

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

**SUBMISSIONS BY THE ATTORNEY GENERAL
OF CANADA ON THE STANDARDS OF CONDUCT**

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PART I- ISSUES

1. On November 12, 2008, the Commissioner issued a Notice of Hearing on Standards of Conduct and invited the four parties to the Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney (hereinafter the "Commission") to make submissions on the following issues in relation to questions 11, 12, and 13 of its Terms of Reference:
 1. In relation to question 13 of the Terms of Reference, what were the ethical rules and guidelines that were applicable to the business and financial dealings between Mr. Mulroney and Mr. Schreiber?
 2. In relation to questions 11 and 12, what were the applicable norms and standards in interpreting whether Mr. Mulroney's conduct was "appropriate" in the circumstances?
2. It is the function of the Attorney General of Canada in these proceedings to represent the interests of the Government of Canada and in doing so, to assist in facilitating the work of the Commission. To that end, the Attorney General will review those areas of the legislation, rules, guidelines and jurisprudence, which may potentially have application, depending upon the evidence which will ultimately be put before the Inquiry and will attempt to lay out a general framework within which statements of opinion as to what is "appropriate" may be considered.
3. Since these submissions have been requested in advance of any evidence being tendered before the Commission, they are necessarily approached at a conceptual level. What particular findings of fact may be made by the Commissioner and what statements of opinion on the part of the Commissioner may emerge remain unknown.

PART II- STANDARDS OF CONDUCT

A. LEGISLATION

(i) The Parliament of Canada Act

4. The *Parliament of Canada Act*¹ contains several conflict of interest provisions. Notably, section 41 of the Act prohibits Members of Parliament from receiving, or agreeing to receive, any payment to influence proceedings of Parliament. Penalties for violating these prohibitions include fines, and disqualification from the House of Commons or from the public service of Canada, for five years.

5. The current version of the *Parliament of Canada Act* reflects significant legislative amendments that have been implemented since 2004. Many of the relevant sections of the Act that existed during the time of the alleged financial transactions between Messrs. Mulroney and Schreiber have since been altered or repealed. On April 26, 2004, the House of Commons adopted the *Conflict of Interest Code for the Members of the House of Commons*.

6. The sections of the Act reproduced in *Annex A* reflect the provisions as they existed on June 23, 1993, the date at which Mr. Schreiber alleges to have entered into an agreement with Mr. Mulroney. They set out the conflict of interest norms that prohibit sitting Members of Parliament from receiving unauthorized compensation.

¹ *Parliament of Canada Act*, R.S.C. 1985, c. P-1.

(ii) The Financial Administration Act

7. The *Financial Administration Act*² (“FAA”) governs the use of public monies and prohibits certain conduct that would lead to its improper allocation. Its focus is on regulating the financial management and accountability of public service organizations and Crown corporations, by setting out fundamental principles for the management of government funds.

8. The prohibitory language found in sections 80 and 81 is broad and encompasses the actions of Ministers of the Crown as well as public servants.³ As one commentator has noted, “[...] the Act is intended to impose certain legal obligations upon the political executive, obligations that constitute the statutory legal component of ministerial responsibility.”⁴

9. As recognized by the Supreme Court in *R. v. Hinchey*, the criminal law is not the only legislation aimed at preserving the integrity of government and deterring fraudulent behaviour towards the government and bribery of public office holders. Other statutes, such as the *Financial Administration Act*, deals with corrupt or fraudulent practices. In the words of L’Heureux-Dubé J.:

Obviously, the criminal law is not the only method utilized [to preserve the integrity of government]; a variety of other statutes contain provisions which deal with corrupt and fraudulent practises, while there are also conflict of interest and ethical guidelines to regulate behaviour. See, for example, *Financial Administration Act* [...] ss. 80 and 81; *Conflict of Interest and Post-Employment Code for Public Office Holders* (1994).⁵

³ Section 2 of the FAA defines “public officer” to include a *minister of the Crown*, as well as persons employed in the federal public administration.

⁴ Stan Corbett, “Ministerial Responsibility and the Financial Administration Act: The Constitutional Obligation to Account for Government Spending,” in Commission of Inquiry into the Sponsorship Program and Advertising Activities, *Restoring Accountability: Research Studies Volume 3* (Ottawa: PWGSC, 2006), http://epe.lac-bac.gc.ca/100/200/301/pco-bcp/commissions-ef/sponsorship_program-ef/phase2report/en/phase2report/volume3/CISPAA_Vol3_5.pdf, at p. 244.

⁵ *R. v. Hinchey*, [1996] 3 S.C.R. 1128 at para. 13.

(iii) The Criminal Code

10. Sections 119, 121 and 122 of the *Criminal Code* prohibit corruption in relation to public office. The Supreme Court has stated that society's expectations of public officials are encompassed by these provisions of the *Criminal Code*, which exist to preserve the integrity of government, as well as the appearance of integrity. According to the Court, the heavy level of trust and responsibility bestowed upon public officials merits a more stringent expectation of proper conduct than would be expected of an ordinary person.⁶ In dealing with the interpretation of section 121(1)(c) of the *Criminal Code* (which specifically prohibits an official from accepting any benefit from a person who has dealings with the government without the written consent of a senior official), the Supreme Court of Canada stated that:

Section 121(1)(c) has a special role to play in this regard. This Court has decided on several occasions that the crucial purpose encompassed by this section is not merely to preserve the integrity of government, but to preserve the appearance of the integrity as well.⁷

11. In addition, the Supreme Court, in *R. v. Cogger*, stated that the purpose of section 121(1)(a) of the *Criminal Code* (which makes it an offence for anyone to give, and for an official to accept, any benefits for the purpose of obtaining assistance from an official in connection with government business) "is to prevent government officials from taking benefits from a third party in exchange for conducting some form of business on that party's behalf with government." The Supreme Court held that a "corrupt state of mind" is not a required element of the crime. As explained by the Court:

What is required is that the accused intentionally commit the prohibited act with a knowledge of the circumstances which are necessary elements of the offence. Thus, to be guilty of an offence under this section, the accused must know that he or she is

⁶ *R. v. Hinchey*, *Supra* note 5.

⁷ *Ibid* at par. 16.

an official; he or she must intentionally demand or accept a loan, reward, advantage or benefit of any kind for himself, herself or another person; and the accused must know that the reward is in consideration for cooperation, assistance or exercise of influence in connection with the transaction of business with or relating to the government.⁸

(iv) Income Tax Act

12. In determining the meaning of “appropriate” in relation to question 12 of the Terms of Reference, which asks whether there was appropriate disclosure and reporting of the dealings and payments in question, it may assist to consider the place of Canada Revenue Agency’s Voluntary Disclosure Program in the overall legislative and administrative framework.
13. Canada Revenue Agency’s (CRA) Voluntary Disclosure Program provides a standard policy for individuals who wish to provide tax information that was not reported or that was misreported in previous years. Taxpayers may request consideration of a voluntary disclosure in accordance with subsection 230 (3.1) of the *Income Tax Act*. If the disclosure is accepted, penalties are waived and prosecution may be avoided.
14. In order to qualify under the program, the disclosure must be voluntary. It must include enough detail to allow the facts to be verified, must be complete and payment of the amount of tax and interest or an acceptable arrangement for paying such amount must be made.⁹

⁸ *R. v. Cogger*, [1997] 2 S.C.R. 842 at paras. 22 and 24.

⁹ IC 85-1R2. CRA’s information Circular on Voluntary Disclosure Program.

B. STANDING ORDERS

15. The House of Commons has exclusive jurisdiction to set its standing orders, which are the internal rules under which the House of Commons regulates its proceedings. Standing Orders do not lapse at the end of a parliamentary session and remain effective until they are suspended, changed or repealed.

16. Standing Order 23 underlines the gravity with which the House views the offence of offering money or bribery to any member of the House:

23. (1) The offer of any money or other advantage to any Member of this House, for the promoting of any matter whatsoever depending or to be transacted in Parliament, is a high crime and misdemeanour, and tends to the subversion of the Constitution.

17. The content of Standing Order 23 has not changed since 1867. There has never been an instance in which it was found to have been breached. The scope of Standing Order 23 is limited, since it only deals with the offer of bribes, and not their acceptance. Thus, it does not cover instances where an MP accepts the offer of a bribe or arranges one.¹⁰ Such conduct by MPs would be prohibited by section 41 of the *Parliament of Canada Act* and section 119 of the *Criminal Code* which both apply to the offer and acceptance of a bribe.

18. In 1962, Mr. Raymond Bruneau was convicted under what would now be section 119 of the *Criminal Code* for unlawfully and corruptly agreeing to accept money from Mr. Abbe Bergeron for the use of his influence in his official capacity as a Member of Parliament in respect to the sale of property by Mr. Bergeron to the Government of

¹⁰ In the *Annotated Standing Orders of the House of Commons*, 2005, it is stated that : “Instances where a Member accepts the offer of a bribe or even arranges for one in consideration of his or her work in Parliament are not foreseen by the rule, although such actions could also be viewed as a breach of privilege.” Available at http://www.parl.gc.ca/Sites/ASOII/00_ASOII_Cover-e.html

Canada. The Ontario Court of Appeal dismissed Mr. Bruneau's appeal, allowed the Crown's appeal, and imposed a tougher sentence on the accused. McLennan J.A., for the Court, made the following statement with respect to the standard of conduct expected from Members of Parliament:

The responsibility of a Member of Parliament to his constituency and to the nation requires a rigorous standard of honesty and behaviour, departure from which should not be tolerated. If, in violation of their responsibilities the services of Members of Parliament can be bought then justice and freedom cannot survive, nor can this nation long survive as a place where free men can live.¹¹

19. Standing Order 21 of the House of Commons, as it read during the time that Mr. Mulroney was a Member of Parliament, provided that "No Member is entitled to vote upon any question in which he or she has a direct pecuniary interest, and the vote of any Member so interested will be disallowed." As this matter is now covered by the *Conflict of Interest Code for Members of the House of Commons*, which forms part of the Standing Orders and establishes a far more comprehensive regime with regard to the standards of conduct expected from Members of the House, Standing Order 21 was considered superfluous and, therefore, repealed on October 4, 2004.

**C. 1985 CONFLICT OF INTEREST AND POST-EMPLOYMENT
CODE FOR PUBLIC OFFICE HOLDERS**

20. Ethical guidelines for public office holders have been in place for more than four decades. It has been usual practice for each new Prime Minister to issue his/her own rules to govern the conduct of public office holders.

¹¹ *R. v. Bruneau*, [1964] 1 C.C.C. 97 at pp. 103-104.

21. Ministerial codes of conduct, up to and including the code introduced by the Right Honourable Brian Mulroney (the “1985 *Conflict of Interest Code*”), had no statutory basis.
22. The ethical rules under Prime Minister Pearson broadly emphasized high ethical standards. The first guidelines regulating post-employment conduct of ministers were introduced in 1978 during Prime Minister Trudeau’s administration.
23. The 1985 *Conflict of Interest Code* was part of a larger package of government initiatives in response to the 1983 Starr/Sharp Task Force on Conflict of Interest appointed by Prime Minister Trudeau to undertake a major review of the policies and procedures on conflict of interest and to assess whether new approaches to this issue should be devised. The Report of the Task Force on Conflict of Interest, released in May 1984, recommended *inter alia* that the existing guidelines be replaced by a short, simple code of ethical conduct and the creation of a new office headed by an ethics counsellor.¹²
24. On September 9, 1985, Prime Minister Mulroney tabled in the House of Commons the first *Conflict of Interest and Post-Employment Code for Public Office Holders*.¹³
25. The 1985 *Conflict of Interest Code* applies to public office holders which are defined as including a Minister of the Crown.¹⁴ Members of Parliament were explicitly excluded from the application of the 1985 Conflict of Interest Code (section 3). Thus,

¹² Report of the Task Force on Conflict of Interest entitled *Ethical Conduct in the Public Sector*, 1984.

¹³ Prime Minister Mulroney stated that his Code “represents a marked strengthening over the current regime”. Prime Minister Brian Mulroney, “An Open Letter to Members of Parliament and Senators”, September 9, 1985.

¹⁴ Section 2(2)(a) of the 1985 *Conflict of Interest Code*.

the applicable rules and standards of ethics imposed upon ministers were more demanding than those that applied to MPs.

26. The 1985 *Conflict of Interest Code* was more detailed and more structured than those of its predecessors. For example, it:

- i. contained enforcement mechanisms in its post-employment regime.
- ii. had much broader application, covering almost all public office holders.
- iii. was structured much like a statute, including language that compelled certain conduct (“shall” language).
- iv. contained nine principles which specifically delineated prohibited conduct, and significantly expanded the obligations imposed by its predecessor.
- v. contained a “Failure to Comply” section, which stated that breach could result in discharge from office.¹⁵

27. Section 4 of the 1985 *Conflict of Interest Code* provides that the object of the Code is to “enhance public confidence in the integrity of public office holders and the public service.” When Mr. Mulroney introduced the 1985 *Conflict of Interest Code* and its accompanying public sector ethics initiatives he stated:

It is a great principle of public administration – I could even say an imperative – that to function effectively the government and the public service of a democracy must have the trust and confidence of the public they serve. In order to reinforce that trust, the government must be able to provide competent management and, above all, to be guided by the highest standards of conduct.¹⁶

28. Section 5(2) provides that mere respect of the code is not enough. Public office holders have the responsibility to take such additional action as may be necessary to prevent any real, potential or apparent conflict of interest.

¹⁵ In practice, this was not new since ministers are appointed at pleasure. However, this was the first time a code explicitly set out this warning.

¹⁶House of Commons Debates, Official Report, First Session, Thirty-Third Parliament, 34 Elisabeth II, Volume V, 1985 at p. 6399 .

29. Section 7 sets out the principles which are intended to govern the conduct of public office holders. It would appear that subsections 7(a) and (b) constitute the organizing principles while subsections (c) to (i) are specific illustrations of these principles. Subsections 7(a) and (b) reads as follows:

- (a) public office holders shall perform their official duties and arrange their private affairs in such a manner that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced;
- (b) public office holders have an obligation to act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law;

Section 7 is set out in its entirety at *Annex A*.

30. Under Part II of the 1985 *Conflict of Interest Code*, Ministers of the Crown were required to arrange their private affairs so as to minimize the risk of conflict of interest (section 15). They were *inter alia* prohibited from serving as paid consultants outside their official duties (section 29), except in exceptional circumstances under which those services related to their official duties (section 31). Ministers of the Crown had to decline any benefit that could influence their judgment and performance of official duties and responsibilities (section 33) except in very limited circumstances where the benefit was of nominal value, constituted a normal expression of courtesy, would not bring suspicion on his or her objectivity and impartiality, and would not compromise the integrity of the government (section 34). Finally, Ministers of the Crown were required to avoid being placed, or the appearance of being placed, under an obligation to anyone that might profit from special consideration on his or her part and avoid according preferential treatment to anyone (section 36). Failure to comply with these provisions, allowed the designated authority (i.e. the Prime Minister in the case of Ministers of the Crown) to take “appropriate measure” including “discharge or termination or appointment” (section 38).

31. Part III of the 1985 *Conflict of Interest Code* deals with Compliance measures for former public office holders and public office holders anticipating departure from office. A former prime minister's conduct would be specifically regulated by the relevant post-employment provisions of the 1985 *Conflict of Interest Code*. The object of Part III of the 1985 *Conflict of Interest Code* is to ensure that public office holders did not act, after they leave public office, "in such a manner as to take improper advantage of their previous public office" (section 57) and to minimize the possibilities of:
- (a) allowing prospects of outside employment to create a real, potential or apparent conflict of interest for public office holders while in public office;
 - (b) obtaining preferential treatment or privileged access to government after leaving public office;
 - (c) taking personal advantage of information obtained in the course of official duties and responsibilities until it has become generally available to the public; and
 - (d) using public office to unfair advantage in obtaining opportunities for outside employment.
32. Pursuant to section 58 of the 1985 *Conflict of Interest Code*, prior to leaving office, a Minister of the Crown is required to disclose to the Prime Minister any offers of outside employment that could place him or her in a conflict of interest. In addition, a Minister of the Crown has to disclose to the Prime Minister any outside employment offer that they had accepted and, if he or she was engaged in "significant official dealings with the future employer", the Minister has to be assigned to other duties and responsibilities as soon as possible. The period of time spent in office after such an assignment is counted towards the limitation period on prohibited activities.

33. As per section 59 of the 1985 *Conflict of Interest Code*, after leaving office, former Ministers of the Crown are prohibited from acting “for or on behalf of any person, commercial entity, association, or union in connection with any specific ongoing proceeding, transaction, negotiation, or case to which the Government is a party”, in respect of which “the former public office holder acted for or advised a department” and “which would result in the conferring of a benefit not for general application or of a purely commercial or private nature.”
34. Section 60 of the 1985 *Conflict of Interest Code* sets out a limitation period for former Ministers of the Crown. For a period of two years after leaving office (as opposed to one year for other public office holders), they are prohibited from undertaking the following activities:
- (a) accept appointment to a board of directors of, or employment with, an entity with which they had significant official dealings [...];
 - (b) make representations for or on behalf of any other person or entity to any department with which they had significant official dealings [...];
or
 - (c) give counsel, for the commercial purposes of the recipient of the counsel, concerning the programs or policies of the department with which they were employed, or with which they had a direct and substantial relationship [...].
35. The two-year limitation period for prohibited activities can be reduced upon application by the Minister of the Crown to the Prime Minister (section 61).
36. Finally, section 65 provides that public office holders who failed to comply with the 1985 *Conflict of Interest Code*, are “subject to appropriate measures as may be determined by the designated authority [i.e. the Prime Minister in the case of Ministers of the Crown].”

37. The 1985 *Conflict of Interest Code* was subsequently modified in 1994 by Prime Minister Chrétien, in 2003 by Prime Minister Martin, and in 2006 by Prime Minister Harper. A new conflict of interest act, enacted as the *Federal Accountability Act*, S.C. 2006, c. 9, has superseded the 2006 *Conflict of Interest Code* since July 9, 2007. The 2006 *Conflict of Interest Code* has been substantially incorporated into the *Federal Accountability Act* which builds on the Code and also adds new provisions.

D. GUIDANCE FOR MINISTERS

38. The *Guidance for Ministers* is a document circulated to all Ministers by the Prime Minister in order to provide them with guidance and information on their ministerial responsibilities. The 1984 and 1988 versions of the document are relevant for purposes of the inquiry, and contain a section dealing with the standard of conduct expected of ministers.

39. The *Guidance for Ministers* provides that the “elementary qualification demanded of a minister is honesty and incorruptibility.”¹⁷ They go on to provide that ministers have an obligation “not simply to observe the law but to act in a manner so scrupulous that it will bear the closest public scrutiny.”¹⁸

40. The *Guidance for Ministers* is there to assist Ministers in “maintaining the high standard of conduct expected of them throughout their activities”¹⁹ The 1988 *Guidance for Ministers* not only address unethical conduct but also the appearance of

¹⁷ *Guidance for Ministers* (Privy Council Office: Ottawa, Sept. 1984) at p. 43.

¹⁸ *Ibid*, p. 43; *Guidance for Ministers* (Privy Council Office: Ottawa, Oct. 1988) at p. 45.

¹⁹ *Guidance for Ministers* (Privy Council Office: Ottawa, Sept. 1984) at p. 43.

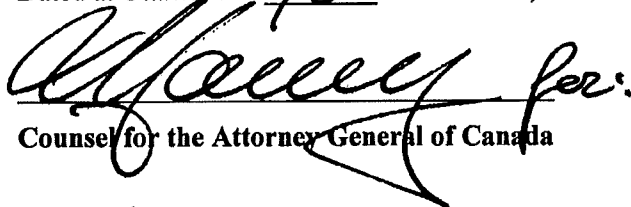
unethical conduct. It warns ministers to be aware that an appearance may also reflect badly on the Government's reputation.²⁰

41. The practical test to be applied is to ask whether the conduct of the minister or that of the staff of a minister could cause "embarrassment or be difficult to justify to the public should it be raised in Parliament or reported in the press."²¹

CONCLUSION

42. A commission of inquiry is neither a criminal trial nor a civil action for the determination of liability. It cannot establish either criminal culpability or civil responsibility for damages, although it may make findings of "misconduct".²² It is submitted that the legislation, rules, guidelines and jurisprudence which are applicable to the conduct of public office holders generally will help to inform the Commissioner's views as to what constitutes "appropriate" conduct for the purposes of this inquiry.

Dated at Ottawa, this 10th of December, 2008.


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²⁰ *Guidance for Ministers* (Privy Council Office: Ottawa, Oct. 1988) at p. 45.

²¹ *Ibid*, p.45.

²² *Canada (A.G.) v. Canada (Commission of Inquiry on the Blood System)*, [1997] 3 S.C.R. 440 at paras. 34 to 57.

ANNEX A

The Parliament of Canada Act

Receiving prohibited compensation

41. (1) No member of the House of Commons shall receive or agree to receive any compensation, directly or indirectly, for services rendered or to be rendered to any person, either by the member or another person,

(a) in relation to any bill, proceeding, contract, claim, controversy, charge, accusation, arrest or other matter before the Senate or the House of Commons or a committee of either House; or

(b) for the purpose of influencing or attempting to influence any member of either House.

Offence and punishment

(2) Every member of the House of Commons who contravenes subsection (1) is guilty of an offence and liable to a fine of not less than five hundred dollars and not more than two thousand dollars and shall, for five years after conviction of that offence, be disqualified from being a member of the House of Commons and from holding any office in the public service of Canada.

(3) Every person who gives, offers or promises to any member of the House of Commons any compensation for services described in subsection (1), *rendered or to be rendered*, is guilty of an indictable offence and liable to imprisonment for a term not exceeding one year and to a fine of not less than five hundred dollars and not more than two thousand dollars.

See also:

Government Contractor

34. Where a person, directly or indirectly, alone or with any other, personally or by the interposition of any trustee or third party, holds, enjoys, undertakes or executes any contract or agreement, expressed or implied, with or for the Government of Canada on behalf of the Crown, or with or for any of the officers of the Government of Canada, for which any public money of Canada is to be paid, the person is not eligible to be a member of the House of Commons and shall not sit or vote therein.

Disqualification

35. If any member of the House of Commons

(a) accepts any office or commission, or is concerned or interested in any contract, agreement, service or work, that, by virtue of this Division, renders a person incapable of being elected to, or of sitting or voting in, the House of Commons, or

(b) knowingly sells to the Government of Canada any goods, wares or merchandise, or knowingly performs for the Government of Canada or for any of

the officers of that Government any service, for which any public money of Canada is paid or to be paid,

whether the contract, agreement or sale is expressed or implied and whether the transaction is single or continuous, the seat of the member is thereby vacated and the member's election is thenceforth void.

Penalty

36. (1) Any person who, by this Division, is declared ineligible to be a member of the House of Commons or is disqualified from sitting or voting therein or, having been duly elected, is disqualified pursuant to section 35 from continuing to be such a member or continuing to so sit or vote, and who nevertheless sits or votes in the House of Commons or continues to do so, shall forfeit the sum of two hundred dollars for each day on which the person so sits or votes.

...

Acts done in recess

37. Sections 34 to 36 extend to any transaction or act begun and concluded during a recess of Parliament.

Clause in all Government contracts

38. (1) In every contract, agreement or commission to be made, entered into or accepted by any person with the Government of Canada or any of the departments or officers of that Government, for which any public money of Canada is to be paid, there shall be inserted an express condition that no member of the House of Commons shall be admitted to any share or part of the contract, agreement or commission or to any benefit to arise therefrom.

Penalty

(2) Where any person who has entered into or accepted, or enters into or accepts, any contract, agreement or commission described in subsection (1) admits any of the members of the House of Commons to any part or share of the contract, agreement or commission or to receive any benefit thereby, that person shall, for each such admission, forfeit and pay the sum of two thousand dollars, recoverable with costs in any court of competent civil jurisdiction by any person who sues for it.

Limitation period

39. Proceedings for the recovery of any forfeiture imposed by section 36 or 38 may be instituted at any time within but not later than one year after the time when the forfeiture was incurred.

Further exceptions

40. (1) This Division does not extend to render ineligible to be a member of the House of Commons, or disqualify from sitting or voting therein, any person by reason only that the person is

(a) a shareholder in any corporation having a contract or agreement with the Government of Canada, except any company that undertakes a contract for the building of any public work;

(b) a person on whom the completion of any contract or agreement, expressed or implied, devolves by descent, limitation, marriage, common-law partnership or by virtue of a marriage contract, or a pre-nuptial or co-habitation agreement, or as devisee, legatee, executor or administrator, where less than twelve months have elapsed after the devolution;

(c) a contractor for the loan of money or of securities for the payment of money to the Government of Canada under the authority of Parliament, after public competition; or

(d) a contractor in respect of the purchase or payment of the public stock or debentures of Canada, on terms common to all persons.

