policies, and practices. The result is a systematic, professional, and evolving approach. No structural, procedural, or technological features identified in the comparative analysis of other jurisdictions stand out as so superior as to warrant a strong recommendation for their adoption by the Government of Canada."

> P.G. Thomas, "Who is Getting the Message? Communications at the Centre of Government" at p. 47.

[40] In relation to whether correspondence employees in the PCO would deliberately fail to transfer correspondence to the PMO in order to facilitate *plausible deniability*, Professor Thomas concludes that it "is highly improbable that an employee of the PCO would deliberately seek to protect the prime minister and the government of the day by withholding information so that a condition of plausible deniability involving a controversial event could be created."

> P.G. Thomas, "Who is Getting the Message? Communications at the Centre of Government" at pp. 47-8.

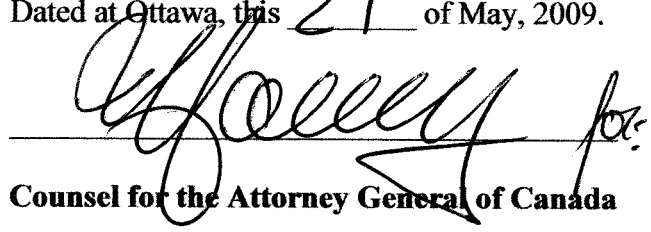
[41] The Attorney General supports Professor Thomas' findings and conclusions about the highly systematic nature of the management of the Prime Minister's correspondence in the PCO, the state-of-the-art nature of its technological equipment, and the professionalism of its employees. For the sake of completeness and to ensure that the Report is as accurate as possible, more comments pertaining to specific statements made by Professor Thomas in his Report are included in Annex A.

PART III – CONCLUSION

[42] In relation to question 14 of the Terms of Reference, subject to any findings made by the Commissioner following Part I of the Inquiry, the current ethics regime could have covered the business dealings between Mr. Schreiber and Mr. Mulroney if the events had occurred today. Considering that the Canadian ethics regime is one of the most regulated internationally, additional rules are not needed to strengthen the scheme. Over time, as appropriate cases are brought forward, the Ethics Commissioner will have the opportunity to interpret and apply the post-employment restrictions of the COIA thus clarifying, if necessary, the obligations of current and former public office holders.

[43] In relation to question 17 of the Terms of Reference, the independent examination of the management of the Prime Minister's correspondence by the PCO conducted by Professor Thomas did not reveal any weaknesses from a procedural, structural, or technological standpoint. Professor Thomas did not recommend that changes be made nor did he suggest that the PCO should have adopted any different procedure in handling Mr. Schreiber's correspondence to the Prime Minister.

Dated at Ottawa, this 29 of May, 2009.



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ANNEX A

SPECIFIC COMMENTS ON THE THOMAS REPORT

- **Page 3, first paragraph, first sentence** – The subject of the cited article is correspondence received by Prime Minister Martin in "the year leading up to the November 29 [2005] election call."

- **Page 4, second paragraph, last sentence** – The responses sent from staff on behalf of the Prime Minister are signed by the staff themselves. The signature arm is only used for responses that require the PM's signature.

- **Page 21, first paragraph, first sentence** – As the exemption taken for information on international/intergovernmental affairs is discretionary and not mandatory, the phrase "[...] documents in those fields are afforded extra protection against disclosure" should end with the words "if necessary."

- **Page 28, second paragraph** – Core communications functions at PCO fall under the Communications and Consultation Secretariat, not the Corporate Services Branch. Information on the mandates of these groups is available in the document *The Role and Structure of the Privy Council Office 2008*, on the PCO website. In addition to managing correspondence sent to the PM and PCO portfolio ministers, the Corporate Services Branch performs the communications function of management of PCO's public websites and its Intranet site. Two other managers are referred to as performing communications functions: the Director of the Cabinet Papers System Unit and the Director of Cabinet Confidences. Neither of these units performs communications functions.

- **Pages 28, last paragraph** – Whilst the mailing addresses for PM Correspondence and the Executive Correspondence Unit are the same, they are located in two different buildings. Face to face contact between the managers takes place occasionally. Face to face contact between employees is rare.

- **Page 29, second and third paragraphs** – There is no Deputy Prime Minister in the current government. The DCU did not support the Deputy Prime Minister; a separate DPM Correspondence Unit existed until February 2006. DCU now also provides correspondence support to the Minister of State (Democratic Reform).

- **Page 31, first paragraph, last sentence** – This sentence contains a quotation from the 2006-2007 PCO Departmental Performance Report. The word "communications" has been inserted in square brackets in the sentence. The section of the PCO Performance Report that contains this sentence refers specifically to the function of correspondence support to the Prime Minister, and not to the function of communications.

- **Page 31, second paragraph, third sentence** – This sentence indicates that e-mails are processed by ECU clerks. E-mails are dealt with by correspondence analysts (AS-01). The mailroom and production clerks (CR-04) are not involved in processing e-mails.