Financial Administration Act

80. (1) Every officer or person acting in any office or employment connected with the collection, management or disbursement of public money who

(a) receives any compensation or reward for the performance of any official duty, except as by law prescribed,

(b) conspires or colludes with any other person to defraud Her Majesty, or makes opportunity for any person to defraud Her Majesty,

(c) designedly permits any contravention of the law by any other person,

(d) wilfully makes or signs any false entry in any book, or wilfully makes or signs any false certificate or return in any case in which it is the duty of that officer or person to make an entry, certificate or return,

(e) having knowledge or information of the contravention of this Act or the regulations or any revenue law of Canada by any person, or of fraud committed by any person against Her Majesty, under this Act or the regulations or any revenue law of Canada, fails to report, in writing, that knowledge or information to a superior officer, or

(f) demands or accepts or attempts to collect, directly or indirectly, as payment or gift or otherwise, any sum of money, or other thing of value, for the compromise, adjustment or settlement of any charge or complaint for any contravention or alleged contravention of law,

is guilty of an indictable offence and liable on conviction to a fine not exceeding five thousand dollars and to imprisonment for a term not exceeding five years.

Fraud against Her Majesty

(2) Every officer or person acting in any office or employment connected with the collection, management or disbursement of public money who, by deceit, falsehood or other fraudulent means, defrauds Her Majesty of any money, securities, property or service is guilty of an indictable offence and liable on conviction,

(a) if the amount of the money or the value of the securities, property or service does not exceed \$5,000, to a fine not exceeding \$5,000 and to imprisonment for a term not exceeding five years; or

(b) if the amount of the money or the value of the securities, property or service exceeds \$5,000, to a fine not exceeding that amount or that value and to imprisonment for a term not exceeding fourteen years. R.S., 1985, c. F-11, s. 80;

Idem, where bribes offered or accepted

81. Every person who

(a) promises, offers or gives any bribe to any officer or any person acting in any office or employment connected with the collection, management or disbursement of public money, with intent

(i) to influence the decision or action of that officer or person on any question or matter that is then pending, or may, by law, be brought before him in his official capacity, or

(ii) to influence that officer or person to commit, or aid or abet in committing any fraud on the revenue, or to connive at, collude in, or allow or permit any opportunity for the commission of any such fraud, or

(b) accepts or receives any such bribe,

is guilty of an indictable offence and liable on conviction to a fine not exceeding three times the amount so offered or accepted and to imprisonment for any term not exceeding five years.

Criminal Code

119. (1) Every one is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years who

(a) being the holder of a judicial office, or being a member of Parliament or of the legislature of a province, directly or indirectly, corruptly accepts, obtains, agrees to accept or attempts to obtain, for themselves or another person, any money, valuable consideration, office, place or employment in respect of anything done or omitted or to be done or omitted by them in their official capacity, or

(b) directly or indirectly, corruptly gives or offers to a person mentioned in paragraph (a), or to anyone for the benefit of that person, any money, valuable

consideration, office, place or employment in respect of anything done or omitted or to be done or omitted by that person in their official capacity.

Consent of Attorney General

(2) No proceedings against a person who holds a judicial office shall be instituted under this section without the consent in writing of the Attorney General of Canada.

R.S., 1985, c. C-46, s. 119; 2007, c. 13, s. 3.

...

Frauds on the government

121. (1) Every one commits an offence who

(a) directly or indirectly

(i) gives, offers or agrees to give or offer to an official or to any member of his family, or to any one for the benefit of an official, or

(ii) being an official, demands, accepts or offers or agrees to accept from any person for himself or another person,

a loan, reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with

(iii) the transaction of business with or any matter of business relating to the government, or

(iv) a claim against Her Majesty or any benefit that Her Majesty is authorized or is entitled to bestow,

whether or not, in fact, the official is able to cooperate, render assistance, exercise influence or do or omit to do what is proposed, as the case may be;

(b) having dealings of any kind with the government, directly or indirectly pays a commission or reward to or confers an advantage or benefit of any kind on an employee or official of the government with which the dealings take place, or to any member of the employee's or official's family, or to anyone for the benefit of the employee or official, with respect to those dealings, unless the person has the consent in writing of the head of the branch of government with which the dealings take place;

(c) being an official or employee of the government, directly or indirectly demands, accepts or offers or agrees to accept from a person who has dealings with the government a commission, reward, advantage or benefit of any kind for themselves or another person, unless they have the consent in writing of the

head of the branch of government that employs them or of which they are an official;

(d) having or pretending to have influence with the government or with a minister of the government or an official, directly or indirectly demands, accepts or offers or agrees to accept, for themselves or another person, a reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with

(i) anything mentioned in subparagraph (a)(iii) or (iv), or

(ii) the appointment of any person, including themselves, to an office;

(e) directly or indirectly gives or offers, or agrees to give or offer, to a minister of the government or an official, or to anyone for the benefit of a minister or an official, a reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence, or an act or omission, by that minister or official, in connection with

(i) anything mentioned in subparagraph (a)(iii) or (iv), or

(ii) the appointment of any person, including themselves, to an office; or

(f) having made a tender to obtain a contract with the government,

(i) directly or indirectly gives or offers, or agrees to give or offer, to another person who has made a tender, to a member of that person's family or to another person for the benefit of that person, a reward, advantage or benefit of any kind as consideration for the withdrawal of the tender of that person, or

(ii) directly or indirectly demands, accepts or offers or agrees to accept from another person who has made a tender a reward, advantage or benefit of any kind for themselves or another person as consideration for the withdrawal of their own tender.

Contractor subscribing to election fund

(2) Every one commits an offence who, in order to obtain or retain a contract with the government, or as a term of any such contract, whether express or implied, directly or indirectly subscribes or gives, or agrees to subscribe or give, to any person any valuable consideration

(a) for the purpose of promoting the election of a candidate or a class or party of candidates to Parliament or the legislature of a province; or

(b) with intent to influence or affect in any way the result of an election conducted for the purpose of electing persons to serve in Parliament or the legislature of a province.

Punishment

(3) Every one who commits an offence under this section is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.
R.S., 1985, c. C-46, s. 121; 2007, c. 13, s. 5.

Breach of trust by public officer

122. Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

Income Tax Act

Waiver of penalty or interest

230 (3.1) The Minister may, on or before the day that is ten calendar years after the end of a taxation year of a taxpayer (or in the case of a partnership, a fiscal period of the partnership) or on application by the taxpayer or partnership on or before that day, waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by the taxpayer or partnership in respect of that taxation year or fiscal period, and notwithstanding subsections 152(4) to (5), any assessment of the interest and penalties payable by the taxpayer or partnership shall be made that is necessary to take into account the cancellation of the penalty or interest.

1985 Conflict of Interest and Post-Employment Code

Section 7

Every public office holder shall conform to the following principles:

- (a) public office holders shall perform their official duties and arrange their private affairs in such a manner that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced;
- (b) public office holders have an obligation to act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law;
- (c) public office holders shall not have private interests, other than those permitted pursuant to this Code, that would be affected particularly or significantly by government actions in which they participate;
- (d) on appointment to office, and thereafter, public office holders shall arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from arising but if such a conflict does arise between

responsibilities of that public office holder, the conflict shall be resolved in favour of the public interest;

- (e) public office holders shall not solicit or accept transfers of economic benefit, other than incidental gifts, customary hospitality, or other benefits of nominal value, unless the transfer is pursuant to an enforceable contract of property right of the public office holder;
- (f) public office holders shall not step out of their official roles to assist private entities or persons in their dealings with the government where this would result in preferential treatment to any person;
- (g) public office holders shall not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and responsibilities and that is not generally available to the public;
- (h) public office holders shall not directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for anything other than officially approved activities; and
- (i) public office holders shall not act, after they leave public office, in such a manner as to take improper advantage of their previous office.



HOUSE OF COMMONS DEBATES

OFFICIAL REPORT

FIRST SESSION—THIRTY-THIRD PARLIAMENT

34 Elizabeth II

VOLUME V, 1985

COMPRISING THE PERIOD FROM THE NINTH DAY OF SEPTEMBER, 1985
TO THE TWENTY-FIFTH DAY OF OCTOBER, 1985

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Tabling of Documents

do not meet the requirements of the Standing Orders as to form.

[English]

The petitions presented by the Hon. Member for Broadview-Greenwood (Ms. McDonald) and the Hon. Member for Cowichan-Malahat-The Islands (Mr. Manly) by filing with the Clerk of the House also meet the requirements of the Standing Orders as to form.

dealing with an experimental program of parliamentary scrutiny of Governor in Council appointments, which I know we all hope will become a permanent feature of our parliamentary democracy here in Canada.

Some Hon. Members: Hear, hear!

Mr. Mulroney: Fifth, there is a document dealing with the registration of lobbying activity in Ottawa. Sixth, a document dealing with advice to Crown corporations respecting appropriate conduct in their dealings with the Government has been tabled. The seventh document deals with a review of the judicial appointments process.

[Translation]

To this end, Mr. Speaker I am tabling today a set of documents detailing several aspects of a package of major initiatives on public sector ethics undertaken by this Government.

This afternoon I wish to provide my colleagues in the House with some thoughts in explanation of the documents and to acquaint the House with other elements of the package which will soon be placed before the House in documentary form.

There are seven components in the over-all program, as I mentioned earlier. First, there is a new conflict of interest/post-employment code for public office holders, which has been tabled.

Second, there are instructions to Ministers imposing specific and strict limitations on the hiring of family members, which has also been tabled.

Third, there are letters to the Leaders of the Opposition on the subject of ethical conduct for all MPs and Senators, which has been tabled.

Fourth, there is a document dealing with an experimental program of parliamentary scrutiny of Governor in Council appointments. At this point, Mr. Speaker, I would like to mention the work done by all Members on the Committee, and especially by the Hon. Member for St. John's East (Mr. McGrath) and the Hon. Member for Papineau (Mr. Ouellet) who did an excellent job.

Some Hon. Members: Hear, hear!

Mr. Mulroney: Fifth, a document dealing with the registration of lobbying activity in Ottawa.

Sixth, a document dealing with advice to Crown corporations respecting appropriate conduct in their dealings with the Government has been tabled.

The seventh document deals with a review of the judicial appointments process.

[English]

Mr. Speaker, we have not made final decisions in all of the component areas. However, we are putting forward an authoritative outline of our intentions today. Some elements,

Documents available from Assistant Reprographic Services

ROUTINE PROCEEDINGS

[Translation]

THE GOVERNMENT

TABLING OF FOUR DOCUMENTS

Right Hon. Brian Mulroney (Prime Minister): Mr. Speaker, in accordance with Standing Order 47(2), I have the honour of laying on the Table, in both official languages, the four following documents: First, a new conflict of interest/post-employment code for public office holders. Second, instructions to Ministers imposing specific and strict limitations on the hiring of family members. Third, letters to the Leaders of the Opposition on the subject of ethical conduct for all MPs and Senators. Fourth, advice to Crown corporations concerning their relations with the central Government.

[English]

Mr. Speaker, anyone who expected the documents to be tabled with a red ribbon on them knows that my non-partisanship only goes to so many limites.

It is a great principle of public administration—I could even say an imperative—that to function effectively the government and the public service of a democracy must have the trust and confidence of the public they serve. In order to reinforce that trust, the government must be able to provide competent management and, above all, to be guided by the highest standards of conduct. To this end, I am tabling today a set of documents detailing several aspects of a package of major initiatives on public sector ethics undertaken by this Government.

This afternoon I wish to provide my colleagues in the House with some thoughts in explanation of the documents and to acquaint the House with other elements of the package which will soon be placed before the House in documentary form. There are seven components in the over-all program.

First, there is a new conflict of interest/post-employment code for public office holders, which has been tabled. Second, there are instructions to Ministers imposing specific and strict limitations on the hiring of family members, which has also been tabled. Third, there are letters to the Leaders of the Opposition on the subject of ethical conduct for all MPs and Senators, which has been tabled. Fourth, there is a document

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Tabling of Documents

such as the new conflict of interest/post-employment code for public office holders are ready for implementation. The code will take effect on January 1, 1986, once the necessary infrastructure is in place. In the interim, Ministers and Governor in Council appointees will conduct themselves in accordance with its provisions.

Other elements, such as the experimental program of parliamentary scrutiny of Order in Council appointments, will be refined through discussion with Leaders of the Opposition and with the benefit of experience. We would like to consult, again, the distinguished Members, the Chairman and Vice-Chairman of the Committee on the Reform of the House of Commons.

Still others, such as the review of the judicial appointments process, will require more consultation with the Canadian Bar Association before detailed proposals can be advanced.

[Translation]

For the first time in this country's history, Mr. Speaker, the government has laid before Parliament a broad program of initiatives concerning public sector ethics.

This is tangible proof that the government is determined to see to it that the affairs of state are conducted according to the very highest standards.

[English]

Rather than dealing at some length with each component orally, I have tabled today an open letter to Members of Parliament and Senators which delineates each of the seven components in summary form, highlighting the most important aspects which Members should consider.

[Translation]

As indicated in the document I have just tabled, it provides a set of reform measures that reflect the Government's intention, and I would add that of all parliamentarians, to adopt a standard of ethics that will meet with the respect of all Canadians. In this way, we want to strengthen the economic renewal process and enhance the faith of Canadians in our Government institutions.

Many of these measures have been awaited for some time, and sometimes, Mr. Speaker, this Government would have wished that they were already in place. They now are or are about to become so, and we can look forward, in the near future, to a new era of confidence and respect.

● (1510)

[English]

The documents, the ideas and the propositions, Mr. Speaker, are placed before all Hon. Members of Parliament today in the genuine belief that they will enhance the respect which Canadians must have for Parliament as a noble institution.

Some Hon. Members: Hear, hear!

Right Hon. John N. Turner (Leader of the Opposition): I believe I just heard the Prime Minister (Mr. Mulroney) at his unctuous best attempting, presumably in a non-partisan fashion,

to disguise the most blatant series of partisan appointments over the last year than we have had in the history of our country.

Some Hon. Members: Oh, oh!

Mr. Turner (Vancouver Quadra): The Prime Minister has spoken about civility in this House. I received a copy of the documents which were just tabled and a copy of the statement the Prime Minister has just read at one thirty this afternoon, a half hour before Parliament assembled for Question Period. I do not know whether my friend, the Leader of the New Democratic Party, received earlier communication.

Mr. Hnatyshyn: It was in accordance with our arrangements.

Mr. Turner (Vancouver Quadra): It is absolutely impossible for any member of the Opposition, particularly myself and my colleague, the Leader of the New Democratic Party, with our responsibilities, to respond with some clarity and with some profound appreciation of what is in that pile of documents.

Mr. Cassidy: Never complain and never explain, John.

Mr. Turner (Vancouver Quadra): I will say as well, of course, that I am suspicious. The House Leader may protest but he knows how the business of the House ought to be conducted.

An Hon. Member: He's a dummy, anyway.

Mr. Turner (Vancouver Quadra): He knows.

Some Hon. Members: Oh, oh!

Mr. Turner (Vancouver Quadra): I am also suspicious of the coincidence of the timing of the tabling of these documents today. The Government is faced with a bank scandal. The Government is faced with a financial Titanic and it hopes that the Prime Minister (Mr. Mulroney) may be able to pre-empt the news and distract the attention of the country and of the media by this little subterfuge.

Some Hon. Members: Oh, oh!

Mr. Chrétien: The Minister of Finance (Mr. Wilson) is running away now.

Ms. Copps: Run away, Mike.

Mr. Chrétien: Bye, bye, Mike.

Mr. Turner (Vancouver Quadra): The Minister of Finance has just left the House shaking his head. We hope he will stand in this House tomorrow and defend the issues for which he has statutory responsibility.

Mr. Chrétien: Right on.

Mr. Turner (Vancouver Quadra): The issues of the guidelines and the conflicts of interest, Mr. Speaker, arose in this House several months ago. Why the delay? Why do we have to

Tabling of Documents

wait until the Secretary of State for External Affairs (Mr. Clark)—and he is now leaving—is able to favour his brother? Why do we have to wait until the Minister of Justice (Mr. Crosbie) is able to dispense his largesse to his sons in Newfoundland? Why do we have to wait until the Minister of Finance—who just left the House—has favoured his brother-in-law? Why so late? Are these guidelines retroactive? Will the so-called experimental scrutiny affect the 1,200 appointments which have already been made?

Mr. Chrétien: One every three hours.

Some Hon. Members: Hear, hear!

Mr. Turner (Vancouver Quadra): I suppose, Mr. Speaker, Hon. Members of the House are entitled to ask the Prime Minister and the Deputy Prime Minister (Mr. Nielsen) if these guidelines are going to be any more enforced than the guidelines which are currently before the House. Are these guidelines going to be breached the way Mr. Trudeau's guidelines which are currently in force were breached by the Minister of Justice, by the Minister of Finance and by the Secretary of State for External Affairs? That is a question we are entitled to ask.

I notice that the Prime Minister, following some of the recommendations of the Hon. Member for St. John's East (Mr. McGrath), on an experimental basis only, will allow some Governor in Council appointments to be scrutinized by a parliamentary committee.

Mr. Hnatyshyn: All.

Mr. Turner (Vancouver Quadra): We will see, and we will see how effective that is. That is not what the Prime Minister said during the election campaign. He said all appointments were going to be scrutinized.

An Hon. Member: And not on an experimental basis.

Mr. Turner (Vancouver Quadra): And not on an experimental basis. We want a commitment—

Mr. Chrétien: And not a year too late.

Mr. Turner (Vancouver Quadra):—and not a year too late, not after the barn door has been closed and the horse has escaped.

Mr. Hnatyshyn: All of them retroactive.

Mr. Turner (Vancouver Quadra): The Prime Minister's supporters, his friends and intimates, have been in the trough for over a year. That is enough time to accomplish the evil. Now we look sanctimonious, we look statesman-like, we look parliamentary and we bring in these guidelines, some of them on an experimental basis.

Mr. Dick: He looks better than you.

Mr. Turner (Vancouver Quadra): During the election campaign the Prime Minister set very high expectations for the

performance of this House. He breached those expectations blatantly during the last 12 months. There has been the most consistent patronage, partisan and crony-like appointments in the history of this country.

Some Hon. Members: Hear, hear!

Mr. Turner (Vancouver Quadra): Frankly, when I looked at the Prime Minister closely as he wrapped himself in the cloak of prime ministerial non-partisanship, I said, what a shameless hypocrite after his conduct during the last year.

Some Hon. Members: Hear, hear!

Some Hon. Members: Oh, oh!

Mr. Stevens: Withdraw.

Mr. Rossi: Bravo.

Mr. Speaker: The Right Hon. Leader of the Opposition (Mr. Turner) is an experienced Member of the House. I think he knows that to accuse someone of being a shameless hypocrite is not terribly parliamentary. I would ask him to withdraw.

Mr. Turner (Vancouver Quadra): Which word, Mr. Speaker, would you like me to withdraw?

Mr. Speaker: The Right Hon. Leader of the Opposition knows the difficulty these situations create. I would simply ask him to do what he knows is the right thing and to withdraw the comment.

Mr. Chrétien: Which one?

Mr. Turner (Vancouver Quadra): Do you want me to withdraw the word "shameless" or the word "hypocrite", Mr. Speaker?

Mr. Dick: You know better, John Turner.

Mr. Speaker: I invite the Right Hon. Leader of the Opposition to do the right honourable thing and withdraw the comment "shameless hypocrite".

Mr. Turner (Vancouver Quadra): If that is your interpretation of the rules then, of course, I accept it, Mr. Speaker. May I say—and I do withdraw those words—that the Prime Minister has been blatantly cynical over the past year in the way he has treated appointments of the Crown.

Some Hon. Members: Hear, hear!

Mr. Turner (Vancouver Quadra): I notice that the guidelines, or the package tabled under "blue ribbon" today, does not include contracts awarded by the Crown. I would invite the Prime Minister, the Deputy Prime Minister and the House Leader to review with the Hon. Member for St. John's East whether contracts under the benefit of the Crown also ought to be included within these guidelines because, coincidentally, *The Ottawa Citizen* headline of September 7, reads, "Firm

Tabling of Documents

hires PM's pal, \$200,000 job follows". This involves the Prime Minister's pal, Sam Wakim, apparently a former classmate at St. Francis Xavier University. Is this type of thing covered? We had a preliminary review of those documents and we do not see this type of arrangement covered at all.

All I will say, Mr. Speaker, is that we were not given the time to review these documents thoroughly. We will give them a close study. We suspect that they may well be more cosmetic camouflage. In any event, the Government will have the co-operation of this side of the House if there is any sincerity at all on its part.

Some Hon. Members: Hear, hear!

Mr. Ian Deans (Hamilton Mountain): Mr. Speaker, among the many things said by the Hon. Leader of the Official Opposition (Mr. Turner) which were accurate, was the fact that we did not receive advance notice with regard to the tabling of the documents here today. For that reason I am responding on behalf of my leader and my caucus. I would like to begin by saying that at first glance—which is really all we have been able to have—it seems as if the guidelines will go further than the guidelines which previously existed. It seems as if what the Government is intent on doing will provide more restrictive guidelines and will bring about a better code of behaviour than existed under the guidelines which are now in place.

The question, of course, will be—as is now the case—will these guidelines be adhered to any more closely than the guidelines which are presently in place? It has been a question asked in the House of Commons for the last five years. The guidelines are interpreted, it seems, to satisfy the mood of the government of the day. I want to say that if in establishing new guidelines we can have some assurance that there will be a common interpretation by everyone in the House of Commons as to how they are to be enforced, then I think we will have gone a long way towards solving what was a very difficult and acrimonious period. And that was from the early part of 1980 into the early part of this administration.

● (1520)

I also want to say that it strikes me, at first glance, that these guidelines may well put in place a regime which will preclude another orgy of patronage such as occurred at the end of the last Liberal Government. I hope that that is the case. I hope that as a result of these guidelines this Government will not be in a position, at the time of its defeat, to appoint any number of its inadequate back-benchers and hangers-on to positions of a permanent nature in the Public Service or government agencies.

I also want to say that the performance of this Government until now in its appointment of friends and cronies and old pals to political patronage positions is not something to be proud of. I admit that there two or three notable exceptions, as the Prime Minister (Mr. Mulroney) frequently points out, but when you compare those to the thousands of appointments made, this is hardly a record to be proud of. Therefore, I was

pleased to note that the opportunity will be there in the future for Members of Parliament to review retroactively the qualifications and quality of the appointments made by this Government after it assumed office on September 4, 1984.

Having said that, I hope the House of Commons and the Senate will take seriously, if you will, the request of the Prime Minister and that the Speakers of both Houses will in fact review in consultation whatever is required to be reviewed in order to determine the appropriate behaviour for Members in addition to those who happen to be Ministers of the Crown. However, based on past performance, I am not too optimistic about what the future holds. I look at the Government House Leader (Mr. Hnatyshyn) and the Deputy Prime Minister (Mr. Nielsen) and I remember the long debates we had in the House over what was appropriate behaviour when the Liberals were in government regarding certain of their former Cabinet colleagues who engaged in business after they left Government. I remember the way this Government castigated the previous Government for its despicable abuse of both patronage and entrée to the Civil Service using powers that had been gained while in office.

I am hoping to see an end to this kind of thing. I note that it is referred to but I am not quite sure how it is going to be dealt with. Therefore, I think the proof will lie with the passage of time. Once we see the more definitive description of how we intend to implement and enforce, then perhaps we will have more confidence. However, I say to the Prime Minister that were we to base our confidence on the performance of the past year, it would be pretty shaky.

* * *

PETITIONS

CALL FOR PASSAGE OF BILL C-49

Mr. Rob Nicholson (Niagara Falls): Mr. Speaker, it is my privilege as a Member of Parliament to present a petition signed by almost 2,000 residents of the City of Niagara Falls who, because of the increase in the incidence of prostitution and associated violence, have asked that this House immediately pass Bill C-49.

HIGH WATER LEVELS IN LAKE SUPERIOR

Mr. Ernie Epp (Thunder Bay-Nipigon): Mr. Speaker, I have the honour to present a petition signed by 247 of my constituents, including residents of the Township of Shuniah, Amethyst Beach, as well as members of the Island Beach Campers' Association. They are seriously concerned about damage to their property caused by high water levels in Lake Superior. This damage is due in part to unseasonably heavy rainfall, but it is also due to actions by the Board of Control of the International Joint Commission in keeping the water level of Lake Superior high to preserve properties in the lower lakes. Your petitioners humbly pray that the Government of Canada

CHAPTER II

CHAPITRE II

MEMBERS

LES DÉPUTÉS

Attendance required.

15. Every Member, being cognizant of the provisions of the *Parliament of Canada Act*, is bound to attend the sittings of the House, unless otherwise occupied with parliamentary activities and functions or on public or official business.

15. Vu les dispositions de la *Loi sur le Parlement du Canada*, tout député est tenu d'assister aux séances de la Chambre sauf s'il est occupé à d'autres activités et fonctions parlementaires ou à un engagement public ou officiel.

Assiduité.

Decorum.

16. (1) When the Speaker is putting a question, no Member shall enter, walk out of or across the House, or make any noise or disturbance.

16. (1) Lorsque l'Orateur met une proposition aux voix, il est interdit à tout député d'entrer dans la Chambre, d'en sortir ou d'aller d'un côté à l'autre de la salle, ou encore de faire du bruit ou de troubler l'ordre.

Décorum.

(2) When a Member is speaking, no Member shall pass between that Member and the Chair, nor interrupt him or her, except to raise a point of order.

(2) Lorsqu'un député a la parole, il est interdit à tout député de passer entre lui et le fauteuil ou de l'interrompre sauf pour soulever un rappel au Règlement.

(3) No Member may pass between the Chair and the Table, nor between the Chair and the Mace when the Mace has been taken off the Table by the Sergeant-at-Arms.

(3) Aucun député ne doit passer entre le fauteuil et le Bureau, ni entre le fauteuil et la Masse lorsqu'elle a été enlevée du Bureau par le Sergent d'armes.

(4) When the House adjourns, Members shall keep their seats until the Speaker has left the Chair.

(4) À l'ajournement de la Chambre, les députés doivent rester à leur siège tant que l'Orateur n'a pas quitté le fauteuil.

Rising to be recognized.

17. Every Member desiring to speak is to rise in his or her place and address the Speaker.

17. Tout député qui désire obtenir la parole doit se lever de sa place et s'adresser à l'Orateur en le désignant par son titre.

Pour obtenir la parole.

Disrespectful or offensive language. Reflection on a vote.

18. No Member shall speak disrespectfully of the Sovereign, nor of any of the Royal Family, nor of the Governor General or the person administering the Government of Canada; nor use offensive words against either House, or against any Member thereof. No Member may reflect upon any vote of the House, except for the purpose of moving that such vote be rescinded.

18. Aucun député ne doit parler irrévérencieusement du Souverain ou d'un autre membre de la famille royale, ni du Gouverneur général ou de la personne qui administre le gouvernement du Canada. Nul député ne doit se servir d'expressions offensantes pour l'une ou l'autre des deux Chambres ni pour un de leurs membres. Aucun député ne peut critiquer un vote de la Chambre, sauf pour proposer que ce vote soit rescindé.

Remarques irrévérencieuses ou offensantes. Critique d'un vote.

Point of order. Speaker may allow a debate.

19. Any Member addressing the House, if called to order either by the Speaker or on a point raised by another Member, shall sit down while the point is being stated, after which he or she may explain. The Speaker may permit debate on the point of order before giving a decision, but such debate must be strictly relevant to the point of order taken.

19. Lorsqu'un député qui a la parole est rappelé au Règlement, soit par l'Orateur, de son propre mouvement, soit sur un rappel au Règlement soulevé par un autre député, il doit reprendre son siège pendant qu'est exposé le rappel au Règlement, après quoi il peut s'expliquer. L'Orateur peut permettre à la Chambre de discuter le rappel au Règlement avant de rendre sa décision, mais le débat doit se borner rigoureusement au point soulevé.

Rappel au Règlement. L'Orateur peut permettre un débat.

When a Member shall withdraw.

20. If anything shall come in question touching the conduct, election or right of any Member to hold a seat, that Member may make a statement and shall withdraw during the time the matter is in debate.

20. S'il surgit une question concernant la conduite ou l'élection d'un député, ou encore son droit de faire partie de la Chambre, ce député peut faire une déclaration et doit se retirer durant la discussion de ladite question.

Cas où un député doit se retirer.

Pecuniary interest.

21. No Member is entitled to vote upon any question in which he or she has a direct pecuniary interest, and the vote of any Member so interested will be disallowed.

21. Aucun député n'a le droit de voter sur une question dans laquelle il a un intérêt pécuniaire direct, et le vote de tout député ainsi intéressé doit être rejeté.

Intérêt pécuniaire.

Public registry
of Members'
foreign travel.

22. The Clerk of the House shall maintain a public registry of foreign travel by Members of Parliament in which Members shall register all visits they make outside Canada, arising from or relating to their membership in the House of Commons where the cost of any such travel is not wholly borne by the Consolidated Revenue Fund, the Member personally, any inter-parliamentary association or friendship group recognized by the House of Commons and any recognized party, together with the name of the sponsoring person or organization which paid for travel to and/or from Canada.

22. Le Greffier de la Chambre tient un Registre public des déplacements des députés à l'étranger, dans lequel les députés consignent tous leurs déplacements effectués à l'extérieur du Canada en leur qualité de membre de la Chambre des communes, ou liés à leur fonction de membre de la Chambre des communes, lorsque le coût des déplacements en question n'est pas entièrement assumé par le Fonds du revenu consolidé, le député personnellement, une association inter-parlementaire ou un groupe d'affinité sanctionné par la Chambre des communes et tout parti reconnu, ainsi que le nom du particulier ou de l'organisation qui a parrainé le déplacement en provenance et à destination du Canada.

Registre public
des déplacements
des députés à
l'étranger.

Offer of money
to Members.

23. (1) The offer of any money or other advantage to any Member of this House, for the promoting of any matter whatsoever depending or to be transacted in Parliament, is a high crime and misdemeanour, and tends to the subversion of the Constitution.

23. (1) Le fait d'offrir de l'argent ou quelque autre avantage à un député à la Chambre des communes, en vue de favoriser toute opération pendante ou devant être conduite au Parlement, constitue un délit qualifié de «high crime and misdemeanour» et tend à la subversion de la Constitution.

Offre d'argent
aux députés.

Bribery in
elections.

(2) If it shall appear that any person has been elected and returned a Member of this House, or has endeavoured so to be, by bribery or any other corrupt practices, this House will proceed with the utmost severity against all such persons as shall have been wilfully concerned in such bribery or other corrupt practices.

(2) S'il appert qu'une personne a été élue et déclarée élue député à la Chambre des communes, ou a cherché à l'être, par l'emploi de moyens de corruption ou d'autres tractations malhonnêtes, la Chambre usera de la plus grande rigueur envers tout individu qui aura volontairement pris part à ces manœuvres.

Corruption
électorale.

Appendix H

Letter of Prime Minister Brian Mulroney, September 9, 1985



PRIME MINISTER • PREMIER MINISTRE

September 9, 1985

AN OPEN LETTER TO MEMBERS OF PARLIAMENT AND SENATORS

Dear Colleagues:

It is a great principle of public administration -- I would even say an 'imperative' -- that to function effectively the government and the public service of a democracy must have the trust and confidence of the public they serve. In order to reinforce that trust, the government must be able to provide competent management and, above all, to be guided by the highest standards of conduct.

To this end, I am tabling today a set of documents providing detail on a package of major initiatives on public sector ethics now being undertaken by this Government. In this letter I wish to provide you with some thought in explanation of the documents, and to acquaint you with other elements of the package which will soon be put in documentary form. There are seven components in the overall program.

1. A new Conflict of Interest-Post-Employment Code for Public Office Holders (tabled);
2. Instructions to Ministers imposing specific and strict limitations on the hiring of family members (tabled);
3. Letters to Opposition Leaders on the subject of ethical standards for MPs and Senators (tabled);
4. An experimental program of Parliamentary scrutiny of Governor in Council appointments;

5. The registration of lobbying activity;
6. Advice to Crown corporations respecting appropriate conduct in their dealings with the Government (tabled); and,
7. A review of the judicial appointments process.

We have not made final decisions in all of the component areas, but we are putting forward an authoritative outline of our intentions. Some elements such as the new Conflict of Interest/Post-Employment Code for Public Office Holders are ready for implementation. The Code will take effect January 1, 1986, once the necessary infrastructure is in place. In the interim, Ministers and Governor in Council appointees will conduct themselves in accordance with its provisions. Other elements, such as the experimental program of Parliamentary oversight of Governor in Council appointments, will be refined through discussion with Opposition leaders and with the benefit of experience. Still others, such as the review of the judicial appointments process, will require more consultation before detailed proposals can be advanced.

The important point is that for the first time a government has placed before Parliament a comprehensive program of initiatives on public sector ethics. It provides tangible evidence to the people of Canada of the determination of this Government to ensure that its actions will be governed by the highest standards of conduct.

Let me deal with each component in turn.

1. CONFLICT OF INTEREST CODE

Among my first actions upon assuming office was to give the Deputy Prime Minister a mandate to:

"[review] existing conflict of interest and post-employment guidelines ... with a view to making recommendations on whether any changes in the current two régimes are required."

The Deputy Prime Minister's recommendations provided the basis for the Conflict of Interest/Post-Employment Code tabled today.

The new Code represents a marked strengthening over the current régime. In particular:

- It covers a much broader population in definitive fashion than does the current régime. The principles

apply to virtually everyone whose salary is paid for by the Canadian taxpayers. Notable exceptions are judges and the officers and employees of Parliament who have been excluded from the application of the Code for constitutional reasons. However, I have written to the Speakers suggesting that both Houses may wish to consider adopting a similar course in respect of those serving them. These letters are among the material to be tabled.

- It includes enforcement mechanisms, which are currently lacking in the post-employment régime. For example, public office holders are forbidden to deal with those operating in contravention of the post-employment provision.
- It places an absolute prohibition on switching sides, just as a lawyer is barred from changing from one side of a case to the other.
- It clearly allocates responsibility and provides for accountability.
- It is fairer to the individuals affected because it permits greater reasonableness in its application by taking into account both individual circumstances and the public interest.
- It is clearer and more precise, presenting in a single consolidated document what is currently found in five.

The precision and fairness of the new Code is important because, in the end, the success of the régime will depend upon the goodwill and the sense of public service of public office holders. The correct balance between fairness to the individual and protection of the public interest is delicate and difficult to attain, but I believe it exists in the new Code.

The first effort to provide ethical guidance to public office holders was made by Prime Minister Pearson more than two decades ago. This was followed by some improvements introduced by Prime Minister Trudeau a decade later. In developing the new Code we have been able to build on the Guidelines and the experience of working with them.

We have also had the advantage of being able to avail ourselves of the thinking and analysis that went into the Report of the Task Force on Conflict of Interest. I want again to pay tribute to the efforts of the Honourable Michael Starr, the Honourable Mitchell Sharp and, I must add, to those of our

colleague the Honourable member for Etobicoke-Lakeshore who, in his previous capacity, acted as executive-director of the Task Force. These gentlemen will find some of their thinking and, on occasion, their very words enshrined in the new Code.

In short the new Code, while it bears the unmistakable stamp of this Government, is clearly an evolutionary step.

We have taken great pains to ensure that the new Code leaves no doubt that the ultimate responsibility for the ethical standards of the federal government rests with the Cabinet and, more particularly, with me.

In carrying out that responsibility the Government is directly accountable to Parliament and through Parliament to the people of Canada. You will find no quasi-independent agencies in this Code that will allow the Government to shirk its responsibility by saying that the problem belongs to someone else. Nor will you find anything which will relieve me and my colleagues of the necessity of exercising judgement. Obviously, from time to time, circumstances may arise that call for an impartial person to conduct an investigation as to fact. Instruments already exist which permit the Government to respond appropriately to such a requirement. But making use of these instruments will not relieve the Government of the responsibility to decide and to stand accountable before Parliament. The principles of responsible government and the supremacy of Parliament are respected and reinforced.

Although there are undoubtedly circumstances which demand such an approach, Canadian government have too often set up permanent quasi-independent agencies to deal with important areas of public policy. Rules and regulations become a substitute for the exercise of judgement. The intent has usually been to remove the matters concerned from the somewhat disorderly and often confusing arena of politics. The effect, all too frequently, has been simply to substitute an appointed decision-maker for an elected one, and to leave Parliament in the invidious and frustrating position of not being able to influence policy and not being able to exact accountability.

While ultimate accountability for ethical standards is that of the Government, the Code continues to place the onus of responsibility on the individual public office holder for his or her own conduct. What is expected of each individual is clearly stated in the Code, which also provides a clear basis for assessing those individual judgements, as well as prescribing penalties for those who fail to meet expected standards.

More streamlined, more equitable, yet stronger than previous efforts, I am convinced that this new Code represents a significant advance in the safeguarding of the public interest.

2. HIRING PRACTICES

I now wish to turn to the matter of the hiring of family members. The second half of the letter conveying the Conflict of Interest Code to Ministers contains my instructions to Ministers in this regard.

It has been the practice in Parliamentary democracies, even in those like Canada where an impartial appointment process covers the vast majority of positions in the public service, to reserve a number of key senior positions to be filled on a discretionary basis by the Government of the day.

There are important reasons of public policy for leaving certain appointments entirely to the judgement of the Government of the day. Governments change because the electors wish to see changes in public policy, and in the Government's methods of, and approaches to, dealing with the public.

The machinery of government is now so vast and complex that forty Cabinet Ministers acting without assistance could not hope rapidly to bring about desired changes in direction. To do so, they require the assistance of others of like mind, in whom they can have confidence, and who have the same commitment to change. That often means looking to political and even personal associates to undertake such duties -- competent, qualified people of like philosophy and approach. Custom and convention limit the degree of discretion to be exercised in some cases. Overall, the process of political accountability ensures that judgement will be weighted on the side of ability, qualification and competence. To act otherwise would be to invite embarrassment in Parliament and punishment for elected Members at the hands of the electorate -- to say nothing of placing the actual objectives of the Government at risk.

However, there are boundaries which should not be crossed in the exercise of this discretionary authority. My letter to Ministers sets them out in precise detail as they apply to family members. In summary, they are the following:

- No Cabinet Minister or department or agency subject to his or her direction should hire or contract with a member of his or her immediate family.
- No Cabinet Minister, or department or agency subject to his or her direction should, except through an impartially administered hiring process in which the Minister plays no part, hire or contract with members of the immediate family of her or her spouse, the immediate family of Cabinet colleagues, or of the immediate family members of caucus colleagues. An exception to this rule would be the hiring or contracting of ministerial exempt staff.

- The same impartial processes must be applied in the cases of organizations in which such family members hold senior positions of authority.

Obviously, there will be occasions in which it is in the public interest to act otherwise. My letter sets out the conditions under which such action may be contemplated.

I have done my best to reassure Canadians that favouritism will no govern the hiring practices of this Government without, at the same time, arbitrarily denying, to those whose fortune it is to be related to a member of the Government, the opportunity to serve their country.

3. STANDARDS OF ETHICAL CONDUCT FOR MPs AND SENATORS

In conjunction with the issuance of the Code, I have written to the Leaders of the Opposition parties to explore the desirability of working with the Government House Leader towards the adoption of similar standards of ethical conduct for all Members of Parliament.

It may be recalled that a Green Paper entitled Members of Parliament and Conflict of Interest was tabled by the President of the Privy Council in July 1973. This was referred to the Standing Committee on Privileges and Elections the following year and tabled in the Senate in 1975. In 1975 and 1976 the House Standing Committee on Privileges and Elections and the Senate Standing Committee on Legal and Constitutional Affairs submitted reports on the Green Paper. Neither report was debated in the respective Houses.

Later, an Independence of Parliament Act was given first reading in June 1978. Having been reintroduced in October, it was given second reading and was referred to the Sanding Committee on Privileges and Elections on March 9, 1979. This Bill died on the order paper when, eighteen days later, the session of Parliament ended.

It seems to me, at a time when the Government has taken on itself increased and more precise accountability for ethical standards, that Members of Parliament and Senators would find this to be an opportune time to examine their present rules to see whether they, too, should be brought up to date. I believe such action on their part would provide even more assurance to the public that all their elected representatives and those who have been chosen to serve their country in the Senate, are determined to govern themselves according to the highest standards.

4. PARLIAMENTARY SCRUTINY OF APPOINTMENTS

The fourth initiative in this package is that of beginning -- and I want to emphasize this -- on an experimental basis, the Parliamentary scrutiny of Governor in Council appointments.

The establishment of such a process was an undertaking made by this Government during the election campaign. Early in our mandate, we led the House of Commons in establishing a special committee under the chairmanship of the Honourable Member for St. John's East to provide recommendations on this and other matters of Parliamentary Reform. We took no action on the appointments process until we could benefit from the advice of that Committee. It has now presented its excellent report. I congratulate the Chairman, the Honourable James McGrath, and his colleagues from all parties, on the thoughtfulness and thoroughness with which they have addressed the issues, and on the creativity and originality of their thinking. The Government is, as I have said before, very favourable disposed towards the Committee proposals. My colleague, the President of the Privy Council, is hard at work on the Government's response.

In the interim, and as an earnest demonstration of our commitment, we have decided to offer the opportunity to review, on an experimental basis, all of the Governor in Council appointments made since this Government took office, and those to be made in the future.

I cannot provide immediately all of the details of the process. For one thing, we will be consulting with the Leaders of the Opposition parties. The process will, to some extent, be defined during those discussions. For example, there obviously will have to be parameters established about the appropriate lines of questioning to be pursued. We cannot look to the United States for a model because their system is so different from ours. Our deputy ministers, again as an example, have neither the right nor the responsibility to comment upon policies adopted or contemplated by the Government, except to explain. This alone will make for great differences with what we are accustomed to seeing take place across the border.

Because, to my knowledge, this approach has not been attempted in any other jurisdiction with a British Parliamentary form of government, we will have to move with some caution and with due regard to the fact we have embarked on a new path where the end is not in sight. Parliament is not an institution which responds well to radical changes in its operations. It is for that reason we will begin at a point short of where some believe we should end.

Some constitutional experts have warned me that I am wrong to take this step, that it is foreign to our system of government and incompatible with it. These gentlemen and I have agreed to differ, but I am not unconscious of the risks involved. That is why I am fully prepared to end this experiment and to re-think the approach if it seems to be taking a wrong turn.

I ask each of you to see this ground-breaking step for what it is -- an opportunity and a beginning -- and to work with my colleagues and me to ensure that it evolves into a process worthy of emulation by other Parliamentary democracies.

5. LOBBYING LEGISLATION

The fifth component of this comprehensive approach to public sector ethics is the undertaking of this Government to introduce into the House of Commons, at an early date, legislation to monitor lobbying activity and to control the lobbying process by providing a reliable and accurate source of information on the activities of lobbyists. We will require, among other things, paid lobbyists to register and identify their clients. This will enable persons who are approached by unions, and by agents on behalf of foreign governments and other foreign interests, to be clearly aware of who is behind the representation.

I have accordingly asked my colleague, the Minister of Consumer and Corporate Affairs, to prepare, on an urgent basis, legislation to govern lobbying activity.

This initiative should not be misinterpreted to mean that this Government is aware of particular improprieties in the conduct of lobbyists or that it considers lobbying to be an inappropriate activity. On the contrary, the practice of lobbying plays an important role in ensuring that government, in taking the decisions which affect the lives of all of us, are able to take properly into account the multitude of diverse interests involved. This Government is simply saying that something so important should not be shrouded in mystery.

6. ADVICE TO CROWN CORPORATIONS

On a related matter, and as the sixth component of this public sector ethics package, I have tabled a letter, which the Secretary to the Cabinet has written to the Presidents of all Crown corporations, advising them that this Government believes that the corporations' dealings with the Government should be conducted directly between their senior officers and members of the Government -- and without the use of intermediaries. I am sure that they will see the wisdom of the advice and act on it.

The practice, while not a new one, thankfully has not been widespread. Indeed, any instances have been exceptional. However, we do not through inaction wish to see it grow or continue. It is wasteful of public funds and a breach of the candid and direct (albeit arms-length) relationships which Parliament envisaged.

7. JUDICIAL APPOINTMENTS

Seventh, and finally, I wish to announce that my colleague the Minister of Justice has the judicial appointments process under active review. The Minister, from the outset of his mandate, has taken steps to improve the practice of consultation with the provinces, Bench and Bar.

One interesting approach that will assist the Minister in his review is a study of the matter recently completed by a Committee of the Canadian Bar Association. I wish to commend the Bar on its initiative and say that we will be following its review of the Committee's report, and awaiting its conclusions, with great interest. In the meantime, the Minister is proceeding forthwith with consultations in this area of vital importance.

Having dealt with each of its components in turn, may I say in conclusion that this package of reforms is evidence of the Government's intent to adopt ethical standards worthy of the respect of the Canadian people. In so doing, we wish to further the process of national renewal by revitalizing the faith of the citizens of this country in their institutions of government. Many of these steps are long overdue, and heaven knows this Government has had cause to regret their absence. But now they are in place, or in the process of being put in place, and we can look forward together to the dawning of a new day of trust and confidence.

Yours sincerely,



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CANADA

GUIDANCE FOR MINISTERS

PRIVY COUNCIL OFFICE

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Preface

This volume contains information and advice for Ministers on their duties and responsibilities as Ministers of the Crown. The Prime Minister has asked that every Minister should receive and be guided by this advice. Further information on the matters raised herein can be obtained from the Minister's deputy, or from the Secretary to the Cabinet.

PRIVY COUNCIL OFFICE
OCTOBER 1988

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Fundamental Responsibilities

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I.1. Cabinet Government and Ministerial Responsibility

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As Minister of the Crown, you are held accountable by the Prime Minister and publicly by Parliament for the exercise of *two fundamental responsibilities*: your individual position or portfolio in the Government, *and* your support of the Cabinet team to which you belong. Ministers both head their own departments and collectively constitute the political executive, under the Prime Minister's leadership.* Taken together, Ministers' individual and collective responsibilities sum up enduring principles to guide governmental action, and give rise to standards for Ministerial behaviour with very practical implications.

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Individually, a Minister is sworn to carry out the powers, duties and functions of his or her portfolio in accordance with the opportunities and the constraints provided by statute and convention (summarized in this briefing). Ministers are responsible for the policies, programs and administration of their departments. It is from Ministers and their departments that policy and program initiatives primarily flow, and by them that they are implemented.**

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As a Cabinet Minister, you participate with your colleagues in overseeing the conduct of national affairs. Ministers are collectively responsible before Parliament for the policies of the Government and for the policies and programs of each Minister as a member of the Government. A Minister cannot repudiate or divorce himself from the

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* The special position of Ministers of State to assist is described in Part II.3.

** Ministers' portfolio responsibilities are dealt with at more length in Part II.

decisions of his or her colleagues in the Ministry. The conventions and confidentiality of Cabinet decision-making must be observed by every Minister. That is the significance of your oath as a Privy Councillor.

Collective responsibility in essence is a pact with the Prime Minister and your colleagues. Your individual actions as a Minister affect your colleagues and the credit of the whole Ministry. There are common sense consequences: the Cabinet stands or falls together. A fundamental political limit to your powers as a Minister is the necessary support of your colleagues and the Prime Minister for your proposals. If, for instance, a Minister discloses forthcoming Cabinet business, or makes his own preferences known publicly before (or after) Cabinet decides on an issue, even one concerning his own portfolio, the solidarity of the Ministry is fractured; the Minister runs the risks of losing credibility with his colleagues, of an embarrassing public reversal or even a call for resignation if Cabinet does not agree with his position.*

Ministers also decide collectively for very practical reasons. Ministerial responsibilities inevitably overlap. In addition to Ministers' needing the political support and counsel of their colleagues, policies and programs must be reviewed in relation to each other if they are to be successful. Ministers share both Parliamentary time and the scarce financial resources of dollars in the Consolidated Revenue Fund. These resources are allocated amongst Ministers by collective agreement, and their use coordinated for the collective benefit. Only a relatively small number of major initiatives can be handled at one time, so the Government's overall agenda affects each Minister. Moreover, Ministers' responsibilities for representing the differing perspectives and interests of their regions cut across the division of governmental activities into departmental spheres.

In sum, both for constitutional and for very practical reasons, *Ministers can only fulfill their individual responsibilities by acting in concert.* Canadian Cabinet government requires Ministers to be continually seeking consensus upon their goals, policies, programs and even, to the degree the whole Ministry is affected, upon the means of

* Since our languages lack a neutral pronoun, "he" or "his" will reluctantly be pressed into service for "he/she" and "his/her".

implementing their programs. These principles lie behind the Ministry's decision-making machinery and coordinating institutions.*

In fact these principles are also often expressed *in law* through requirements for approval of Ministerial actions by the Governor in Council or the Treasury Board, on matters such as program expenditures, regulations, appointments, management practices and standards of behaviour.

I.2. The Prime Minister

The Prime Minister is principally responsible for providing the cohesion and direction necessary to the unity of the Ministry, which is essential if the Government is to retain the confidence of Parliament. The Ministry and the Cabinet are identified with the Prime Minister politically and constitutionally (as only he is commissioned by the Governor General to form a Government) and cannot exist without his leadership. His principal functions and exclusive powers (or prerogatives) are no accident of personality or history, but are required to make Cabinet government work.

You are advised to ensure that you and your colleagues respect and protect the Prime Minister's functions and prerogatives:

- The Prime Minister leads and most heavily influences *the process of setting the general directions of government policy*. He is responsible for arranging and managing the decision-making process as a whole. He arbitrates differences or disagreements amongst Ministers. He determines the Ministry's posture before Parliament: it is the Prime Minister's prerogative to recommend to the Governor General the summoning and dissolution of Parliament, to draft the Speech from the Throne for the Governor General, and to approve every piece of Government legislation put before Parliament.
- The Prime Minister *chooses the principal holders of public office*. In addition to Ministerial appointments (or resignations, for which he may ask at any time), it is also his prerogative to recommend to

* Described in Parts III and IV.

the Governor General numerous *senior appointments* including all deputy ministers, heads of agencies, and many others. The Prime Minister and his officials monitor and coordinate all appointments recommended by any Minister to the Governor in Council, including their terms and conditions. Ministers are advised to consult the Prime Minister's officials before making any commitments along these lines.*

- The Prime Minister decides *Cabinet's organization and operations*, including establishing Cabinet committees, selecting membership, convening Cabinet itself, and generally determining how Cabinet and its committees work.
- The Prime Minister decides *the broad organization of the Government of Canada*, subject to action by Parliament or by Order in Council if legal changes are involved. He is responsible for allocating Ministers' portfolios, establishing their mandates or jurisdictions, and adjusting the relationships among them. His approval is required for the creation of new institutions. To support the Prime Minister's leadership and prevent unnecessary disputes among colleagues, Ministers should be alert to ensure that any proposals for significant organizational change, or which may affect their own mandates or the mandates of other Ministers, are referred first to the Prime Minister (and not discussed publicly before he decides).
- The Prime Minister establishes *standards of conduct for Ministers*, subject always to the basic requirements of law. Ministers should recognize that the Prime Minister will hold them accountable for maintaining, and appearing to maintain, a standard of propriety in the conduct of public business stricter than required by law or expected in other occupations.**
- The Prime Minister has *special responsibilities* for national security, federal-provincial relations, and aspects of foreign affairs that touch on his role as head of government. He may also take a special interest in other areas as circumstances require. You are advised to be alert for activities of your own which touch on Prime Ministerial concerns.