- **Page 31, second paragraph, fourth sentence** – No initial acknowledgement of receipt is usually sent to the correspondent. The final and only response may be an acknowledgement of receipt (if no referral is required), or the referral to the appropriate department will be the response provided.

- **Page 31, third paragraph, second sentence** – This sentence indicates that "These pieces of correspondence are given a tracking number." General Mail and Priority Mail both receive a tracking number.

- **Page 36, second paragraph, second sentence** – The phrase "The [ATI] Act has remained unchanged in its fundamental features" is not accurate. For example, the *Federal Accountability Act* introduced a new "duty to assist" s. 4(2.1) to the ATIA that makes equitable support for access to information explicit. The FAA also extended the application of the ATIA to 70 more organizations, including Officers of Parliament, Crown corporations and their subsidiaries, and foundations.

- **Page 36, third paragraph, fourth sentence** – In the phrase "there is a blanket exemption for cabinet confidences", the word "exemption" should be replaced by "exclusion".

- **Page 36, third paragraph, fifth sentence** – It should be noted that Cabinet documents are excluded from the ATIA for 20 years, after which they become available to the public, subject to exemptions under the ATIA. They are transferred from PCO to Library and Archives Canada after 30 years.

- **Page 37, second paragraph, fifth sentence** – It should be noted that Ministers' Offices are not subject to the ATIA. Only institutions listed in the ATIA itself are subject to access law. This has been the position of the Government since the adoption of the ATIA and is therefore not a "new policy" as suggested in the Report and the Ottawa Citizen article cited. Secondly, requests for records on government business meetings and travel expenses incurred by Ministers were not "refused" after 1999 as alleged here, and remain available to this day.

- **Page 38, second paragraph, first sentence** – It should be noted that the Privacy Act and the ATIA both provide protection for personal information. The "balance" between them is not, as implied, between personal and non-personal information, but between access and privacy.

- **Page 38, third paragraph** – This paragraph summarizes two separate complaints as one. In the complaint against PCO on disclosure of a journalist's name in an

access response, the complaint was judged well-founded. The complaint on disclosure of a journalist's name in a conference call was deemed not well-founded.

- **Page 38, first paragraph, first sentence** – In this sentence, the reference to "ministerial aides" is incorrect. No ministerial aides were involved in the journalist's complaint.

- **Page 39, second paragraph, third sentence** – The time limit for response to an access request is a minimum of "30 days" as stated. However, this limit could be extended when extensions authorized under the ATIA are taken.

- **Page 39, second paragraph, tenth sentence** – The "last Report for PCO" by the OIC was in 2006-2007, not in 2005-2006 as shown. For 2007-2008, following the improvements detailed at line 11, PCO received an OIC performance rating of three stars out of five.

- **Page 39, second paragraph, twelfth sentence** – PCO has found no evidence that its delegation of authority is "top-heavy". For every access request, consultation and concurrence between PCO ATIP and PCO officials are mandatory. If the delegation of authority were reversed, the requirement for cooperation and agreement between both parties would not change.

- **Page 39, second paragraph, last sentence** – The phrase "In the PCO's 2006-07 annual report" suggests that the Information Commissioner commented on PCO's ATI process in PCO's own departmental report.

- **Page 39, third paragraph, third sentence** – PCO receives approximately 650 requests per year, not the "300-400" claimed. In 2008-2009, media requests were 56% of PCO volume, public requests 17%, and business requests 9%. PCO is the reverse of government as a whole, where in 2007-2008 business requests were number one at 42%, and media requests were only 14% of volume.

- **Page 40, first paragraph, second sentence** – PCO contests the conclusion that "caution and delay" characterizes its handling of access requests. PCO has found no evidence of such delay. PCO employs standardized and consistent processes in the handling of access requests, and has reported in detail on its processes to the Office of the Information Commissioner. In the 2009 OIC Report "Systemic Issues Affecting Access to Information in Canada", PCO was one of three rated improved in performance, out of a total of ten departments.

- **Page 41, first paragraph, fourth sentence** – Transitory e-mails can be deleted, unless they exist at the time a relevant request under the ATIA is received. Sentence four does not make this specific time point clear.

- **Page 42, second paragraph, last sentence** – This sentence appears to state that the Auditor General of Canada and the Information Commission have both singled out PCO "for the sorry state of its records, many of which were stored in the damp basement of the Langevin Building." The source of this criticism is not provided. Reports of the Auditor General and Information Commissioner have been searched, but the reference has not been found. The source of this comment should be provided. If the source is not known, or cannot be provided, the comment should be removed. PCO does not store records in the basement of the Langevin Building. Records stored in the basement of another PCO building were damaged in a flood in 2001 that was caused by a burst pipe. The records were dried, treated, and returned to a refurbished storage location.