* For appointment procedures, see Part IV.6.

** See Part V.

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The Prime Minister is supported by three main government offices: the *Prime Minister's Office* (his political and personal staff), and the *Privy Council Office* and *Federal-Provincial Relations Office* (his public service officials). All three work to provide the Prime Minister with the fullest possible information and analysis on proposed policies and priorities. Your own staff and your departmental officials are expected to keep in touch with their counterparts in these offices.*

From time to time, Prime Ministers have appointed one Minister to serve as a *Deputy Prime Minister*. This is a political designation, the duties of which depend on the Prime Minister's priorities and preferences, and which detracts not at all from the Prime Minister's own rights and responsibilities. The *House Leader*, who usually is the President of the Privy Council, acts on behalf of the Prime Minister in managing House business for the Government.

I.3. Ministers, the Governor General and the Privy Council

a) *The Governor General and the Crown*

The Executive Government of Canada is vested in the Sovereign, who is the Head of State. The Governor General is the representative of the Sovereign and exercises virtually all of her powers. As a Minister of the Crown, you are appointed by the Governor General on the advice of the Prime Minister.**

The Governor General exercises executive powers (e.g. approving Orders in Council including appointments) on the advice of the Ministry in almost all circumstances, but it is important to respect the constitutional and lawful requirement that the Governor General's approval must be obtained, where it is required, *before* decisions can take legal effect or be announced. The Prime Minister offers individual advice to the Governor General on some matters (e.g. the appointment of Ministers); other advice, such as for the passage of Orders in Council, comes from the Ministry as a whole (with certain rare exceptions), even though one Minister initially recommends the advice to his colleagues.

* These offices are described in Part IV.

** The fundamental elements of responsibility and accountability in our constitutional system are described in "Responsibility in the Constitution", in the 1979 submission by the Privy Council Office to the (Lambert) Royal Commission on Financial Management and Accountability.

Any apparent lack of respect for the Governor General's position (e.g. announcing actions which require the Governor General's approval before it has officially been given) usually is taken as disrespect for the Sovereign or as a misunderstanding of the Minister's own constitutional position.

b) Cabinet, Ministry, Privy Council and Governor in Council

The *Ministry* of the Crown consists of those members of the Queen's Privy Council for Canada who currently hold Ministerial office and collectively command the support of the House of Commons. Constitutionally speaking, the *Privy Council* is an advisory body to the Sovereign, but it is exceedingly rare for the Privy Council to meet as a body and, even then, it does so only for ceremonial purposes. All Ministers must be sworn to the Privy Council. They remain Privy Councillors for life, entitled to be styled "The Honourable" and to use the initials "P.C." after their names.

Unlike the Ministry, the *Cabinet* has no statutory constitutional standing. In theory it is an unofficial committee of the Privy Council composed of the members of the Privy Council currently holding Ministerial office. The reality, of course, is that the Cabinet (with its committees) is the fundamental and final forum for reaching a political, authoritative consensus upon governmental issues, under the Prime Minister's leadership. Because the Cabinet is essentially an unofficial and political body its organization, procedures, and composition are for the Prime Minister to decide.

The *Governor in Council*, for most practical purposes, is the Cabinet acting in a legal guise. Properly speaking, it is the Governor General acting by and with the advice of the Ministry. Thus, the Governor in Council may issue *Orders in Council*, pursuant to a statutory authority or (infrequently) royal prerogative, giving legal force to Cabinet decisions.*

I.4. Ministers and the Law

It is essential to recognize how far *legal requirements permeate government* and orient daily practices as well as high policy. The Prime

* The procedures for passing Orders in Council are dealt with in Part IV.7.

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Minister and Ministers, individually and collectively, all act within limits laid down by Parliament or pursuant to Parliamentary authority. The key statutes of Parliament which affect your Ministerial activities and the capacity of your department to implement your decisions are:

- The Acts of Parliament (principally *departmental Acts*) which create the offices to which Ministers are appointed, establish the departments over which they preside, and provide a basic framework of "powers, duties and functions" for which Ministers are accountable. These and related Acts establish the *deputy minister's* responsibility to provide overall support to the Minister in all aspects of his departmental portfolio from policy advice to coordination and administration.*
- The *Public Service Employment Act* which lays the basis for the continuing, professional, and non-partisan Public Service. It establishes the *Public Service Commission* with its powers to appoint public servants and authorizes the appointment of Ministers' exempt staffs outside the Public Service regime. The Public Service Commission's authority extends to all departmental officials except deputy ministers.
- The *Financial Administration Act*, which shapes nearly all aspects of government management, principally through the powers over departments given to the *Treasury Board*. The Board is in effect the Cabinet committee for public service and expenditure management, but many of its decisions have statutory force which limit even Ministers' discretion to manage and direct their departments.
- The *Access to Information* regime (including the Privacy Act) which establishes a public right of access to government documents subject only to certain exclusions and conditions under which the government may withhold material which could injure the public interest if released, and imposes conditions governing personal information held by the government.**

* The functions of the deputy minister and departmental public servants are dealt with in Parts II.1(b) and (c).

** See also Part V.6.

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- Most fundamentally, the *Charter of Rights and Freedoms*. Ministers also are personally affected by the *Salaries Act* and by provisions of the *Senate and House of Commons Act* which distinguishes between Ministerial status and rights, and the status and rights of private members; for instance, private members are prohibited from accepting payment in the service of the Government (excepting travelling expenses only where the travel is undertaken at the formal request of the Governor in Council)*. Certain Acts also govern particular programs or non-departmental agencies.

The accumulated constraints resulting from this legal framework may appear cumbersome or bureaucratic. You should expect your officials to have the knowledge and experience to help accomplish your objectives while avoiding frustrating limitations or delays as far as possible. They are nonetheless bound to act according to law and government regulations, and to advise you where such constraints apply, where they do not, and how they might be changed if necessary.

* Ministers also will be affected by the provisions of the legislation to regulate conflict of interest matters that was introduced in the House of Commons on February 24, 1988 (see Part V.2).

II

Portfolio Responsibilities and Support

Your deputy minister will brief you in detail on issues and programs.* This section advises you on the framework for handling those issues, on the general character of your portfolio responsibilities, and on the resources upon which you can call for support.

II.1. Portfolio, Department and Deputy Minister

a) *"Powers, Duties and Functions"*

As a first constitutional and political principle, you are individually responsible to Parliament, and to the Prime Minister, both for your own actions and for the activities of your department, including the actions of all officials under your management and direction. Your portfolio may also extend to a variety of non-departmental bodies**, though your authority in relation to these is not usually as direct and persuasive as it is in relation to your department. In addition, the Prime Minister may assign a Minister additional responsibilities, either through Order in Council or by political designation, and may provide specific direction from time to time.

A Minister's *departmental "powers, duties and functions"* are ordinarily defined by Parliament in a departmental Act. That Act normally gives the Minister general authority over the management and direction of the department and its officers. Powers are vested in the

* A Minister of State to assist may be briefed by the deputy or by another senior official in the department who advises and supports him directly. Ministers without departmental responsibilities may be briefed by the Privy Council Office.

** See Part II.7.

Minister himself, and may be exercised by the deputy minister and departmental officials who act on the Minister's behalf according to law.

There is a distinction between, on the one hand, departmental portfolios (i.e. those held by Ministers who are appointed under a departmental Act and head a statutory department) and their equivalent (e.g. the President of the Privy Council or the Prime Minister himself); and, on the other hand, Ministers of State appointed to assist senior colleagues (whose position is described below*). Infrequently, the Prime Minister may decide on the appointment of a Minister of State to head a *Ministry of State* which is a separate department having primarily policy coordination responsibilities (e.g. the former Ministry of State for Urban Affairs). Occasionally, Ministers of State may be assigned certain statutory responsibilities in their own right, and may have responsibility for a portion of the public service.

A Minister's partisan political work, in relation for instance to the party's parliamentary caucus or to the Minister's constituency, is of course distinct from the Minister's official departmental responsibilities. Departmental public servants are prohibited from participating in partisan activities.

b) Deputy Minister

Deputy ministers are professional, non-partisan public servants. They are *chosen and assigned by the Prime Minister* to provide Ministers with the broadest possible expert support in all their responsibilities, short of partisan political activities. Their status is that of an appointment by the Governor in Council on the Prime Minister's advice.

Deputy ministers should help the Minister achieve his and the Government's objectives and help keep him and his department out of trouble. You should expect of your deputy minister that he advise you fully and frankly on policy issues as well as on management concerns, *and* manage the department on your behalf, on the basis of his professional experience and drawing on the accumulated knowledge of the department.

* Part II.3.

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In order to use your deputy effectively, you should know the responsibilities for which he may and will be held accountable. The deputy minister is responsible for:

- *Policy Advice.* Deputy ministers should play the central role in formulating advice for their Ministers on policy matters and on alternative means of achieving Governmental objectives, as well as implementing effectively the Government's policies and programs. Deputies are expected to anticipate problems and initiate the development of policy options. Your deputy's advice should cover alternative policies, communications and the impact of policy choices on the public and on different interests. Obviously you are not bound to take his advice; but he is bound to offer it. You are advised to ensure you receive that advice, and give it due consideration.
- *Internal departmental management.* Deputy ministers are expected, and authorized in law to exercise on the Minister's behalf his "management and direction" of the department. In so doing, the deputy is naturally subject to the Minister's direction. At the same time, he is required by law to observe financial, administrative and personnel management standards and practices established government-wide by the Treasury Board on behalf of the Ministry as a whole. The deputy minister also exercises certain powers of personnel and financial management assigned by law or delegated to him directly by the Public Service Commission or the Treasury Board acting on Parliamentary authority.
- *Interdepartmental coordination.* The deputy minister is an important link for the Minister to the wider government machinery for policy development and decision-making. The deputy participates in interdepartmental consultations as a contribution to coherent government, and as a means of resolving potential clashes of interest or technical differences before they take up scarce Ministerial time unnecessarily. These interdepartmental activities also enable the deputy to inform his Minister of other departments' initiatives which may affect the Minister's portfolio, and to advise the Minister (as the Minister chooses) on contributions the Minister may want to make to Cabinet or Cabinet committee discussions.

Deputy ministers, therefore, have a fundamental duty to *support both the individual and collective responsibilities of their Ministers*.^{*} In so doing, each deputy is answerable in the first instance to his Minister. As part of their participation in the collective management of the government, deputies are also responsible to the Prime Minister for responding to the policies of the Ministry as a whole and to the Treasury Board and the Public Service Commission. This includes appropriate interdepartmental consultation where other Ministerial responsibilities are concerned. In this capacity, deputies are required to inform the Secretary to the Cabinet of any significant matter affecting their or their Ministers' responsibilities.

Accordingly, the working relationship between Minister and deputy minister is most important: their mutual confidence is the cornerstone of a successfully operating department. Any serious differences should be discussed first of all by the Minister with the deputy minister. If the matter cannot be resolved, the Secretary to the Cabinet may be of assistance or, ultimately, the Prime Minister may be involved.

c) Departmental Officials

The *departmental organization* reports to the Minister through the deputy minister, according to the usual principle of a clear chain of command. It is the deputy who is answerable to the Minister for the quality of management and advice provided by the department, and who is responsible for disciplining subordinate officials if circumstances warrant. Assistant deputy ministers and all other departmental officials are appointed by the Public Service Commission or, below the senior management levels, by the deputy according to conditions set by the Commission.

The first requirement for all officials is to serve their Ministers professionally, that is with equal skill, expertise, energy and non-partisan loyalty, and according to the laws of the Parliament of Canada. If you are not satisfied that this requirement is being met, you are advised to speak to your deputy, to the Secretary to the Cabinet as the

* The role of departmental officials, including deputy ministers, in appearing before Parliamentary Committees in support of Ministers is outlined in Part II.6(b).

government's senior public servant, or ultimately to the Prime Minister.*

II.2. Minister's Office and Exempt Staff

Your Ministerial office generally responds to your political and personal needs as you choose, under your direct supervision, within certain resource limits and standards of behaviour. Nowhere else is your individual responsibility more visibly engaged. (Of course, departmental officials assigned to your office remain subject to the usual limitations on public service activities.)

The capacities and conduct of your staff are not only vital to your own effectiveness, but are also likely to be publicly scrutinized as a reflection of your personal capacities and conduct. And of course the media do scrutinize activities of Ministers' staff, daily and through the provisions of the Access to Information regime. You are advised to ensure that your staff members know, in the clearest terms, the limits of their responsibilities and authority, and that they do not create the impression of speaking or acting on your behalf unless clearly directed to do so.

Every Minister depends upon his staff's political expertise and support, and their skills in managing his time effectively. Staff members should be chosen who enjoy your personal confidence in their loyalty and probity, and combine the energy required to work long hours with a capacity to work well with others both outside and inside the government.

Moreover, a Minister's success will to a significant degree hinge upon establishing productive working relations between his personal, partisan political staff and his deputy and departmental officials. A Minister's chief of staff and his deputy minister fulfill distinct but complementary roles providing the Minister with two streams of advice and support.

* A longer exploration of the position of deputy ministers and departmental officials is "The Office of Deputy Minister", issued by the Privy Council Office.

a) Composition

The core of every Minister's office is his "*exempt staff*", that is the staff appointed by the Minister who are outside the official Public Service and exempt from Public Service Commission controls. They are appointed under the special authority of section 37 of the Public Service Employment Act, and subject to terms and conditions set by the Treasury Board for the Ministry as a whole.

The purpose is to ensure that Ministers have at hand some advisors and assistants who are not departmental public servants, who share the Minister's political commitment, who can supplement the professional, expert and non-partisan advice and support of the public service, and who may contribute a particular qualification or point of view which the public service cannot provide. This also ensures that the public service is not used for politically partisan purposes, so that it can continue to serve successive Ministries.

A Minister's office may also include a limited number of public service *departmental assistants* (officers and secretarial or clerical staff) assigned by the deputy minister from departmental resources at your request, subject to conditions set by the Treasury Board. Their role is to liaise with the department and provide the Minister with administrative support and advice or general assistance in respect of his departmental or other governmental duties. They cannot, of course, undertake partisan or constituency work, and should not be asked to perform duties in the Minister's office which could appear to place them in a partisan light (e.g. caucus liaison functions).

A Minister who is an M.P. may also receive constituency office and other *support provided by the House of Commons*. You are advised to ensure that such support is used only according to House of Commons rules.

b) Functions

Generally speaking, exempt staff fulfill the key functions of managing the Minister's time and providing him with partisan political support and advice. They support his political concerns through activities such as party, parliamentary and interest group liaison, constituency work, travel and correspondence, media relations and, usually, policy advice from a partisan political point of view. Normally they play an important part in keeping the Minister in touch with the

Government's leadership in the House and Senate and the Parliamentary caucus.*

These functions are distinct from those of departmental officials, but exempt staff naturally work in contact with senior departmental management and can call upon the department for information through channels provided by the deputy minister. In principle, and for the most part in practice, departmental officials (through the deputy minister) and exempt staff provide separate channels of advice and different kinds of operational support to the Minister. It is important to recognize that exempt staff can neither replace the functions of the departmental public service nor instruct departmental officials in their responsibilities. By the same token, departmental officials cannot, nor should they be expected to, provide partisan political advice or support to a Minister.

c) Organization and Budget

The organization of the office, its size, and its hierarchy are largely open to you to determine, although experience suggests that the establishment at the outset of a clear allocation of responsibilities, and clear channels of communication and direction, will pay off.

However, your exempt staff must be appointed and paid within the overall *exempt staff budget*, and your office must operate in accordance with the *specific terms and conditions established by the Treasury Board* and statutory constraints which apply to Ministers' offices as well as departments.** In sum, these conditions cover:

- Staff budget, titles, and salary levels for key positions (Chief of Staff, Executive Assistant, Special Assistants and Private Secretaries).

* You or your staff may be interested in "Time Management for Cabinet Ministers", a short document prepared by the Bureau of Management Consulting (Department of Supply and Services) and available from the Privy Council Office.

** The conditions set by the Treasury Board may be detailed and rigorous. Your deputy minister can assist in providing any further information necessary. Detailed information on current rules can be found in the handbook "Administrative Practices: Guidelines for Ministers Offices" which is issued by the Treasury Board Secretariat.

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- Staff pay and benefits, including severance benefits and separation payments which a Minister may grant to exempt staff in certain circumstances.
- Office facilities, including the possibility of office space in federally owned or rented buildings in or near your riding, for governmental purposes.
- Travel, relocation and hospitality expenses.
- Financial management and authorization of expenditures.

You should also keep in mind the application of the Official Languages Act, the necessary bilingual capacity of your office, and the expectation of a balance between men and women.

The deputy minister can ensure the immediate needs of a new Minister are met until the Minister's own office and staff are fully in place.

d) Ethical Standards and Security

You are advised to devote particular attention to *ensuring that your staff are appointed and behave in a manner that does not give rise to the slightest appearance of impropriety*. Three aspects must be of special concern:

- *Security*: Security of offices and staffs is the personal responsibility of Ministers, for which the Prime Minister holds them accountable. You are responsible for ensuring that all members of your personal staff are fully trustworthy. Your staff is covered by the Government Security Policy directive issued by the Treasury Board. *All prospective employees (including constituency or contract staff working in any of your offices) must be cleared for security purposes before their appointments take effect*. This normally takes about two days. These clearances are arranged by the deputy minister; the Intelligence and Security Coordinator in the Privy Council Office can also advise you.
- *Ethical conduct of exempt staff*: The attitudes and conduct of Ministers' staffs, like those of Ministers, are expected to be so scrupulously ethical that they may bear the closest public scrutiny.

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More is required than simply acting honestly and within the law. For instance, no pecuniary interest can be allowed to exist which could appear to conflict with the discharge of public duties. Exempt staff members are obliged to maintain the confidentiality of classified information or personal information about members of the public that comes to them through their official duties. They must not use official information (classified or not) for their own interest or advantage, or for that of any friend, relative or associate. Specifically, all exempt staff are subject to the *Conflict of Interest and Post-Employment Code for Public Office Holders*, and they should be sure to read its provisions carefully. Each Minister is responsible for designating senior exempt staff members to whom the strictest (or Ministerial) guidelines apply. To ensure compliance, Ministers are asked to make known their decisions in this regard to the *Assistant Deputy Registrar General*, who can also inform Ministers on the application of the Government's policy.

- *Financial probity and prudence:* Your office expenditures are not only subject to statutory and Treasury Board strictures governing the use of public monies, but may also be subject to special scrutiny by Parliament or the media. You are advised to ensure that all expenditures are properly and prudently managed, and relate to the conduct of official business.*

II.3. Ministers of State to Assist

Ministers of State to assist are appointed by the Governor General on the recommendation of the Prime Minister to assist a senior colleague generally or in respect of a particular aspect or aspects of his responsibilities. Any specific responsibilities are assigned to the Minister of State by his senior colleague, subject to the approval of the Prime Minister. It is important to recognize that, notwithstanding their membership in Cabinet or their personal stature, Ministers of State to assist do not have a portfolio standing independent of the senior Minister concerned. Although a Minister of State may fulfill a clear and substantial role, the senior Minister retains ultimate authority for his entire portfolio. Only he can perform any action which must by law be performed by "the Minister". The senior Minister's deputy is

* Details can be obtained from the Treasury Board Secretariat.

responsible to his Minister for providing departmental support to the Minister of State, since Ministers of State to assist do not themselves formally preside over a department or any other portion of the public service.

Each Minister of State to assist should act in concert with his senior colleague, and take policy issues to Cabinet or a Cabinet committee only with the senior Minister's concurrence. Disagreements which cannot be resolved between the two colleagues should be referred to the Prime Minister, who will act to maintain the unity of the Ministry.

II.4. Acting Ministers

The Prime Minister establishes a standing roster of Acting Ministers appointed to cover for each other's temporary absences (or potential incapacity). The roster is formalized by Order in Council, and tabled in Parliament. The Prime Minister also can act for every Minister, but normally does so only when neither the designated Acting Minister nor his alternate is available.

Acting Ministers may exercise the full powers of the Minister, but are advised not to make major decisions in the Minister's temporary absence. In urgent cases, they should consult the Minister, the Prime Minister, or other Cabinet colleagues as appropriate.

In order to safeguard your own responsibility and interests, you should ensure that your office provides your itinerary to the Prime Minister's Office and the Privy Council Office so that you can be reached or the Acting Minister "activated". You are also advised to ensure that, in your absences, your Acting Minister(s) will be properly briefed on issues that could arise.

II.5. Parliamentary Secretaries

Parliamentary Secretaries are *chosen by the Prime Minister* and assigned to assist Ministers for up to one year at a time, within the limits of their unique status. They normally fulfill functions connected predominantly with the Minister's Parliamentary business, and also his relations with the public and interest groups. You are advised to recognize the potential scope and the limits of your Parliamentary Secretary's activities, and to supervise him accordingly.

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Parliamentary Secretaries are *not members of the Ministry or junior Ministers*. This means that they cannot speak for the Ministry as a whole; they are not bound by collective responsibility; they cannot participate in Cabinet or Cabinet committee decision-making. Your Parliamentary Secretary may explain your policies, but he cannot have delegated to him your departmental "powers, duties and functions"; therefore, he cannot supervise elements of your department or take over responsibility for developing legislation.

But, unbound by executive responsibilities, Parliamentary Secretaries generally assist in carrying out a range of *House responsibilities* for their Ministers. They may, for instance, arrange responses to written questions; speak for their Ministers during Private Members Hour and in the adjournment debate; or conduct legislation which does not involve a major policy question through some or all stages in the House. Overall, Parliamentary Secretaries may help maintain the Minister's contacts with other Members and Senators. They should not, however, be asked to reply to sensitive policy questions during Question Period. In the Minister's absence, those questions should be answered by the Acting Minister.

Parliamentary Secretaries may be members of any *legislative committee* of the House, and in this capacity advocate their Ministers' positions or organize the participation of Government members on the committee. However, in recognition of their links to Ministers, Parliamentary Secretaries are excluded by House rules from membership of *standing committees*. Nonetheless, they can attend and may play an important committee role for the Minister: they may accompany officials in order to protect the Minister's political interests and policy responsibilities; help explain the Minister's policies to committees; and generally keep in touch with committee members.

Outside Parliament, a Parliamentary Secretary often *represents his Minister* in dealings with members of the public and interest groups, including delivering speeches on the Minister's behalf. In appropriate portfolios, a Parliamentary Secretary may act as a Canadian representative abroad (but may only sign agreements with the prior approval of the Governor in Council on the recommendation of the Secretary of State for External Affairs).

You are advised to ensure that your Parliamentary Secretary is briefed on *departmental matters* about which he may need to be

knowledgeable when speaking on your behalf. Classified information may be provided to Parliamentary Secretaries, but only with your authorization as Minister and *on your responsibility*. Parliamentary Secretaries do not normally have access to Cabinet documents; only the Minister personally, on his own responsibility, may authorize exceptions on a case-by-case basis. It is also for you as responsible Minister to decide whether you wish your Parliamentary Secretary to have any further access to departmental discussion and officials' advice and assistance. Parliamentary Secretaries do not, however, have authority over officials and cannot themselves initiate departmental actions.

Even though Parliamentary Secretaries are not members of the Ministry, they should not criticize the Minister they serve or his department, and it would be difficult in practice for a Parliamentary Secretary to criticize the Government and continue to serve his Minister. It is also inadvisable for a Parliamentary Secretary to introduce a Private Member's Bill or Motion lest the appearance be given of Government endorsement.

Parliamentary Secretaries are subject to the *Conflict of Interest and Post-Employment Code for Public Office Holders*, and are sworn not to disclose privileged information.*

II.6. Relations with Parliament

a) Ministerial Answerability

The principle of Ministers' responsibility and answerability to Parliament is fundamental: Ministers answer to Parliament for their own actions and for the actions of all officials under their management and direction. The departmental Acts and any other Acts or organizations for which a Minister is responsible, together with the corresponding Estimates, provide a basic framework of responsibilities.

Thus, in response to *Parliamentary questions*, you are advised to answer within your areas of statutory authority as clearly, fully, and cooperatively as possible. You should be careful, nonetheless, not to appear to assume responsibility for matters over which you have no

* Further information is provided from the Prime Minister's Office or Privy Council Office in "Briefing Notes for Parliamentary Secretaries".

authority — for instance, the internal management and operations of most non-departmental bodies, or the statutorily independent activities of regulatory commissions or tribunals. Parliamentary questions must not seek from a former or current Minister information concerning transactions during his term of office in a previous portfolio.

Your relations with and duties in Parliament evidently will demand a great deal of your own time and attention, and significant official support. Your House duties normally take precedence over other business. The careful daily and long-term coordination which is required with the Prime Minister and the Government's Leaders in the House and the Senate, and their offices, is outlined in part IV.*

In this light, you are advised to ensure that a senior *member of your exempt staff* is assigned to support your relations with Parliament, to ensure ongoing liaison with the Whip's Office and the House Leader's Office regarding House business and questions, and to act as a key contact point with departmental staff in this regard. You should ensure you are fully briefed each day before Question Period. Your deputy minister will ensure that departmental officials provide you with all relevant information. Of course, your Parliamentary Secretary may also assist you.

b) Parliamentary Committees and the Role of Departmental Officials

Recent changes to Parliamentary rules have increased both the scope of committee inquiry and the number of occasions on which you and your officials may be asked to appear. The *appearance of departmental and non-departmental officials* before parliamentary committees is an important means of informing Parliament. However, you will want to assure yourself that your own responsibilities and prerogatives are respected, and that officials do not discuss — or are not drawn to discuss — questions properly reserved for Ministers.

Therefore, you are advised to ensure that your officials respond only in accordance with your responsibility, and not on their own account. The principle of ministerial responsibility and its political significance

* See Part IV.4.

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should guide you and any of your officials who appear before committees. That is, Ministers are responsible and answer to Parliament for the Government's policies, programs and activities; public servants are ultimately accountable to Ministers, rather than directly to Parliament; officials may assist Ministers by answering questions at Parliamentary committees, but they do so only on the Minister's behalf.

As a general principle, then, appearances by officials before Parliamentary committees should be conducted in a manner fully consistent with ministerial responsibility, the neutrality of public servants including the conscious avoidance by public servants of identification with particular policy positions, and the loyalty of public servants to the government of the day.

More particularly, the ultimate responsibility of Ministers for providing information to Parliament dictates that any information given by officials to Parliamentary committees beyond that which would be given out to the public can be provided only on the Minister's authorization. Matters of policy and political controversy are reserved more or less exclusively for Ministers, principally because political answerability on the part of officials would undermine the authority and responsibility of their Ministers, and would inevitably draw officials into controversy, thereby destroying their neutrality and permanent utility to the system. Officials' answers are limited to explanations rather than to defences of policies or debate on alternative policies.

Deputy ministers have received guidance from the Privy Council Office along these lines.* Nevertheless, as Minister *you will want to determine yourself which officials will speak on your behalf at committees, and decide which questions properly should be answered by officials and which questions should be reserved for yourself.* In this regard, you would find it advantageous to ensure that officials do not appear at committees without clear ministerial guidance and, in any cases where matters of political controversy are likely to arise, without an authoritative political presence, if not yourself then your Parliamentary Secretary. You will doubtless want also to keep in touch with the ongoing concerns of the appropriate committees.

* "Notes on the Responsibilities of Public Servants in Relation to Parliamentary Committees", circulated to all Ministers and deputy ministers by the Privy Council Office.

Upon request by caucus spokesmen, the responsible Minister may also arrange for departmental officials to provide purely factual briefings to *Parliamentary caucuses*, subject to certain conditions consistent with preserving Ministerial responsibility, the necessary confidences of government, and the political impartiality of public servants.* Briefings organized for one caucus will be available on request to other Parliamentary caucuses. The House Leader of each party will be alerted to each such briefing given to other caucuses. The Secretary to the Cabinet should be kept informed of caucus briefings, and consulted in cases of doubt.

II.7 Non-Departmental Bodies

Most Ministers have within their realm of responsibility several non-departmental bodies in the form of *Crown or departmental corporations, agencies, commissions, tribunals and boards*. A Minister's relationship to these bodies, his degree of responsibility for them, and his powers of direction over them are usually significantly different from his relationship with his department. The relationship may be a matter of public sensitivity.

Generally speaking, non-departmental bodies are established to achieve a greater degree of independence from direct ministerial control and from government personnel, administrative or budgetary controls, than is the case for departments. For that reason, powers are usually vested by statute in the board of directors or head of the non-departmental body rather than in the Minister. Ministers individually and collectively exercise varying degrees of control and responsibility in accordance with each non-departmental body's constituent Act. In addition, the *Financial Administration Act* sets out the financial accountability framework for the relationship between many of the non-departmental bodies, their "appropriate Minister", and the Government as a whole (represented by the Treasury Board, Governor in Council or the Minister of Finance).

Parliament has gone to special lengths to protect the independent mandate and powers of certain other agencies such as *granting bodies or tribunals*. You are advised to take very special care to avoid

* Government policy in this regard is stated in "Briefings by Officials to Parliamentary Caucuses", available from the Privy Council Office.

intervening, or appearing to intervene, in cases under consideration by quasi-judicial bodies.

Within this framework, many of those Crown corporations or similar agencies which have their own statutory basis are responsible not to Ministers but to Parliament *through* Ministers. There are, however, instruments (such as financial instruments, appointments, or powers of direction) by which to ensure that non-departmental bodies are responsive to governmental policies to the extent consistent with their particular nature and governing legislation. As a matter of practice, Ministers usually seek to establish effective communications links with Crown corporations, to keep corporations informed of Government objectives, provide for the appropriate degree of accountability, and ensure Ministers are apprised of problems requiring their attention. But *in responding to Parliamentary questions, you are advised not to accept direct responsibility for actions taken by the Crown corporation or similar agency* in the exercise of its own statutory powers, nor to provide information which could harm a Crown corporation's competitive position. In such cases, a Minister is responsible for inquiring into problems, reporting the required information to Parliament, and, if necessary, undertaking to remedy a problem within the limits of the law.

It cannot be emphasized enough, however, that generalizations with respect to non-departmental bodies are subject to the Parliamentary mandate and specific authorities governing each. You are advised to ensure you are thoroughly briefed on the conditions and constraints of your responsibilities for non-departmental bodies: your deputy minister, departmental legal advisor, and, as necessary, the Secretary of the Treasury Board or the Secretary to the Cabinet can assist you.

III

Cabinet Decision-Making

Ministers propose, and the Cabinet disposes. Decision-making by Cabinet — which in modern practice usually means Cabinet committees — is collective political action by and for all Ministers, led by the Prime Minister. It is in addition the ultimate means of coordination and the final sanction for proposed ministerial actions, reflecting the principles of Cabinet government and ministerial responsibility. Ministers are bound to observe Cabinet decisions, but the decisions themselves have no legal standing.

This section outlines main elements of the organization and conduct of Cabinet decision-making. The Secretary to the Cabinet can provide further information or explanations.

III.1. Ground Rules for Cabinet Business

The basic ground rules for the conduct of Cabinet business are few but essential for maintaining Cabinet solidarity and Cabinet's practical effectiveness. They include:

- *Access:* In principle, every Minister has the right to seek his colleagues' consideration of proposals for Government action in his area of responsibility, subject to the Prime Minister's setting of the agenda in accordance with his determination of Government priorities, and the setting of Cabinet committee agendas by the Committee chairmen acting for the Prime Minister. (Ministers of State to assist normally bring issues to Cabinet only with the concurrence of their senior colleague.)

- *Confidentiality:* Both the upcoming business and the deliberations of Cabinet are secret. This is to ensure that: Ministers can express themselves with absolute frankness; Cabinet solidarity is based on and maintained by collective decisions reached through collective deliberation; and individual Ministers do not lose face publicly if their proposals are changed or rejected by their colleagues. It follows from this that Ministers must not announce policies before Cabinet decisions are taken, and must support Cabinet decisions once they are made. The formal manifestation of this necessary practice is the Privy Councillor's oath.
- *Consensus:* Cabinet government works through a process of compromise and consensus culminating in Cabinet itself. Cabinet and Cabinet committees do not vote on questions before them. The Prime Minister (or committee chairman) "calls" the consensus after Ministers have expressed their views; the Cabinet secretariat in the Privy Council Office records and communicates the decision for him.
- *Leadership:* Cabinet decision-making is led by the Prime Minister. He provides Ministers with the Cabinet and committee forum in which they resolve their different perspectives; organizes Cabinet and Cabinet committee decision-making as he sees fit; determines the agenda for Cabinet business; and chooses committee chairmen to act on his behalf.
- *Efficiency:* Cabinet business is extensive, and Cabinet consensus often is difficult to achieve. Yet clear Cabinet decisions are so important to government operations, and Ministers' time so limited, that the efficient conduct of Cabinet business requires constant attention. Cabinet procedures in accordance with these ground rules must be widely understood and mutually respected. To this end, the Privy Council Office acts as Cabinet's secretariat and as the administrator of the Cabinet decision-making process on behalf of the Prime Minister.
- *Consultation:* Consultations among the Ministers concerned in any issue (or among their departments) must *precede* the submission of a proposal to Cabinet by the responsible Minister(s). Ministerial discussions in Cabinet or Cabinet committee resolve differing views or confirm the course a Minister proposes to follow: they are not occasions for a first exposé of a problem. Your deputy minister is

expected to ensure other affected departments are adequately informed in advance, so that their Ministers can be advised.

III.2. Content of Cabinet Business

Issues are brought by Ministers to Cabinet so that their colleagues may be informed; so that they may have the opportunity to influence or participate in the final decision as required by collective responsibility; and so that policies and programs may be coordinated and scarce resources allocated among Ministers.

Cabinet issues in general are matters of "policy" as opposed to more detailed matters of administration. Nonetheless, whether an issue is at first sight one of policy or administrative import, it may be a matter for Cabinet because of its general importance to the Government, or because it affects a number of Ministers' responsibilities, or because it represents a new policy direction or a significant new program, or because of its general or specific political significance. All such matters engage Ministers' collective responsibility. The bottom line is ultimately an assessment combining policy *and* political criteria.

III.3. Cabinet Structure and Cabinet Committees

Cabinet committees are an extension of Cabinet itself. The Prime Minister establishes both standing and temporary (or special purpose) committees, chooses their membership, prescribes their procedures, and changes them as he sees fit.

The bulk of collective Ministerial deliberations now takes place in Cabinet committees. Committee chairmen act for the Prime Minister and with his authority, including in setting committee agenda. For the most part, decisions are taken by the appropriate committee, subject to confirmation by full Cabinet or by the Cabinet Committee on Priorities and Planning. A basic goal of this system is to settle as many questions as possible at the committee stage in order to lessen the workload of the Priorities and Planning Committee and full Cabinet, and to allow them to concentrate on priority issues and broad political concerns.

The *Cabinet Committee on Priorities and Planning* is the principal focal point for decision-making. Chaired by the Prime Minister, it is both the main forum for determining the Government's strategy,

priorities, fiscal framework and basic policies, and the one committee with authority to ratify the reports of all other committees.

The *Treasury Board* is a unique case. Although it may act as the Cabinet committee for public service and expenditure management, it is unlike all other committees in that it is established by law as a Committee of the Privy Council and many of its decisions have legal force. The Board is the employer for the Public Service; it establishes policies and common standards for administrative, personnel management, financial and organizational practices across the government; it controls the allocation of financial and personnel resources to departments and programs.*

Ministers may attend any Cabinet committee meeting except Priorities and Planning, Treasury Board and other rare exceptions (e.g. the Security and Intelligence Committee). However, the Prime Minister designates certain Ministers as ongoing members of each committee which they are expected to attend regularly. Membership lists of Cabinet committees are provided to all Ministers by the Privy Council Office.

Most *Cabinet committees meet* weekly or bi-weekly on a regular schedule. This allows Ministers to plan their personal schedules; assists the planning for and timing of submissions to Cabinet; and ensures that meetings and decisions can proceed without delay. Your deputy minister or the Privy Council Office can provide you with the committee schedule. Of course, a committee chairman may schedule additional meetings.

The *full Cabinet* is convened by the Prime Minister himself. Ministers are expected to attend all Cabinet meetings. Cabinet's agenda is made up of items of special urgency, Parliamentary business, political communications issues, the discussion of senior appointments, and other issues of general concern to Ministers or which have not been resolved by Cabinet committees and are judged by the Prime Minister to require Cabinet consideration. Cabinet usually meets bi-weekly on Thursday mornings.

* See also Part IV.1.

III.4. Decision-making Process and Procedures

a) The Basic Process

The *process of Cabinet approval* is an essentially simple one.

In brief, an issue is raised by a Minister in the form of a memorandum to Cabinet (MC), which is normally circulated to all Ministers by the Privy Council Office before it is discussed at the appropriate Cabinet committee. The Cabinet committee's report (CR) is subject to confirmation by the Cabinet Committee on Priorities and Planning (or by Cabinet itself). Since committee reports should reflect a full airing of the issue, normally they can be confirmed without further discussion, being simply noted on the annex to the Priorities and Planning Committee agenda. At this stage, a committee report can only be reopened after discussion with the committee chairman and with the Prime Minister's prior approval. Records of final decisions (RDs) are recorded and circulated to all Ministers and their deputies, for action under Ministers' individual authority. The Prime Minister and other Ministers normally consider it very important that no announcements of any policy be made before it has been approved through this process, and by the Treasury Board where resource implications so require.

You will appreciate that the success of the process depends substantially upon high-quality preparation of Ministers' memoranda to Cabinet. Consultation well in advance ensures that your colleagues are not unpleasantly surprised and your memoranda to Cabinet take all necessary factors into account. Otherwise, where a proposal is not well-prepared and well-written, the discussion is unlikely to be fruitful — and the results may not be what the sponsoring Minister would wish. At best, in these circumstances, the Minister is likely to meet with questions or delays which can only be laid at his own door or his department's. It is normally the deputy minister's responsibility to prepare memoranda to Cabinet at the Minister's direction and for his approval. To encourage thorough preparation and facilitate rapid assessment of memoranda to Cabinet, they follow a standard format of which your officials can inform you. Of course, ultimately only you can ensure the quality of your memoranda to Cabinet.

b) Planning

Cabinet decision-making as a whole is oriented by certain key statements of Government policy and priorities in addition to electoral

commitments. The *Speech from the Throne* enunciates the Government's program for Parliament at the opening of each new session; it reflects the overall priorities of the Government and the Prime Minister. The Minister of Finance presents the Government's annual *Budget* in February, reflecting the *fiscal framework* agreed by the Cabinet Committee on Priorities and Planning (on the basis of recommendations by the Minister of Finance, after consultation with the President of the Treasury Board and Cabinet committee chairmen). The President of the Treasury Board subsequently tables the Government's detailed expenditure *Estimates*. In addition, from time to time throughout the year the *Priorities and Planning Committee* defines major priorities and policy initiatives. All these statements both shape and reflect the ongoing work of Cabinet committees.

c) *Procedures*

Although flexible, the process operates on the basis of specific procedures which have evolved through experience, are adapted from time to time at the Prime Minister's discretion, and are circulated on his behalf by the Secretary to the Cabinet. Without delving into detail here, you should be aware of three basic conditions which govern the procedures.

- *Committee discussions are necessarily ministerial in nature.* Only Ministers participate in Cabinet or Cabinet committee decisions in order to ensure privacy of Ministerial exchange, the dynamics of effective discussion and reaching agreement, and clear Ministerial responsibility for the decisions which result. Therefore, Parliamentary Secretaries do not attend Cabinet or Cabinet committee meetings since they are not members of the Ministry; nor do Ministers' political staff (since Ministers speak politically for themselves to their colleagues); nor senior officials other than the secretariat, except for limited purposes (i.e. normally to accompany a Minister sponsoring a proposal, if required, or occasionally at a committee to represent the departmental position of an absent Minister). It is for the Prime Minister to decide whether exceptions are made to these conventions, for certain of his own staff. If a Minister who is sponsoring a specific item at a Cabinet committee meeting must be absent, he is represented by the Acting Minister, not by his departmental officials, political staff, or Parliamentary Secretary. Meetings are conducted as personally and informally as possible, in both official languages (simultaneous translation is available).

- The Privy Council Office, which functions as the permanent Cabinet secretariat, is held responsible by the Prime Minister for the *efficient and discreet administration of committee business and support for each committee and its chairman*. Acting in close touch with departmental liaison officials, the secretariat prepares agendas, organizes meetings, records decisions, prepares confidential minutes, and advises the chairman on the conduct of meetings. It is Privy Council Office officials who are authorized by the Prime Minister to advise senior officials of the substance of Cabinet decisions, while maintaining the confidentiality of Cabinet discussions.
- The process requires a *full sharing of information* among Ministers before committee discussion. Thus, so that Ministers will have sufficient time to consider proposals, memoranda to Cabinet must be submitted to the Privy Council Office five working days before a Cabinet or committee meeting, for circulation to Ministers and to their deputies.

In sum, the Cabinet process and its procedures are aimed at maintaining a well-tuned decision-making system which can help Ministers master the administrative machine. Nevertheless, you will appreciate that the process and its procedures are only the necessary skeleton for a much larger body of coordination including informal or ad hoc discussions by officials and Ministers themselves, which prepare the way for ministerial deliberations and decisions focussing only on the most important, most sensitive, or most controversial matters.

IV

Consultation and Coordination

The Government's program and objectives can be realized only if Ministers work together effectively. *It is the responsibility, and in the personal interest, of each Minister and of all Ministers to protect the interests of the Government as a whole.* But Ministers personally obviously cannot consult with each other and coordinate their and their departments' activities nearly so much as the Government's interests demand. Moreover, if the ongoing work of government is to be carried out effectively, each department must be subject to the overriding needs of the whole Government for unity, coherence, and a consistent regard for the general interests of the Canadian public.

These goals are achieved ultimately through Cabinet decision-making and the Prime Minister's leadership, but they rest in practice upon continuous ministerial and interdepartmental *consultations*, and also upon the activities of *coordinating offices*. This section outlines the work of the key central offices, especially those which support the *Prime Minister* or act on his behalf.

IV.1 The Chief Central Agencies

Central agencies support the exercise by their Ministers — above all the Prime Minister — of government-wide or corporate responsibilities. Line departments primarily develop and carry out operational policies and programs under the direction of their Ministers. Each Minister's portfolio involves a coordinating or lead role within his sector of responsibilities. Each central agency makes a particular contribution to the unity and effectiveness of government activities across all sectors: *Treasury Board* in expenditure and managerial coordination, *Finance* in economic policy coordination, *Justice* in providing legal advice and

counsel, *External Affairs* in foreign policy coordination. The *Prime Minister's Office*, *Privy Council Office* and *Federal-Provincial Relations Office* report directly to the Prime Minister. Ministers and their departments necessarily work closely with all the central agencies.

You and your officials will be especially concerned to work with the Minister of Finance and the President of the Treasury Board, and their officials.

The *Minister of Finance* is responsible for the Government's macro-economic policy generally, including tax policy and tax expenditures, and for analyzing the economic impact of proposals by any Minister. The Department of Finance supports the Minister, and maintains a broad socio-economic analytical capacity on the basis of which the Minister participates in virtually every Cabinet committee and the Department advises Cabinet committee chairmen, through the Privy Council Office, on the economic impact of proposals coming to Cabinet.

Since the *Treasury Board* is responsible for the management of the Government's financial, human and material resources, the *President of the Board* maintains an overview of the Government's expenditure plan, presents the Estimates to Parliament, and coordinates the Government's financial and administrative systems.*

The President is supported by the *Treasury Board Secretariat*, which advises the Board in its rulings on proposals from departments for person-years and money to carry out programs previously given policy approval by Cabinet (and by Parliament as appropriate); and upon contracts, administrative procedures, public service classification and compensation questions, departments' internal organization, personnel management and official languages policies. To fulfill these responsibilities, the Secretariat maintains a broad analytical capacity on the basis of which the President also advises Cabinet committees, and the Secretariat advises committee chairmen (through the Privy Council Office).

* For the special status of the Board itself, see Part III.3.

IV.2. Prime Minister's Office (PMO)

The Prime Minister's Office is his political staff, which is personal to the Prime Minister in the same way as a Minister's exempt staff are to him. The Prime Minister organizes his office as he sees fit.

The Prime Minister may have his office emphasize more or less its several staff functions in support of his political leadership. In general, the PMO plays an important role in advising and enabling the Prime Minister to guide the political strategy of the Government. This role directly affects individual Ministers, for it involves coordinating the political activities of Ministers on the Prime Minister's behalf and for the advantage of the Government as a whole. The PMO may also facilitate coordination among Ministers' offices.

You should generally ensure that you and your exempt staff consult the PMO on matters of a political nature. More particularly, the PMO's roles which may directly affect Ministers' activities — and which are outlined in the following sections — include:

- appointments;
- legislative coordination and caucus liaison (in cooperation with the House Leader);
- communications strategies and announcements; and
- ministerial travel.

When the Prime Minister has designated a Deputy Prime Minister, some functions that would otherwise be performed by the PMO (e.g., coordinating government communications) might be performed by the office supporting the Deputy Prime Minister.

IV.3 Privy Council Office (PCO)

The Privy Council Office is both the Cabinet's secretariat and the Prime Minister's public service department. It is headed by the Clerk of the Privy Council and Secretary to the Cabinet, who has always been an experienced career civil servant and who enjoys the confidence of the

Prime Minister. As a consequence, he is conventionally regarded as the senior official of the public service and, in that sense, as its head.

The PCO is organized to reflect its support of the Prime Minister and Cabinet decision-making. Its major functions are:

- *Non-partisan advice to the Prime Minister* on the overall effective conduct of the Government. This includes advice on the strategic handling of governmental issues; the delineation of responsibilities among Ministers, the organization of the Government generally, and its relationships with Parliament and the Crown; senior appointments matters*; key policy questions for which any Prime Minister is ultimately responsible, such as national security; and, as required, on the policy proposals developed by Ministers and their departments.
- *Secretariat support* to Cabinet, Cabinet committees and their chairmen, as described in Part III of this briefing.
- *General coordination* of the inter-relationships of policy proposals with each other and with the Government's policy objectives as a whole.

The Privy Council Office's operational focus is upon the process of policy-making through ensuring that all the affected parties have been consulted or involved in the decision on a particular policy proposal, that relationships among policies are brought out for Ministerial consideration, and that a full range of alternatives has been considered. The PCO has a special concern for the continuity of government, which includes facilitating changes of Government and briefing individual Ministers, as in this document.

IV.4 Parliament and Legislation

a) *The Legislative Program*

The content of the legislative program is ultimately the responsibility of the Prime Minister, who is advised and assisted by his Ministerial

* See Part IV.6.

colleague, the Government House Leader. The program's main thrusts are determined by Cabinet and the Cabinet Committee on Priorities and Planning. A cabinet committee chaired by the House Leader coordinates the program and the process of translating policy decisions into Bills.

The first stage in that process is, of course, Cabinet approval of a Minister's policy proposal. Subsequently, a Bill is drafted by the Department of Justice to reflect the Cabinet policy decision, according to drafting priorities established by the House Leader and his committee colleagues. That committee undertakes final scrutiny of the Bill, before it can be conclusively approved by Cabinet for introduction in the House subject to the tactical judgement of the House Leader.*

The handling in Parliament of the legislative program is the direct responsibility of the *Leader of the Government in the House*. The House Leader has a great deal of flexibility in establishing priorities for consideration of Bills by the House and in deciding on strategy and tactics, although Cabinet discussions of House business take place regularly. He is supported by his own exempt staff and by the Legislation and House Planning Secretariat in the Privy Council Office.

b) Ministerial House Duties

It is obviously crucial to the Government's effectiveness and public standing that its position on every issue be well presented in the House by Ministers. Because House business cannot be done without Ministers' presence, ministerial House duties are a first priority. They are carefully planned and coordinated, and consist of:

- Attendance at all of *Question Period* every day. Any proposed absences are to be cleared with the Prime Minister's Office before other commitments are made. When a Minister is absent, the designated Acting Minister answers for him.
- Attendance at other specified times according to a *mandatory schedule of House duties* prepared by the House Leader. If your

* Details are available in the Department of Justice booklet on "The Federal Legislative Process in Canada".

absence is unavoidable on a duty day, you are personally responsible for arranging for another Minister to replace you and for notifying the House Leader and the Chief Whip.

- *Piloting legislation.* Ministers attend the House to pilot through their own legislation, and should give a high priority to appearances before Parliamentary Committees.
- *Other House duties,* which are assigned and coordinated by the House Leader (e.g. attendance at votes, leading the Government's response to Opposition Day motions, directing the response to "Late Show" and written questions).

In carrying out these duties, you can expect to be supported by both departmental officials and your exempt staff, as well as your Parliamentary Secretary.*

IV.5 Federal-Provincial Relations and Regional Coordination

The Prime Minister is responsible for the overall management of federal-provincial relations, since they touch on virtually all areas of federal government activity. In general, each Minister is responsible for the federal-provincial aspects of policies and programs within his own portfolio. However, it is important to ensure that activities which may appear to be desirable in one area are also consistent with other federal-provincial initiatives and with the Government's overall approach to intergovernmental relations.

The *Federal-Provincial Relations Office (FPRO)* is the public service department which advises and assists the Prime Minister in his responsibility to oversee the federal-provincial relationship, and supports Cabinet and Cabinet committee examination of issues with federal-provincial implications. From time to time, Prime Ministers have appointed a Minister of State to coordinate federal-provincial relations and have established a Cabinet Committee on Federal-Provincial Relations. Consultation with FPRO will help Ministers and their

* Advice on the responsibilities of a Minister to Parliament for his portfolio is provided in Part II.6(a). Advice is similarly provided on the roles with respect to Parliament of a Minister's officials (Part II.6(b)), Parliamentary Secretary (Part II.5), and Acting Minister (Part II.4).

departments to determine the best way to handle difficult federal-provincial issues within their portfolios, ensure consistency of their initiatives with the Government's overall approach, and keep abreast of all federal-provincial developments.

The Prime Minister may also designate *regional (or "political") Ministers* for each province or major area, who play an important role in coordinating regional or provincial politics with federal government activities. The administration of departmental programs in every region remains the individual responsibility of departmental Ministers.

IV.6 Appointments

Appointments by the Governor in Council are handled through a distinct approval process which recognizes both their special confidentiality and sensitivity, and the Prime Minister's prerogative to coordinate or determine all appointments. This process applies to the approximately 500 full-time Governor in Council appointments, *and* to the numerous part-time appointments to boards, agencies, commissions and corporations.

The Prime Minister is supported in this area by both the *Prime Minister's Office* and the *Privy Council Office*. As a rule, the two offices participate in identifying vacancies, gathering information and advising with respect to full-time and part-time appointments. The Prime Minister determines the specific role which he wishes PMO to play, and PMO informs Ministers directly in this regard. You should ensure that you and your staff are well-informed by PMO of the necessary process, and consult PMO as required.

The Senior Personnel Secretariat in PCO ensures that statutory and procedural requirements are met and advises on issues of feasibility, remuneration, and conditions of appointment. In this regard, you are advised to consult the Secretary to the Cabinet or his staff. The Senior Personnel Secretariat supports the Secretary to the Cabinet in the exercise of his responsibility to advise the Prime Minister on the appointment of deputy ministers.

You are particularly advised to take into account the following points *before* appointments are promised or recommended:

- All appointment recommendations are *subject to the Prime Minister's approval* before they go forward to the Governor in Council.
- *Salaries and remuneration* for GIC appointments, both full-time and part-time, are set or approved by the Prime Minister. In this area, he is supported by the Privy Council Office. Therefore, you should avoid quoting salary figures to candidates without his approval. You should also ensure that the boards of directors of corporations within your portfolio neither promise remuneration without authorization beforehand, nor implement compensation packages such as bonuses or termination benefits, beyond those approved by the Governor in Council (unless separate statutory provision exists).
- You should ensure that candidates do not have potential *conflicts of interest* and meet the requirements of the Government's Conflict of Interest Code.
- All Governor in Council appointees are subject to a criminal and security *records check* prior to appointment. You are responsible for obtaining from the candidate all the information required, in good time, so that the Privy Council Office can coordinate these checks.
- You should ensure with any candidate for a *full-time* position that he understands the full-time nature of the responsibilities.
- It is important to ensure that the submission to the Governor in Council accurately states the *full name* and place of residence of the appointee, as well as the *effective starting date* of the appointment when necessary.
- Appropriate representational criteria should be taken into account when recommending appointments, including linguistic, male/female, regional, visible minorities and ethnic considerations.
- Governor in Council appointments (except to judicial or quasi-judicial positions) are *tabled in the House of Commons*, after each appointment is made, so the appropriate standing committee has

the opportunity to call the appointee and examine his qualifications. Government policy is to table nominations to certain regulatory bodies for possible examination before those appointments are made official. Your office should be prepared to arrange the appropriate briefing for an appointee in your portfolio who is called to appear; the Prime Minister's Office can advise you.

- *Announcements* of appointments are coordinated by the Prime Minister's Office.

IV.7 Orders in Council

Orders in Council are, in effect, Government decrees made pursuant to some statutory authority (or, infrequently, royal prerogative). All recommendations for Orders to be made by the Governor in Council must be signed by the responsible Minister.* They only take legal effect once signed by the Governor General. If the procedures necessary to pass Orders in Council are not followed, the responsible Minister may be publicly embarrassed to find the Orders are invalid or mistaken.

You should know that:

- Submissions which do not raise policy issues, and are not related to appointments, ordinarily are considered in the *Special Committee of Council*. Submissions to the Special Committee are coordinated by the Assistant Clerk of the Privy Council.
- A special process applies to all *appointments* (see above).
- Public *announcements* regarding Orders in Council should not be made until the Privy Council Office can assure you the Orders have been approved by the Governor General. With respect to appointments, the Prime Minister's Office coordinates the timing of public announcements.
- All Orders in Council become *public documents* once signed by the Governor General. A list of Orders passed each week is made

* The "Governor in Council" is described in Part I.3(b).

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public the following Monday. It is regularly scrutinized by the media.

- Order in Council *regulations* cannot take effect retroactively, unless there is a statutory authority to do so. You should, therefore, ensure your department arranges for proposed regulations to reach the Privy Council Office well before the desired implementation date, in time to check them against prescribed standards. Many regulations are adopted only after a period set aside for public examination and comment.

Your departmental legal advisor or the Assistant Clerk of the Privy Council can advise you on the procedures.*

IV.8. Communications and Public Announcements

Government policy requires you to ensure that any public statement is made pursuant to a general *communications strategy* designed for the issue. Every memorandum to Cabinet is to include a communications plan, which must be approved according to procedures which the Prime Minister establishes, such as approval by the Cabinet Communications Committee (if one has been created) and/or its chairman, before Cabinet decides on the policy and before any announcement.

In addition, each public statement of a policy or announcement of some action (including appointments, grants or agreements) is to be carefully coordinated between the responsible Minister, acting with his office and department, and the Prime Minister's staff. Otherwise, the effectiveness of Government policies may be compromised by inconsistent communications, exposure of a decision at the wrong time, or exposure of an inter-ministerial dispute. The Prime Minister holds Ministers personally responsible for their contribution to the Government's public posture, and requires that announcements be coordinated on his behalf.

As a minimum, you are responsible for appointing one of your office staff to *seek the approval of PMO* (or the Deputy Prime Minister's

* Details are available in the Privy Council Office manual entitled "Directives on Submissions to the Governor in Council and Statutory Instruments".

Office, as determined by the Prime Minister) for the timing of all impending announcements, with the proposed text, well in advance. You are also responsible for consulting the affected *regional Minister* before the announcement. To ensure the consistency of departmental policies, the *deputy minister* should be briefed on all Ministerial statements.

IV.9 Ministerial Travel Coordination

All proposed Ministerial travel is to be *cleared with the PMO* on behalf of the Prime Minister, well in advance and before making commitments*. Ministers should also consult the Government House Leader. This process ensures the Prime Minister and Ministers can get in touch with each other, and Ministers or Acting Ministers are available to carry out essential Government and Parliamentary business. Ministers are expected to arrange even tentative travel plans consistent with their Parliamentary and Cabinet duties. The process is also designed to maximize the impact of ministerial travel, both abroad and in the various regions of Canada. Once approval is secured, the Deputy Secretary to the Cabinet (Operations) should be notified.

Foreign travel must be coordinated to take account of the full range of Canadian interests both domestically and abroad. Generally speaking, Ministers are expected to limit travel abroad to the necessary minimum, especially while Parliament is in session. When considering a trip abroad, the Minister is to seek in writing the prior approval of the *Prime Minister*, and the advice of the *Secretary of State for External Affairs* on all aspects of foreign travel, including necessary security precautions. No plans should be confirmed before the trip has been approved.* The actual arrangements for official foreign travel must be coordinated by the Department of External Affairs. Agreements may be signed only with the prior approval of the Governor in Council on the recommendation of the Secretary of State for External Affairs.

Ministers planning *private travel abroad* should also inform the Secretary of State for External Affairs well in advance, where security or policy considerations may be involved.

* The Prime Minister may from time to time enunciate specific procedures in this regard through the PMO, and you should ensure that you and your staff are familiar with them. See also Part V.8 respecting the use of air passes and government aircraft.

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Before issuing *invitations* to Cabinet-level counterparts in foreign governments to visit Canada, consultation in writing is again required with the Secretary of State for External Affairs. He and his Department coordinate these visits.

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Standards of Conduct

This section points out key areas where established government standards and rules of conduct apply to *Ministers personally*. Your rigorous compliance with the full letter and spirit of these standards — and not only with the summary indications given here — is of the utmost importance.

V.1. High Expectations

The *fundamental principles* applying to all public officers, and above all Ministers, are long-established. There is an obligation not simply to observe the law, but to act both in official and personal capacities in a manner so scrupulous that it will bear the closest public scrutiny.

Today, ethical conduct is subject to *more intense public scrutiny* than ever before. The public right of access to information reveals much more to be scrutinized, across a wide range of Ministerial and government activities. In addition, the rules applying to Ministerial conduct are becoming more and more detailed, complex and *stricter than equivalent standards outside government*. The appearance of unethical conduct, of taking advantage of an official position or government facilities for personal convenience, of breaching a specific rule (perhaps inadvertently) — any of these may affect the Government's reputation for integrity and may lead to calls for a Minister's resignation even before the facts are established.

A practical test is to ask whether your conduct, or that of your staff, could cause any embarrassment or be difficult to justify to the public, should it be raised in Parliament or reported in the press.

The *Prime Minister will hold Ministers personally accountable* for acting in accordance with the spirit of the highest standards of conduct, as well as for complying with the letter of the Government's rules. Your deputy minister can arrange briefings for you and your staff.

V.2. Conflict of Interest (and Gifts)

You should ensure you are personally familiar, and that you are and remain in compliance, with the requirements of the *Conflict of Interest and Post-Employment Code for Public Office Holders**. These requirements are not repeated here, nor summarized, because Ministers will be held accountable by the Prime Minister, and will be judged by the media and the public, according to the Code's precise provisions to which you should refer. The Code includes:

- basic *principles* of general application, and certain prohibitions;
- requirements to provide *confidential reports* to the Assistant Deputy Registrar General with respect to Ministers' assets, liabilities, former and current activities, as well as some gifts, hospitality and other benefits received;
- *post employment conditions*.

You should be fully briefed by the *Assistant Deputy Registrar General* in the days immediately following your taking office.

In addition to the provisions of the Code, it has become established that Ministers should not accept *honoraria* for speeches or interviews in relation to their Ministerial responsibilities.

V.3. Security

The importance of preserving the security of government facilities, personnel, and appropriately classified information is not simply an official matter, but one of high public sensitivity which focuses directly on individual Ministers. Even an apparent breach can be seriously

* Available from your deputy minister, the Assistant Deputy Registrar General, or the Privy Council Office.

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controversial. On security questions, such as those outlined here, you are advised to consult your deputy minister or the Secretary to the Cabinet.

Various measures are, or can be, taken to protect Ministers' *personal physical security*, including at their homes. You should speak to your deputy minister and satisfy yourself that the necessary steps are implemented.

Ministers are responsible for ensuring adequate security arrangements with respect to:

- *Ministers' offices and their staffs.* You must ensure that all members of your personal staff, whether they serve in Ottawa or elsewhere, have been security cleared *prior to appointment*, and that access to your office is appropriately secure.*
- *Classified information.* You must take personal care to maintain the security of classified information, both written and oral. Sensitive matters should be discussed face to face if at all possible rather than by *telephone (car telephones are completely insecure, and are known to have been monitored by equipment easily acquired by private citizens)*.
- *Cabinet documents.* You are responsible for the safe handling of Cabinet documents in your office and personal possession. Strict security rules apply about which your deputy minister (who also receives Cabinet documents) should inform you. For instance, no copies may be made; *everyone with access to a Cabinet document must be security cleared, including all staff in your Ottawa and constituency offices*; and Cabinet documents should never be shown to anyone outside government. Cabinet documents must be returned to the Privy Council Office and cannot be retained after a Minister leaves office.

You are advised to have your deputy minister arrange a *briefing* on how to protect your confidentiality and government security at the earliest possible moment. Your deputy will also ensure that the

* The "Security Policy of the Government of Canada", issued by the Treasury Board, is the basic authority.

Department of External Affairs briefs you on the special precautions required before any foreign travel.

If you should hear of any *allegations of misconduct or security infringements*, the Prime Minister holds you responsible to immediately notify him, the Secretary to the Cabinet, or your deputy minister in order for appropriate investigations to be undertaken.

V.4. Cabinet, Departmental and Personal Papers

Ministers face embarrassment or criticism either for withholding information that could or should be publicly released, or for mishandling material which is properly confidential. Lost documents, for example, can easily be a source of embarrassment, security problems, and delays in resolving policy questions.

For the most part, Ministers naturally rely on their staff to manage documents for them, but you should be aware of the main provisions governing the handling of official papers. You are responsible for ensuring these provisions are met. Your deputy minister is familiar with the problems and can advise you.

Ministers' papers fall into *four categories: Cabinet papers; departmental papers; other official papers (termed "ministerial records"); and personal and political papers*. You are advised to have these categories filed separately, for reasons of operating efficiency and confidentiality; to facilitate changes of office; and to be able to respond to statutory requirements since each category of documents is subject to different treatment under the Access to Information, Privacy, Canada Evidence, and National Archives Acts.

The efficient operation of Cabinet and the necessary confidentiality of Ministerial discussions — both today and under future Ministries — depends upon the proper handling of *Cabinet papers*. From your point of view as a Minister, this requires ensuring that your and your colleagues' memoranda to Cabinet, Cabinet committee reports or records of Cabinet decisions, are always in the custody of an authorized and security cleared staff member or official; and that when a Cabinet item has been dealt with, the associated Cabinet papers are returned to the Privy Council Office. You should ensure that one member of your staff is specifically charged with responsibility for the control of Cabinet

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papers on your behalf. The actual minutes of Cabinet and Cabinet committees are held in the Privy Council Office, where only Ministers may consult them personally.*

Departmental papers relate to the continuing business of the department and associated agencies. These should be kept in a separate registry. They can not be removed when you leave or change office.

The category "*ministerial records*" includes records of an official governmental character pertaining to your office as a Minister, which the National Archives Act requires be dealt with in consultation with the Archivist after you leave office (normally they would be transferred to the Archives).

Personal and political papers, or papers which are primarily political as distinct from official in nature, should be kept on separate ministerial files which the Minister normally removes when leaving office. These papers, like ministerial records, are excluded from the application of the Access to Information Act, *if* they are properly kept separate from departmental papers.

On leaving office, Cabinet papers must be returned to the Privy Council Office; departmental records left with the department; ministerial records disposed of in consultation with the Archivist; and personal and political papers may be removed. You are advised to use the specially secure storage facilities and archival services offered by the National Archives to Ministers for their personal papers. You should be particularly careful to ensure the security of any sensitive matters.

You are accordingly advised to ensure your ministerial office has an efficient and complete *records system* that establishes the necessary distinctions. The accuracy of your office records not only serves operational ends, but may protect your interests when you leave office or in responding to access to information requests or accusations of wrongdoing (which may require documentation of expenses, as one instance). Your deputy minister can advise you, drawing on expertise in the National Archives and Treasury Board Secretariat.** In the event of

* See also the following section on "Access to Cabinet and Ministerial Confidences".

** The National Archives issues a document titled "Managing the Records of a Minister's Office".

uncertainty about your rights to remove certain papers of a personal and political character, you are invited to consult the Secretary to the Cabinet.

V.5. Access to Cabinet and Ministerial Confidences

The handling of all official or personal papers is subject to the recognition that maintaining the confidentiality of Cabinet discussions is fundamental both to the collective responsibility of Ministers to Parliament and to the political solidarity of each Ministry. *The confidences and papers of one Ministry must therefore be preserved from its successors.*

It is a well-established convention, respected by successive Governments, that a new Ministry may not have access to the Cabinet and Cabinet committee records or other ministerial confidences of preceding Governments. This includes most correspondence between Ministers and other documents which express Ministers' views and opinions, even if held in departmental files. However, officials are responsible for ensuring continuity in government operations and must provide all necessary information for Ministers by briefing them on necessary background and on the substance of decisions and actions taken by previous Governments. The Clerk of the Privy Council and Secretary to the Cabinet plays a central role as custodian of the convention governing access to Cabinet and Ministerial papers.

This convention is reaffirmed by each Prime Minister, as an integral part of the rules of business and standards of conduct applying to all Ministers. When a change of Government occurs, the outgoing Prime Minister traditionally leaves the Cabinet records of his Government in the custody of the Clerk of the Privy Council and Secretary to the Cabinet. The Cabinet Secretary advises the Prime Minister and Ministers on the implementation of this convention, and holds deputy ministers responsible for applying the convention to official papers in their departments.

Former Ministers have a conventional right of access to Cabinet papers (in the Privy Council Office), and generally to departmental files, which were prepared during — and only during — the period of time when they held office.

Ministers should not breach solidarity with their Cabinet colleagues by publishing *memoirs* of their ministerial experience while continuing to hold any portfolio. Of course, former Ministers intending to write about their ministerial experience are still bound to respect their oath as Privy Councillors and remain subject to the *Official Secrets Act*.

The *Secretary to the Cabinet* should be consulted for advice on all questions of Cabinet and ministerial confidences, including access by former Ministers and any requests under the Access to Information Act relating to confidences.

V.6. Public Access to Information

The Access to Information Act provides a *right of public access* to information in records under the control of government institutions, subject only to certain necessary *exceptions limited and specified in law*. You and your deputy minister are ultimately responsible for the application of the Act within your portfolio. Decisions can be reviewed by the Information Commissioner, and finally by the Federal Court. You are advised to operate in accordance with the intent as well as the letter of the Act when dealing with requests from the public for information; and you have the right to expect your department to keep you fully informed of requests for access which are being granted. Of course, potential embarrassment is not grounds for withholding information that should properly be disclosed.

Moreover, you will recognize that the Act intensifies the public spotlight on ministerial activities. All the more necessary, therefore, is care to avoid any appearance of impropriety or activities which could be interpreted as inappropriate. Necessary, too, is an effective records management system in each Minister's office.

Accordingly, you and your staff should become familiar with the Access regime. You should ensure that you are aware of the respective roles which the Access Act and the Treasury Board assign to the Minister and to the deputy minister in making decisions about requests, and also of the implications in relation to Cabinet confidences, advice provided to Ministers, and records in your ministerial office. Each department has established internal expertise and management systems for responding to Access requests, and for consulting PCO where Cabinet confidences may be involved. Actions by your staff with respect

to the Access regime should be coordinated with the responsible departmental officials. Your deputy minister should brief you in more detail.*

The related *Privacy Act* imposes conditions governing personal information held by the government. Decisions in this regard can be reviewed by the Privacy Commissioner, and finally by the Federal Court.

In respect of the *production of papers in Parliament*, you are advised to ensure that requests for information (e.g. in response to a Notice of Motion) are met as far as possible without jeopardizing effective administration, individual privacy, Cabinet confidences or national security, and in coordination with the House Leader. You should also ensure that your and your staff's approaches to the production of papers in the House and to Access requests are consistent: the provisions of the Access and Privacy Acts are the fundamental criteria.

Any decision to release records touching on *Cabinet confidences* (e.g. relating to ministerial discussions or decisions of Cabinet or its committees) may be taken only after consulting the Secretary to the Cabinet, who will seek the Prime Minister's views where any doubt exists.

V.7. Relations with the Judiciary and Quasi-Judicial Bodies

No Minister may communicate with members of the judiciary concerning any matter which they have before them in their judicial capacities, except through the Minister of Justice, or through duly authorized officials of, or counsel acting for, that Minister. On those rare occasions when any Minister might wish to communicate with members of quasi-judicial bodies concerning any matter which they have before them in their judicial capacities, they should only do so through the duly authorized officials.

V.8. Pay, Benefits, Facilities and Expenses

You are entitled to a range of remuneration and benefits from several sources. Often they are governed by Treasury Board directives. This

* See also Part V.4 concerning Cabinet, departmental, personal and political papers.

section simply points out what you should expect and where you should take care, without explaining any of the details. Your deputy minister (or the Secretary of the Treasury Board) can advise you further, and he should arrange for you to receive your full entitlements.

Of course, Ministers know they are personally responsible for ensuring that there cannot be the slightest suggestion of extravagance or the use of public funds or facilities for anything other than official purposes. This requirement applies equally to members of Ministers' staffs. To this end, you and your staff are advised to ensure that your personal records are complete and up-to-date. Since each of the benefits you may receive is constrained by certain limits, you are advised to familiarize yourself with their effects on your own and your staff's activities.*

- *Salaries and allowances:*
 - House or Senate remuneration as a Parliamentarian.
 - Annual salary**.
 - Tax-free motor vehicle allowance.
- *Pension:* Ministers participate in a special contributory pension scheme in addition to the scheme available to them as Members of Parliament**.
- *Expenses and Hospitality:* As a Minister of the Crown, you are not obliged to provide a detailed accounting for expenses that you *personally* have incurred. Instead, you are required to fill out a simple declaration (supplied by the department) stating that this or that amount of money was expended for official hospitality or for travel. You are then reimbursed by your department. By contrast,

* Your deputy minister can assist you on all these matters, and more detailed information can be found in the TBS manual "Administrative Practices: Guidelines for Ministers' Offices".

** Information on salary and pensions may be obtained from the House of Commons (or Senate) administration. The Secretary of the Treasury Board can also assist you.

expenditures made on your behalf — whether by your staff or by the department — must be accounted for in detail, with accompanying receipts. All of the above information is accessible under the *Access to Information Act*, and the media are of course alert for any expenditures that could be seen as less than scrupulously prudent.

- *Giving gifts*: Ministers have access to the government gift banks for official purposes (Secretary of State's Department for within Canada; Department of External Affairs for abroad). Otherwise, specific Treasury Board authority is required. (Receipt of gifts is covered by the Conflict of Interest Code.)
- *Office facilities*: A Minister is entitled to office space and necessary equipment, subject to certain conditions, in the premise(s) of Parliament, in his department, and outside the National Capital Region (usually this will be in the Minister's region). It is important to distinguish between the facilities provided by the government (i.e. for official Ministerial business) and those provided to a Minister as a Parliamentarian (e.g. the constituency office).
- *Telephones* (for official business): One telephone may be paid for from government funds for the Minister at his residence in Ottawa-Hull or elsewhere. Access codes to the government telephone network are also provided.
- *Cars*: Government cars are for Ministerial use only on official business, unless the Minister pays a monthly charge permitting personal use.
- *Travel passes*: Air travel passes are made available by Air Canada and Canadian Airlines International to each Minister for use on official business, in addition to the MP's free rail travel provisions for the Minister and his family.
- *Government aircraft*: Use may be made of administrative aircraft only for government business, and according to Department of National Defence guidelines. Information is made available to the public on each Minister's use of government aircraft. Further details are available from the office of the Minister of National Defence.

You should ensure that your staff *coordinate your travel plans with the Prime Minister's Office* in accordance with specific requirements established by the Prime Minister.*

V.9. Oaths of Office, Precedence, and Honours

- *Swearing-in of Ministers*

Ministers are appointed by the Governor General on the Prime Minister's recommendation. At the beginning of the life of a new Government, Ministers are usually sworn to office as a group. The Clerk of the Privy Council and Secretary to the Cabinet administers the oaths as the Governor General presides: you swear the oath of allegiance and the Privy Councillor's oath (if you have not already done so), and the oath of office for your portfolio. For counsel on the procedures or the implications of your oaths, before or after the ceremony, you are advised to consult the Secretary to the Cabinet or his Assistant Clerk of the Privy Council.

- *Precedence*

The formal Order of Precedence is based on the order in which Ministers are sworn to the Privy Council, except that the Prime Minister always comes first. The Ministry is, by custom, listed according to precedence; this order has nothing to do with individual stature or portfolios. As a matter of convenience, the Prime Minister may use the order of precedence, amongst other criteria, in determining seating at the Cabinet table, seating of Ministers in the House, or the designation of Acting Prime Ministers, but these uses are purely customary.

- *Foreign Honours*

Longstanding Government policy requires that Ministers not seek the offer of, or accept, a foreign order or decoration either personally or on behalf of a colleague, without the prior approval of the Prime Minister.

* See Part IV.9.



**Conflict of Interest
and
Post-Employment Code
for
Public Office Holders**

September 1985

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Copies available from the Office of the
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CONFLICT OF INTEREST AND POST-EMPLOYMENT CODE FOR PUBLIC OFFICE HOLDERS

Short Title

1. This Code may be cited as the *Conflict of Interest Code*.

Part I

INTERPRETATION AND APPLICATION

2.(1) In this Code,

“ADRG” means the Assistant Deputy Registrar General; (SRGA)

“department” means any department as defined in the *Financial Administration Act*, other than the staffs of the Senate, the House of Commons and the Library of Parliament; (ministère)

“ministerial exempt staff” means those persons on the staff of a Minister of the Crown. (personnel soustrait d’un ministre)

(2) For the purposes of this Part, “public office holder” means any officer or employee of Her Majesty in Right of Canada and includes:

- (a) a Minister of the Crown;
- (b) a parliamentary secretary;
- (c) a member of ministerial exempt staff;
- (d) a ministerial appointee;
- (e) a Governor in Council appointee, other than a judge receiving a salary under the *Judges Act*;
- (f) an employee of a department;
- (g) an employee of a separate employer as defined in the *Public Service Staff Relations Act*;
- (h) an officer, director or employee of a federal board, commission or other tribunal as defined in the *Federal Court Act*;
- (i) a member of the Canadian Armed Forces; and
- (j) a member of the Royal Canadian Mounted Police. (titulaire d’une charge publique)

3. This Code does not apply to the staff of the Senate, House of Commons and Library of Parliament and to the persons holding the following offices:

- (a) the Clerk of the Senate and Clerk of the Parliaments;
- (b) the Law Clerk and Parliamentary Counsel of the Senate;
- (c) the Assistant Clerk of the Senate;
- (d) the Gentleman Usher of the Black Rod;
- (e) the Clerk of the House of Commons;
- (f) the Clerk Assistants of the House of Commons;
- (g) the Sergeant-at-Arms;
- (h) the Law Clerk and Parliamentary Counsel of the House of Commons;
- (i) the Parliamentary Librarian; and
- (j) the Associate Parliamentary Librarian.

OBJECT

4. The object of this Code is to enhance public confidence in the integrity of public office holders and the public service

- (a) while encouraging experienced and competent persons to seek and accept public office;
- (b) while facilitating interchange between the private and the public sector;
- (c) by establishing clear rules of conduct respecting conflict of interest for, and post-employment practices applicable to, all public office holders; and
- (d) by minimizing the possibility of conflicts arising between the private interests and public duties of public office holders and providing for the resolution of such conflicts in the public interest should they arise.

APPLICATION

5.(1) This Code provides general and specific direction to assist public office holders in the furtherance of the principles set out in section 7.

(2) Conforming to this Code does not absolve individual public office holders of the responsibility to take such additional action as may be necessary to prevent real, potential or apparent conflicts of interest.

(3) Conforming to this Code does not absolve public office holders from conforming to any specific references to conduct contained in the statutes governing their particular department or office and to the relevant provisions of legislation of more general application such as the *Criminal Code*, the *Canadian Human Rights Act*, the *Privacy Act*, the *Financial Administration Act* and the *Public Service Employment Act*.

6.(1) Nothing in this Code shall be interpreted in a way that would impede Ministers of the Crown and parliamentary secretaries in the performance of their duties as members of the Senate or the House of Commons.

(2) Conforming to this Code does not absolve Ministers of the Crown and parliamentary secretaries from conforming to the Standing Orders and Procedures of the Senate or the House of Commons, as the case may be, and to the conflict of interest provisions of the *Senate and House of Commons Act*.

PRINCIPLES

7. Every public office holder shall conform to the following principles:

- (a) public office holders shall perform their official duties and arrange their private affairs in such a manner that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced;
- (b) public office holders have an obligation to act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law;
- (c) public office holders shall not have private interests, other than those permitted pursuant to this Code, that would be affected particularly or significantly by government actions in which they participate;
- (d) on appointment to office, and thereafter, public office holders shall arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from arising but if such a conflict does arise between the private interests of a public office holder and the official duties and responsibilities of that public office holder, the conflict shall be resolved in favour of the public interest;
- (e) public office holders shall not solicit or accept transfers of economic benefit, other than incidental gifts, customary hospitality, or other benefits of nominal value, unless the transfer is pursuant to an enforceable contract or property right of the public office holder;
- (f) public office holders shall not step out of their official roles to assist private entities or persons in their dealings with the government where this would result in preferential treatment to any person;
- (g) public office holders shall not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and responsibilities and that is not generally available to the public;
- (h) public office holders shall not directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for anything other than officially approved activities; and
- (i) public office holders shall not act, after they leave public office, in such a manner as to take improper advantage of their previous office.

PROPAGATION

Certification

8.(1) Before or on assuming their official duties and responsibilities, Category A public office holders and Category B public office holders as defined in section 14 and public office holders as defined in section 54 shall sign a document certifying that they have read and understood this Code and that, as a condition of their holding office, they will observe this Code.

(2) Category A public office holders and Category B public office holders as defined in section 14 and public office holders as defined in section 54 shall sign the document described in subsection (1) within 120 days after the coming into force of this Code.

Annual Review

9. It is the responsibility of Category A public office holders and Category B public office holders as defined in section 14 and public office holders as defined in section 54 to review their obligations under this Code at least once a year.

Contracts

10.(1) It is the responsibility of every Category A public office holder and Category B public office holder as defined in section 14 who is negotiating a personal service contract to include in the contract appropriate provisions with respect to this Code in accordance with such directives as the Treasury Board may issue.

(2) Every Category A public office holder and Category B public office holder as defined in section 14 who is negotiating a government contract shall ensure that the contract includes safeguards, in accordance with such directives as the Treasury Board may issue, to prevent a former public office holder as defined in section 54, who does not comply with the compliance measures set out in Part III, from receiving benefit from the contract.

Education and Resource Centre

11.(1) The ADRG, in consultation with the Secretary of the Treasury Board, shall prepare informational and educational material about this Code for public office holders and the general public and, for the benefit of public officer holders, make appropriate arrangements for the preparation and implementation of training on conflict of interest and post-employment behaviour to promote compliance with the Code.

(2) The ADRG shall establish a resource centre of print, film, videotape and other material related to conflict of interest, post-employment behaviour and other ethical matters of concern to public office holders and to government.

SUPPLEMENTARY COMPLIANCE MEASURES

12.(1) The deputy head of a department in respect of whose employees the Treasury Board represents the Government as employer may augment the compliance measures set out in Parts II and III with supplementary procedures and guidance:

(a) respecting conflict of interest and post-employment situations peculiar to the unique and special responsibilities of the department; and

(b) reflecting any special requirements relating to employee conduct or interests contained in statutes governing the operations of the department.

(2) Before any supplementary procedures and guidance are implemented pursuant to subsection (1), Treasury Board approval is required.

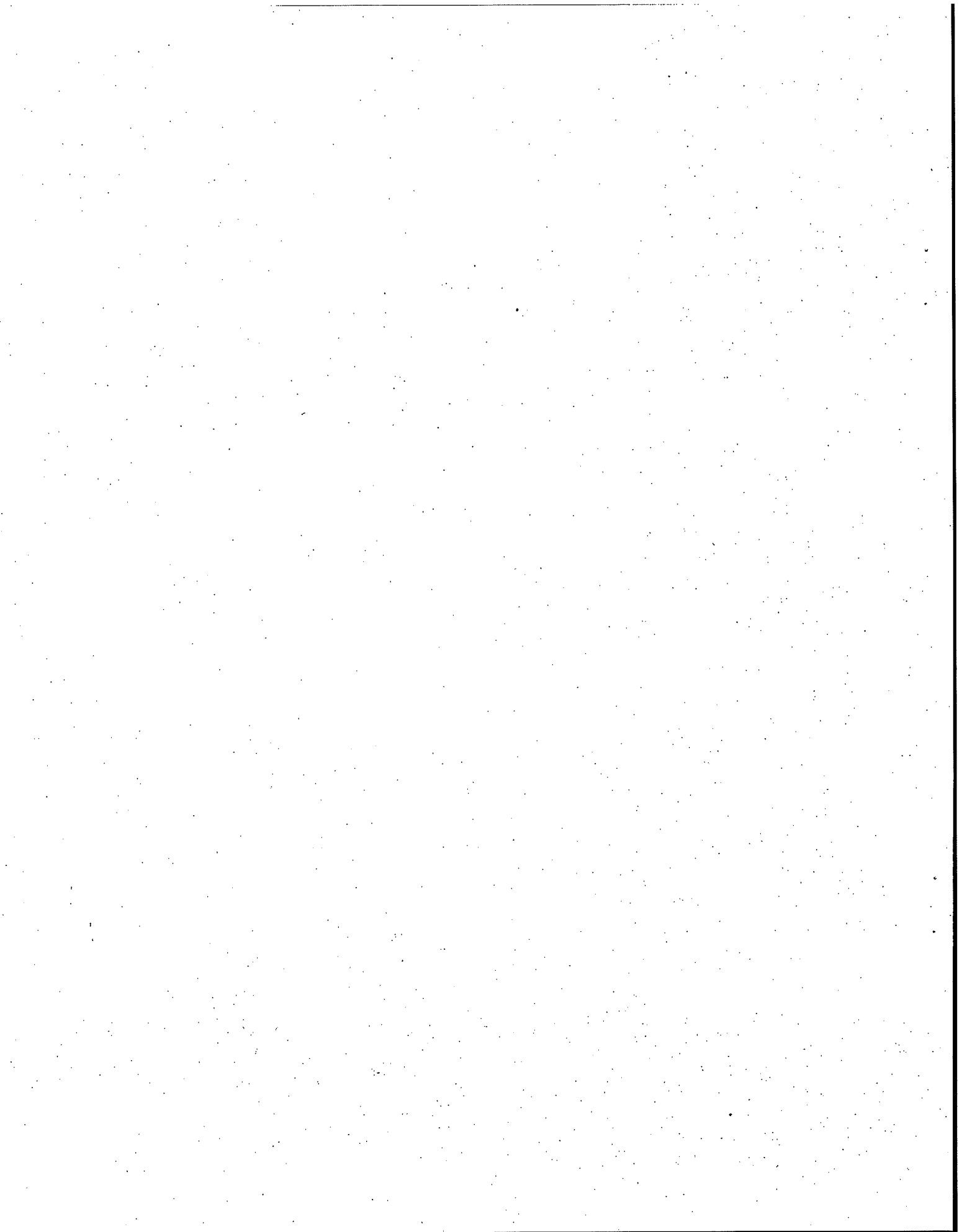
DEALINGS WITH FORMER PUBLIC OFFICE HOLDERS

Obligation to Report

13.(1) Category A public office holders and Category B public office holders as defined in section 14 who have official dealings, other than dealings that consist of routine provision of a service to an individual, with former public office holders as defined in section 54, who are or may be governed by the measures set out in Part III, shall report those dealings to the designated official as defined in section 14.

(2) On receipt of a report under subsection (1), the designated official as defined in section 14 shall immediately determine whether the former public office holder as defined in section 54 is complying with the compliance measures set out in Part III.

(3) Category A public office holders and Category B public office holders as defined in section 14 shall not, in respect of a transaction, have official dealings with former public office holders as defined in section 54, who are determined pursuant to subsection (2) to be acting, in respect of that transaction, contrary to the compliance measures set out in Part III.



Part II

CONFLICT OF INTEREST COMPLIANCE MEASURES — GENERAL

INTERPRETATION

14. For the purposes of this Part and the Schedule,

“Category A public office holder” means:

- (a) a Minister of the Crown;
- (b) a parliamentary secretary designated as a Category A public office holder by the Minister of the Crown whom the parliamentary secretary assists;
- (c) a senior member of ministerial exempt staff and, in addition, any other member of ministerial exempt staff designated by the appropriate Minister of the Crown as a Category A public office holder;
- (d) subject to section 3, a full-time Governor in Council appointee, other than:
 - (i) a Lieutenant-Governor of a province,
 - (ii) a head of mission as defined in the *Department of External Affairs Act*,
 - (iii) a judge who receives a salary under the *Judges Act*, and
 - (iv) a commissioned officer of the Royal Canadian Mounted Police, other than the Commissioner of the Royal Canadian Mounted Police; or
- (e) a full-time ministerial appointee designated by the appropriate Minister of the Crown as a Category A public office holder holder. (titulaire d'une charge publique de la catégorie A)

“Category B public office holder” means:

- (a) an employee of a department for whom the Treasury Board represents the Government as employer;
- (b) a head of mission as defined in the *Department of External Affairs Act*, and
- (c) every member of ministerial exempt staff and every full-time ministerial appointee who is not designated as a Category A public office holder. (titulaire d'une charge publique de la catégorie B)

“designated authority” means:

- (a) in respect of Category A public office holders and Category B public office holders described in paragraph (c) of the definition “Category B public office holder”, the Prime Minister; and

(b) in respect of Category B public office holders described in paragraphs (a) and (b) of the definition "Category B public office holder", the Treasury Board. (autorité désignée)

"designated official" means:

(a) in respect of Category A public office holders and Category B public office holders described in paragraph (c) of the definition "Category B public office holder", the ADRG; and

(b) in respect of Category B public office holders described in paragraphs (a) and (b) of the definition "Category B public office holder", the deputy head of the office holder's department. (administrateur désigné)

"public office holder" means a Category A public office holder and a Category B public office holder. (titulaire d'une charge publique)

"Public Registry" means the registry where public documents are maintained by the ADRG for examination by the public. (Registre public)

OBJECT

15. This Part sets out the procedural and administrative requirements to be observed by public office holders in order to minimize the risk of conflict of interest and to permit the resolution of such conflicts of interest in favour of the public interest should any arise.

METHODS OF COMPLIANCE

16. The following conflict of interest compliance methods are used to comply with this Part:

(a) Avoidance, which is the avoidance of, or withdrawal from participation in, activities or situations that place public office holders in a real, potential or apparent conflict of interest relative to their official duties and responsibilities;

(b) Confidential Report, which is a written statement by a public office holder to a designated official of ownership of an asset, receipt of a gift, hospitality, or other benefit, or participation in any outside employment or activity. The designated official shall keep the statement confidential. Where a public office holder is subject to continuing direction in the performance of his or her official duties and responsibilities, a Confidential Report will, usually, be considered as compliance with the conflict of interest measures set out in this Part. In cases where a Confidential Report does not constitute such compliance, a Confidential Report is preliminary to a Public Declaration, resignation from activity or Divestment;

(c) Public Declaration, which is a written public statement by a public office holder of ownership of an asset, receipt of a gift, hospitality or other benefit, or participation in any outside employment or activity, where such ownership, receipt or participation could give rise to a conflict of interest or otherwise impair the ability of the public office holder to perform his or her official duties and responsibilities objectively; and

(d) Divestment, which is the sale at arm's length, or the placement in trust, of assets, where continued ownership by the public office holder would constitute a real or potential conflict of interest with the public office holder's official duties and responsibilities. The requirement to divest of such assets shall be determined in relation to the duties and responsibilities of the public office holder. For example, the more comprehensive the duties and responsibilities of the public office holder, the more extensive the Divestment needed and, conversely, the narrower the specialization of the duties and responsibilities of the public office holder, the narrower the extent of the Divestment needed.

17. Where there is doubt as to which method set out in section 16 is appropriate in order that a public office holder may comply with this Part, the designated official shall determine the appropriate method and, in doing so, shall try to achieve mutual agreement with the public office holder and shall take into account:

- (a) the specific responsibilities of the public office holder;
- (b) the value and type of the assets and interests involved; and
- (c) the actual costs to be incurred by divesting the assets and interests as opposed to the potential that the assets and interests represent for a conflict of interest.

SALE FOR CIRCUMVENTION PROHIBITED

18. A public office holder shall not sell or transfer assets to family members or other persons for the purpose of circumventing the conflict of interest compliance measures set out in this Part.

EXEMPT ASSETS

19. Assets and interests for the private use of public office holders and their families and assets that are not of a commercial character are not subject to the methods set out in section 16. Such assets, hereinafter referred to as "exempt assets", include:

- (a) residences, recreational property and farms used or intended for use by public office holders or their families;
- (b) household goods and personal effects;
- (c) works of art, antiques and collectibles;
- (d) automobiles and other personal means of transportation;
- (e) cash and deposits;
- (f) Canada Savings Bonds and other similar investments in securities of fixed value issued or guaranteed by any level of government in Canada or agencies of those governments;
- (g) registered retirement savings plans that are not self-administered;
- (h) registered home ownership savings plans;
- (i) investments in open-ended mutual funds;

- (j) guaranteed investment certificates and similar financial instruments;
- (k) annuities and life insurance policies;
- (l) pension rights;
- (m) money owed by a previous employer, client or partnership; and
- (n) personal loans receivable from the members of the public office holder's immediate family and small personal loans receivable from other persons where the public office holder has loaned the moneys receivable.

CONFLICT OF INTEREST COMPLIANCE MEASURES — CATEGORY "A" PUBLIC OFFICE HOLDERS

DUTIES OF THE ADRG

20.(1) Under the general direction of the Clerk of the Privy Council, the ADRG is charged with the administration of this Code and the application of the conflict of interest compliance measures set out in this Part as they apply to Category A public office holders.

(2) Information concerning the private interests of a Category A public office holder provided to the ADRG is confidential until a Public Declaration, if any, is made with respect to that information.

(3) It is the responsibility of the ADRG to ensure:

(a) that information provided under subsection (2) is placed in personal confidential files and in secure safekeeping; and

(b) that any information provided by Category A public office holders for a public purpose is placed in personal unclassified files in the Public Registry.

METHODS OF COMPLIANCE

21. Compliance with the conflict of interest compliance measures set out in this Part for Category A public office holders is achieved, as required by sections 24 to 35, by the following methods set out in section 16:

(a) Avoidance;

(b) Confidential Report;

(c) Public Declaration;

(d) Divestment.

PUBLIC EVIDENCE OF COMPLIANCE

22.(1) Once the arrangements made by a Category A public office holder to comply with the conflict of interest compliance measures set out in this Part are completed, a Summary Statement described in subsection (2) and any Public Declaration made pursuant to section 25, 32 and 35 shall be signed by the office holder and a certified copy of the Statement and any Public Declaration shall be placed in the Public Registry.

(2) The Category A public office holder referred to in subsection (1) shall, in the Summary Statement,

(a) state the methods of compliance used to comply with the conflict of interest compliance measures set out in this Part; and

(b) certify that he or she is fully cognizant of the compliance measures set out in Part III.

(3) All arrangements made by a Category A public office holder to comply with the conflict of interest compliance measures set out in this Part shall be approved:

- (a) in the case of Ministers of the Crown, by the Prime Minister; and
- (b) in the case of all other Category A public office holders, by the ADRG.

TIME LIMITS

23. Unless otherwise authorized by the ADRG, every Category A public office holder shall,

- (a) within 60 days after appointment, make a Confidential Report as required under sections 24 and 30;
- (b) within 120 days after appointment,
 - (i) make a Public Declaration pursuant to section 25 and as required under section 32,
 - (ii) divest controlled assets as required under section 27, and
 - (iii) sign a Public Declaration and a Summary Statement for placing in the Public Registry pursuant to section 22;
- (c) within 30 days after receipt of any gift, hospitality or other benefit, notify the ADRG as required under section 35; and
- (d) within 60 days after receipt of any gift, hospitality or other benefit, make a Public Declaration as required under section 35.

ASSETS AND LIABILITIES

Confidential Report

24. A Category A public office holder shall make a Confidential Report to the ADRG of all assets that are not exempt assets as described in section 19 and of all direct and contingent liabilities. Assets that are not exempt assets are either "declarable assets" or "controlled assets" unless, after a Confidential Report, the ADRG determines that they are of such minimal value that they do not constitute any risk of conflict of interest.

Declarable Assets

25.(1) A Category A public office holder may elect to make a Public Declaration of assets that are not controlled assets, as defined under section 26, in order to allow the office holder to deal with those assets, subject only to exercising vigilance to ensure that such dealings cannot give rise to a conflict of interest.

(2) Declarable assets include:

- (a) interests in family businesses and in companies that are of a local character, do not contract with the government, and do not own or control shares of public companies, other than incidentally, and whose stocks and shares are not traded publicly;
- (b) farms under commercial operation;

- (c) real property that is not an exempt asset as described in section 19; and
- (d) assets that are beneficially owned, that are not exempt assets as described in section 19, and that are administered at arm's length.

(3) Declarable assets that are not publicly declared pursuant to subsection (1) shall, for the purposes of section 27, be considered to be controlled assets and divested.

Controlled Assets

26.(1) For the purposes of this section and section 27, "controlled assets" means assets that could be directly or indirectly affected as to value by Government decisions or policy.

(2) Controlled assets, other than assets that are determined under section 24 to be of minimal value, shall be divested.

(3) Controlled assets include:

- (a) publicly traded securities of corporations and foreign governments;
- (b) self-administered Registered Retirement Savings Plans, except when exclusively composed of exempt assets as described in section 19; and
- (c) commodities, futures and foreign currencies held or traded for speculative purposes.

Divestment of Controlled Assets

27.(1) Subject to subsection (5), controlled assets are usually divested by selling them in an arm's length transaction or by making them subject to a trust arrangement, the most common of which are set out in the Schedule.

(2) Confirmation of sale and a copy of any executed trust instrument shall be filed with the ADRG. With the exception of a statement that a sale has taken place or that a trust exists, all information relating to the sale and the trust is confidential.

(3) For the purposes of this Code, trust arrangements shall be such that they do not leave in the hands of the Category A public office holder any power of management or decision over the assets placed in trust. The ADRG may serve as trustee of a frozen or retention trust but not of a blind trust.

(4) The ADRG has the responsibility for determining that a trust meets the requirements of this Code. Before a trust is executed or when a change from one trust option to another is contemplated a determination that the trust meets the requirements of this Code shall be obtained from the ADRG.

(5) Subject to the approval of the ADRG, a Category A public office holder is not required to divest controlled assets that are:

- (a) pledged to a lending institution as collateral;
- (b) of such value as to be practically non-marketable; or
- (c) lost or not available for disposition by the office holder.

(6) On the recommendation of the ADRG, a Category A public office holder may be reimbursed for trust costs incurred in an amount set out in the Schedule.

OUTSIDE ACTIVITIES

General

28. Category A public office holders' participation in activities outside their official duties and responsibilities is often in the public interest. Subject to sections 29 to 32, such participation is acceptable where it is not inconsistent with their official duties and responsibilities and does not call into question their capacity to perform their official duties and responsibilities objectively.

Prohibited Activities

29. Subject to section 31, Category A public office holders shall not, outside their official duties,

- (a) engage in the practice of a profession;
- (b) actively manage or operate a business or commercial activity;
- (c) retain or accept directorships or offices in a financial or commercial corporation;
- (d) hold office in a union or professional association; or
- (e) serve as a paid consultant.

Confidential Report of Outside Activities

30. Category A public office holders shall provide to the ADRG in a Confidential Report a listing of all their outside activities, including those in which they were engaged during the two year period before they assumed their official duties and responsibilities. That list shall include all involvements in activities of a philanthropic, charitable or non-commercial character and involvements as trustee, executor or under power of attorney.

31.(1) When the activities described in section 29 relate to the official duties and responsibilities of a Category A public office holder, the Category A public office holder may, in exceptional circumstances and with the approval required by subsection 22(3) become or remain involved in them, but may not accept remuneration for any activity, except as provided in subsection (3).

(2) A Category A public office holder may with the approval required by subsection 22(3) retain or accept directorships in organizations of a philanthropic, charitable or non-commercial character, but the office holder shall take great care to prevent conflict of interest from arising.

(3) Where the Prime Minister or a person designated by the Prime Minister is of the opinion that it is in the public interest, full-time Governor in Council appointees to Crown Corporations, as defined in the *Financial Administration Act*, may retain or accept directorships or offices in a financial or commercial corporation, and accept remuneration therefore, in accordance with compensation policies for Governor in Council appointees as determined from time to time.

Public Declaration of Outside Activities

32.(1) A Category A public office holder shall make a Public Declaration of the activities referred to in section 31 and of directorships and official positions listed in a confidential report under section 30.

(2) In co-operation with a Category A public office holder, the ADRG shall prepare the Public Declaration of outside activities to be made by that office holder.

GIFTS, HOSPITALITY AND OTHER BENEFITS

When Declined

33. Subject to section 34, gifts, hospitality or other benefits that could influence Category A public office holders in their judgment and performance of official duties and responsibilities shall be declined.

When Permissible

34.(1) Acceptance by Category A public office holders of offers of incidental gifts, hospitality or other benefits of nominal value arising out of activities associated with the performance of their official duties and responsibilities is not prohibited if such gifts, hospitality or other benefits:

- (a) are within the bounds of propriety, a normal expression of courtesy or protocol or within the normal standards of hospitality;
- (b) are not such as to bring suspicion on the office holder's objectivity and impartiality; and
- (c) would not compromise the integrity of the Government.

(2) Official gifts, hospitality and other benefits of nominal value received from governments or in connection with an official or public event are permitted, as are gifts, hospitality and other benefits from family members and close friends.

Public Declaration Required

35.(1) Notwithstanding section 34, where a Category A public office holder directly or indirectly receives any gift, hospitality or other benefit that has a value of \$200 or more, other than a gift, hospitality or other benefit from a family member or close friend, the Category A public office holder shall notify the ADRG and make a Public Declaration that provides sufficient detail to identify the gift, hospitality or other benefit received, the donor, and the circumstances.

(2) Where there is doubt as to the need for a Public Declaration or the appropriateness of accepting an offer of a gift, hospitality or other benefit, Category A public office holders shall consult the ADRG.

AVOIDANCE OF PREFERENTIAL TREATMENT

36.(1) A Category A public office holder shall not accord preferential treatment in relation to any official matter to family members or friends or to organizations in which they, family members or friends have an interest.

(2) A Category A public office holder shall take care to avoid being placed or the appearance of being placed under an obligation to any person or organization that might profit from special consideration on the part of the office holder.

FAILURE TO AGREE

37. Where a Category A public office holder and the ADRG disagree with respect to the appropriate arrangements necessary to achieve compliance with this Code, the appropriate arrangements shall be determined by the Prime Minister or by a person designated by the Prime Minister.

FAILURE TO COMPLY

38. Where a Category A public office holder does not comply with Parts I and II, the office holder is subject to such appropriate measures as may be determined by the designated authority, including, where applicable, discharge or termination of appointment.

SUBSEQUENT CHANGES

39. A Category A public office holder shall forthwith inform the ADRG of any changes in his or her assets, liabilities and outside activities that would be subject to a Confidential Report.

CONFLICT OF INTEREST COMPLIANCE MEASURES— CATEGORY “B” PUBLIC OFFICE HOLDERS

DUTIES OF THE DESIGNATED AUTHORITY

40. The designated authority may develop procedures and administrative arrangements for the implementation and administration of the conflict of interest compliance measures set out in this Part for Category B public office holders.

CONFIDENTIALITY

41. Information concerning the private interests of Category B public office holders provided to the designated official is confidential. It is the responsibility of the designated official to ensure that this information is placed in personal confidential files and in secure safekeeping.

METHODS OF COMPLIANCE

42. Compliance with the conflict of interest compliance measures set out in this Part for Category B public office holders is achieved, as required by sections 44 to 49, by the following methods set out in section 16:

- (a) Avoidance;
- (b) Confidential Report;
- (c) Divestment.

TIME LIMITS

43. Unless otherwise authorized by the designated official, every Category B public office holder shall:

- (a) within 60 days after appointment, make a Confidential Report as required under sections 44 and 47; and
- (b) within 120 days after appointment, divest assets as required under section 46.

ASSETS AND LIABILITIES

Confidential Report

44. A Category B public office holder shall make a Confidential Report to the designated official of all assets that are not exempt assets as described in section 19 and of all direct and contingent liabilities, where such assets and liabilities might give rise to a conflict of interest in respect of the office holder's official duties and responsibilities.

Assets and Liabilities Subject to Confidential Report

45. Assets and liabilities described under section 44 include:

- (a) publicly traded securities of corporations and foreign governments and self-administered Registered Retirement Savings Plans composed of such securities;
- (b) interests in partnerships, proprietorships, joint ventures, private companies and family businesses, in particular those that own or control shares of public companies or that do business with the Government;
- (c) farms under commercial operation;
- (d) real property that is not an exempt asset as described in section 19,
- (e) commodities, futures and foreign currencies held or traded for speculative purposes;
- (f) assets that are beneficially owned, that are not exempt assets as described in section 19 and that are administered at arm's length;
- (g) secured or unsecured loans granted to persons other than to members of the Category B public office holder's immediate family;
- (h) any other assets or liabilities that could give rise to a real or potential conflict of interest due to the particular nature of the Category B public office holder's duties and responsibilities; and
- (i) direct and contingent liabilities in respect of any of the assets described in this section.

Divestment of Assets

46.(1) A Category B public office holder shall divest assets where, following a Confidential Report, it is determined by the designated official that such assets constitute a real or potential conflict of interest. Such assets are usually divested either by selling them in an arm's length transaction or by making them subject to a trust arrangement, the most common of which are described in the Schedule.

(2) For the purposes of this Code, any trust arrangements shall be such that they do not leave in the hands of the Category B public office holder any power of management or decision over the assets placed in trust. The ADRG may serve as trustee of a frozen or retention trust but not of a blind trust.

(3) The ADRG has the responsibility for determining that a trust meets the requirements of this Code. Before a trust is executed or when a change from one trust option to another is contemplated, a determination that the trust meets the requirements of this Code shall be obtained from the ADRG.

(4) On the recommendation of the ADRG, the department of a Category B public office holder may reimburse the Category B public office holder for trust costs incurred in an amount set out in the Schedule.

OUTSIDE ACTIVITIES

47. Involvement in outside employment and other activities by Category B public office holders is not prohibited if such activities do not place on them demands inconsistent with their official duties and responsibilities or call into question their capacity to perform their

official duties and responsibilities objectively. It is the responsibility of a Category B public office holder to make a Confidential Report to the designated official of any outside activity in which the office holder is involved that is directly or indirectly related to the office holder's official duties and responsibilities. The designated official may require that such activity be curtailed, modified or cease when it has been determined that a real or potential conflict of interest exists.

GIFTS, HOSPITALITY AND OTHER BENEFITS

When Declined

48.(1) Subject to section 49, gifts, hospitality or other benefits that could influence Category B public office holders in their judgment and performance of official duties and responsibilities shall be declined.

(2) Acceptance, directly or indirectly, by Category B public office holders of any gifts, hospitality or other benefits not included under subsection 49(1) that are offered by persons, groups or organizations having dealings with the Government is not permitted.

When Permissible

49.(1) Acceptance by Category B public office holders of offers of incidental gifts, hospitality or other benefits of nominal value arising out of activities associated with the performance of their official duties and responsibilities is not prohibited if such gifts, hospitality or other benefits:

- (a) are within the bounds of propriety, a normal expression of courtesy or protocol or within the normal standards of hospitality;
- (b) are not such as to bring suspicion on the office holder's objectivity and impartiality; and
- (c) would not compromise the integrity of the Government.

(2) Where it is impossible to decline unauthorized gifts, hospitality or other benefits, Category B public office holders shall immediately report the matter to the designated official. The designated official may require that a gift of this nature be retained by the department or be disposed of for charitable purposes.

AVOIDANCE OF PREFERENTIAL TREATMENT

50.(1) A Category B public office holder shall not accord preferential treatment in relation to any official matter to family members or friends or to organizations in which the office holder, family members or friends have an interest.

(2) A Category B public office holder shall take care to avoid being placed or the appearance of being placed under an obligation to any person or organization that might profit from special consideration on the part of the Category B public office holder.

(3) A Category B public office holder shall seek the permission of his or her supervisor before offering assistance in dealing with the Government to any individual or entity where such assistance is outside the official role of that Category B public office holder.

FAILURE TO AGREE

51. Where a Category B public office holder and the designated official disagree with respect to the appropriate arrangements necessary to achieve compliance with this Code, the disagreement shall be resolved through grievance procedures that have been established for the Category B public office holder.

FAILURE TO COMPLY

52. Where a Category B public office holder does not comply with Parts I and II, the office holder is subject to such appropriate measures as may be determined by the designated authority, including, where applicable, discharge or termination of appointment.

SUBSEQUENT CHANGES

53. A Category B public office holder shall forthwith inform the designated official of any changes in his or her assets, liabilities and outside activities that would be subject to a Confidential Report.

Part III

COMPLIANCE MEASURES FOR FORMER PUBLIC OFFICE HOLDERS AND PUBLIC OFFICE HOLDERS ANTICIPATING DEPARTURE FROM PUBLIC OFFICE

INTERPRETATION

54. For the purposes of this Part,

“designated authority” means

- (a) the Prime Minister in the case of public office holders who are:
 - (i) Ministers of the Crown,
 - (ii) parliamentary secretaries,
 - (iii) full-time ministerial appointees,
 - (iv) members of ministerial exempt staff, designated by their Minister to be subject to this Part, and
 - (v) full-time Governor in Council appointees, other than commissioned officers of the Royal Canadian Mounted Police and heads of missions as defined in the *Department of External Affairs Act*;
- (b) the Treasury Board in the case of public office holders:
 - (i) who are employees of a department for whom the Treasury Board represents the Government as employer, and
 - (ii) heads of missions as defined in the *Department of External Affairs Act*;
- (c) the Minister of National Defence in the case of public office holders who are members of the Canadian Armed Forces; and
- (d) the Commissioner of the Royal Canadian Mounted Police in the case of public office holders who are members of the Royal Canadian Mounted Police. (autorité désignée)

“designated official” means:

- (a) in the case of a public office holder under paragraph (a) of the definition “designated authority”, the ADRG under the general direction of the Clerk of the Privy Council;

(b) in the case of a public office holder under paragraph (b) of the definition "designated authority", the deputy head of the public office holder's department or a person designated by the deputy head to administer the Code;

(c) in the case of a public office holder under paragraph (c) of the definition "designated authority", the Chief of the Defence Staff or a person designated by the Chief of the Defence Staff to administer the Code, and

(d) in the case of a public office holder under paragraph (d) of the definition "designated authority", the person designated by the Commissioner of the Royal Canadian Mounted Police to administer the Code. (administrateur désigné)

"public office holder" means:

(a) a Minister of the Crown;

(b) a parliamentary secretary;

(c) a full-time Governor in Council appointee, other than a Lieutenant-Governor of a province and a judge who receives a salary under the *Judges Act*;

(d) an employee of a department classified at a level of, or above, Senior Manager, or the equivalent, for whom Treasury Board represents the Government as employer;

(e) every member of ministerial exempt staff designated by their Minister to be subject to this Part;

(f) a full-time ministerial appointee designated by their Minister to be subject to this Part;

(g) every member of the Canadian Armed Forces at a rank of, or above, Colonel, or the equivalent;

(h) a Commissioned Officer of the Royal Canadian Mounted Police; and

(i) every incumbent in a position designated pursuant to section 55. (titulaire d'une charge publique)

DESIGNATED POSITIONS

55.(1) Where a position in a department in respect of whose employees Treasury Board represents the Government as employer is classified at a level below Senior Manager, or the equivalent, and involves duties and responsibilities that raise post-employment concerns with respect to the possibilities set out in section 57, the Treasury Board may, on the recommendation of the Minister responsible for the department, designate that position as being subject to this Part.

(2) Where a position in the Canadian Armed Forces that is classified at a rank below the rank of Colonel, or the equivalent, involves the duties and responsibilities described in subsection (1), the Minister of National Defence may designate that position as being subject to this Part.

(3) Where a position in the Royal Canadian Mounted Police that is classified at a rank below Commissioned Officer involves the duties and responsibilities described in subsection (1), the Solicitor General may designate that position as being subject to this Part.

EXCLUSION

56.(1) The Treasury Board may, on the recommendation of the Minister responsible for a department in respect of whose employees the Treasury Board represents the Government as employer, exclude positions or groups of positions in that department that are classified at a level of, or above, Senior Manager, or the equivalent, from the application of sections 59 and 60 if the positions or groups of positions meet the conditions set out in subsection (4).

(2) The Minister of National Defence may exclude positions or groups of positions in the Canadian Armed Forces that are classified at a rank of and above Colonel, or the equivalent, from the application of sections 59 and 60, if the positions or groups of positions meet the conditions set out in subsection (4).

(3) The Solicitor General may exclude positions or groups of positions that are classified at a rank of Commissioned Officer from the application of sections 59 and 60, if the positions or group of positions meet the conditions set out in subsection (4).

(4) Positions or groups of positions may be excluded under subsections (1) to (3) if the positions or groups of positions:

(a) do not involve duties and responsibilities that raise post-employment concerns with respect to the possibilities set out in section 57; or

(b) are occupied by persons with knowledge and skills that, in the public interest, should be transferred rapidly from the Government to private and other governmental sectors.

OBJECTS

57. Public office holders shall not act, after they leave public office, in such a manner as to take improper advantage of their previous public office. Observance of this Part will minimize the possibilities of:

(a) allowing prospects of outside employment to create a real, potential or apparent conflict of interest for public office holders while in public office;

(b) obtaining preferential treatment or privileged access to government after leaving public office;

(c) taking personal advantage of information obtained in the course of official duties and responsibilities until it has become generally available to the public; and

(d) using public office to unfair advantage in obtaining opportunities for outside employment.

COMPLIANCE MEASURES

Before Leaving Office

58.(1) Public office holders should not allow themselves to be influenced in the pursuit of their official duties and responsibilities by plans for or offers of outside employment.

(2) Subject to subsection (4), a public office holder shall disclose in writing to the designated official all firm offers of outside employment that could place the public office holder in a position of conflict of interest.

(3) Subject to subsection (4), a public office holder who accepts an offer of outside employment shall immediately disclose in writing to the designated official the acceptance of the offer. In such an event, where it is determined by the designated official that the public office holder is engaged in significant official dealings with the future employer, the public office holder shall be assigned to other duties and responsibilities as soon as possible. The period of time spent in public office following such an assignment shall be counted towards the limitation period on employment imposed under sections 60 and 61.

(4) Disclosure under subsections (2) and (3), shall be:

(a) in the case of Ministers of the Crown, to the Prime Minister;

(b) in the case of deputy heads, to a person designated by the Prime Minister;

(c) in the case of ministerial exempt staff, full-time ministerial appointees and full-time Governor in Council appointees other than those referred to in paragraph (b), to the appropriate Minister of the Crown; and

(d) in the case of parliamentary secretaries, to the Minister of the Crown whom the parliamentary secretary assists.

After Leaving Office

Prohibited Activities

59. At no time shall a former public office holder act for or on behalf of any person, commercial entity, association, or union in connection with any specific ongoing proceeding, transaction, negotiation or case to which the Government is a party:

(a) in respect of which the former public office holder acted for or advised a department; and

(b) which would result in the conferring of a benefit not for general application or of a purely commercial or private nature.

Limitation Period

60. Former public office holders, except for Ministers of the Crown for whom the prescribed period is two years, shall not, within a period of one year after leaving office,

(a) accept appointment to a board of directors of, or employment with, an entity with which they had significant official dealings during the period of one year immediately prior to the termination of their service in public office;

(b) make representations for or on behalf of any other person or entity to any department with which they had significant official dealings during the period of one year immediately prior to the termination of their service in public office; or

(c) give counsel, for the commercial purposes of the recipient of the counsel, concerning the programs or policies of the department with which they were employed, or with

which they had a direct and substantial relationship during the period of one year immediately prior to the termination of their service in public office.

Reduction of Limitation Period

61.(1) On application from a public office holder or former public office holder, the designated authority may reduce the limitation period on employment imposed under section 60.

(2) In deciding whether to reduce the limitation period on employment imposed under section 60, the designated authority shall consider the following factors:

(a) the circumstances under which the termination of their service in public office occurred;

(b) the general employment prospects of the public office holder or former public office holder making the application;

(c) the significance to the Government of information possessed by the public office holder or former public office holder by virtue of that office holder's public office;

(d) the desirability of a rapid transfer from the Government to private or other governmental sectors of the public office holder's or former public office holder's knowledge and skills;

(e) the degree to which the new employer might gain unfair commercial advantage by hiring the public office holder or former public office holder;

(f) the authority and influence possessed by the public office holder or former public office holder while in public office; and

(g) the disposition of other cases.

(3) Decisions made by the designated authority shall be provided in writing to the applicant under subsection (1) and to all departments affected by the decision.

ADVISORY PANELS

62. The designated authority may convene advisory panels to advise the designated authority on the application of the compliance measures set out in this Part in particular cases and to help a public office holder or former public office holder understand how the compliance measures set out in this Part apply to his or her particular case. Advisory panels shall respond without delay to any requests for advice.

EXIT ARRANGEMENTS

63. Prior to a public office holder's official separation from public office, the designated official shall, in order to facilitate the observance of the compliance measures set out in this Part, communicate with the public office holder to advise about post-employment requirements.

RECONSIDERATION

64. A public office holder or former public office holder may apply to the designated authority for reconsideration of any determination respecting that office holder's compliance with this Part or any decision respecting the reduction of the limitation period. On receipt of an application for reconsideration, the designated authority may convene an advisory panel to make recommendations respecting the reconsideration.

FAILURE TO COMPLY

65. Where a public office holder does not comply with the compliance measures set out in this Part, the office holder is subject to such appropriate measures as may be determined by the designated authority, including, where applicable, discharge or termination of appointment.

Part IV

COMPLIANCE MEASURES FOR EMPLOYEES OF CROWN CORPORATIONS AND FOR PUBLIC OFFICE HOLDERS AS DEFINED IN SECTION 2 WHO ARE NOT SUBJECT TO PART II OR PART III

CROWN CORPORATIONS

66. Crown corporations that are subject to Divisions I to IV of Part XII of the *Financial Administration Act* shall be subject to compliance measures established by, and in accordance with, the established practices of their own organization.

LIEUTENANT-GOVERNORS OF A PROVINCE

67. Such provisions of the conflict of interest compliance measures set out in Part II as may be relevant shall be brought to the attention of Lieutenant-Governors at the time of their appointment.

CANADIAN ARMED FORCES

68. Part I applies to members of the Canadian Armed Forces but in lieu of the conflict of interest compliance measures set out in Part II, members of the Canadian Armed Forces shall be governed in accordance with the Code of Service Discipline and any regulations and orders made pursuant to the *National Defence Act* respecting conflict of interest.

ROYAL CANADIAN MOUNTED POLICE

69. Part I applies to members of the Royal Canadian Mounted Police but in lieu of the conflict of interest compliance measures set out in Part II, members of the Royal Canadian Mounted Police shall be governed in accordance with the conflict of interest provisions of the *Royal Canadian Mounted Police Act* and the Commissioner's Standing Orders.

INTERCHANGE CANADA

70.(1) Before entering into an Interchange Canada agreement to accept a person on assignment, the parties to the agreement shall satisfy themselves that there is no risk of conflict of interest or that the risk of conflict of interest is not significant. If the parties determine that the risk of conflict of interest is significant, the parties shall make such provisions as are necessary to prevent the conflict of interest from arising.

(2) Persons entering public office on an Interchange Canada assignment shall not act, after they leave such office, in such a manner as to take improper advantage of that office.

BOARDS, COMMISSIONS AND OTHER TRIBUNALS

71.(1) Officers, directors and employees of any federal board, commission or other tribunal as defined in the *Federal Court Act* shall be subject to the compliance measures established by their own board, commission or other tribunal.

(2) Federal boards, commissions and other tribunals as defined in the *Federal Court Act* shall establish, in consultation with the ADRG, written compliance measures that shall be adopted within one year of the coming into force of the Code and published in the first annual report of the board, commission or tribunal following the adoption of the compliance measures.

SEPARATE EMPLOYERS

72.(1) Part II in respect of Category B public office holders applies, with such modifications as the circumstances require, to the employees of a separate employer as defined in the *Public Service Staff Relations Act*, with the exception that the designated authority for such employees is the Chief Executive Officer, or the equivalent, of the separate employer.

(2) Part III applies, with such modifications as the circumstances require, to the employees of a separate employer as defined in the *Public Service Staff Relations Act* who are classified at a level of, or above, the equivalent of Senior Manager, with the exception that the designated authority for such employees is the Chief Executive Officer, or the equivalent, of the separate employer.

Part V

TRANSITION

73. Where a person has been appointed to hold office during good behaviour prior to the coming into force of this Code, adherence to the compliance measures set out in this Code is voluntary unless the public office holder is reappointed after the coming into force of this Code.

74. Where a Category A public office holder, Category B public office holder as defined in subsection 2(2) or a public office holder as defined in section 54 was, immediately prior to the coming into force of this Code, subject to any conflict of interest guidelines or post-employment guidelines of the Government, the public office holder shall continue to be subject to those guidelines, in lieu of this Code, until a review of his or her compliance arrangements under this Code is completed by the designated official. The designated official shall complete the review of those compliance arrangements within one year after the date that the public office holder signs a document pursuant to subsection 8(2).

Schedule

TRUSTS

1. The following trusts are examples of the most common trusts that may be established by public office holders for the purpose of divestment under the Code:

a) *BLIND TRUST*

A blind trust is one in which the trustee makes all investment decisions concerning the management of the trust assets with no direction from or control by the public office holder who has placed the assets in trust.

No information is provided to the public office holder (settlor) except information that is required by law to be filed. A public office holder who establishes a blind trust may receive any income earned by the trust, add or withdraw capital funds, and be informed of the aggregate value of the entrusted assets.

b) *FROZEN TRUST*

A frozen trust is one in which the trustee maintains the holdings essentially as they were when the trust was established. Public office holders who establish a frozen trust are entitled to any income earned by the trust.

Assets requiring active decision making by the trustee (such as convertible securities and real estate) or assets easily affected by Government action are not considered suitable for a frozen trust.

c) *RETENTION TRUST*

A retention trust is one in which the trustee maintains rights in holding companies, established for estate planning purposes, essentially as they were when the trust was established. The settlor makes arrangements to have third parties exercise his or her voting rights in relation to the shares in the holding company as long as such arrangements will not result in a conflict of interest. Retention trusts usually do not generate income for the settlor.

This form of divestment is useful for a public office holder who has assets to be held under special proper management through a holding company for estate planning purposes.

PROVISIONS COMMON TO ALL TRUSTS

2. Provisions common to all trusts are:

(a) Custody of the Assets:

The assets to be placed in trust must vest in the trustee.

(b) Power of Management or Control:

The public office holder (settlor) may not have any power of management or control over trust assets. The trustee, likewise, may not seek or accept any instruction or advice from the public office holder concerning the management or the administration of the assets.

(c) Schedule of Assets:

The assets placed in trust shall be listed on a schedule attached to the trust agreement.

(d) Duration of Trust:

The term of any trust is to be for as long as the public office holder who establishes the trust continues to hold an office that makes that method of divestment appropriate. A trust may be dismantled once the trust assets have been depleted.

(e) Return of Trust Assets:

Whenever a trust agreement is dismantled, the trustee shall deliver the trust assets to the public office holder.

TRUSTEES

3. Care must be exercised in selecting trustees for each type of trust arrangement. If a single trustee, other than the ADRG, is appointed, the trustee should be:

(a) a public trustee;

(b) a company, such as a trust company or investment company, that is public and known to be qualified in performing the duties of a trustee; or

(c) an individual who performs trustee duties in the normal course of his or her work.

4. If a single trustee is appointed he or she shall clearly be at arm's length from the public office holder.

5. If more than one trustee is selected, at least one of them shall be a public trustee or a company at arm's length from the public office holder.

TRUST INDENTURE

6. Acceptable blind, frozen and retention trust indentures are available from the ADRG. Any amendments to such trust indenture shall be submitted to the ADRG before it is executed.

FILING OF TRUST DOCUMENTS

7. Under the trust options available, public office holders are required to file with the ADRG a copy of any trust instrument. Except for the fact that a trust exists, detailed trust information will be kept in the public office holder's confidential file and will not be made available to anyone for any purpose.

REIMBURSEMENT FOR COSTS INCURRED

8. On the recommendation of the ADRG, the following reimbursements for costs of trusts established to comply with the Conflict of Interest Compliance Measures set out in this Code may be permitted:

- (a) reasonable legal, accounting and transfer costs to establish the trust;
- (b) reasonable legal, accounting and transfer costs to dismantle the trust; and
- (c) annual, actual and reasonable costs to maintain and administer the trust, as follows:
 - (i) up to a maximum of \$500 for a portfolio with a market value of \$100,000 or less, or
 - (ii) up to a maximum of \$5,000 for a portfolio with a market value over \$100,000, 1/2 of 1% on the first \$400,000 and 1/4 of 1% on the remaining value.

The public office holder is responsible for any income tax adjustment that may result from the reimbursement of trust costs.



**Code régissant la conduite
des titulaires de charge publique
en ce qui concerne
les conflits d'intérêts
et l'après-mandat**

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CODE RÉGISSANT LA CONDUITE DES TITULAIRES DE CHARGE PUBLIQUE EN CE QUI CONCERNE LES CONFLITS D'INTÉRÊTS ET L'APRÈS-MANDAT

Titre abrégé

1. Code régissant les conflits d'intérêts.

Partie I

DÉFINITIONS ET APPLICATION

2.(1) Les définitions qui suivent s'appliquent au présent code.

«ministère» S'entend au sens de la *Loi sur l'administration financière*. Sont exclus de la présente définition le personnel du Sénat, celui de la Chambre des communes et celui de la Bibliothèque du Parlement. (department)

«personnel soustrait d'un ministre» Le personnel du cabinet d'un ministre. (ministerial exempt staff)

«SRGA» Le sous-registraire général adjoint. (ADRG)

(2) La définition qui suit s'applique à la présente partie.

«titulaire d'une charge publique» Mandataire ou employé de Sa Majesté du chef du Canada. Sont comprises dans la présente définition les personnes suivantes:

- a) les ministres;
- b) les secrétaires parlementaires;
- c) les membres du personnel soustrait d'un ministre;
- d) les personnes nommées par un ministre;
- e) les personnes nommées par le gouverneur en conseil, à l'exception des juges qui touchent un traitement en vertu de la *Loi sur les juges*;
- f) les employés d'un ministère;
- g) les employés d'un employeur distinct, au sens de la *Loi sur les relations de travail dans la Fonction publique*;
- h) les fonctionnaires, les commis et les employés d'un office, d'une commission ou d'un autre tribunal fédéral, au sens de la *Loi sur la Cour fédérale*;
- i) les officiers et les membres sans brevet d'officier des Forces armées canadiennes;
- j) les membres de la Gendarmerie royale du Canada. (public office holder)

3. Le présent code ne s'applique pas au personnel du Sénat, de la Chambre des communes et de la Bibliothèque du Parlement et aux personnes détenant les charges suivantes:

- a) le greffier du Sénat et greffier des parlements;
- b) le légiste et conseiller parlementaire du Sénat;
- c) le greffier adjoint du Sénat;
- d) le gentilhomme huissier de la verge noire;
- e) le greffier de la Chambre des communes;
- f) les greffiers adjoints de la Chambre des communes;
- g) le sergent d'armes;
- h) le légiste et conseiller parlementaire de la Chambre des communes;
- i) le bibliothécaire parlementaire;
- j) le bibliothécaire parlementaire associé.

OBJET

4. Le présent code a pour objet d'accroître la confiance du public dans l'intégrité des titulaires de charge publique et dans l'administration publique fédérale,

- a) tout en encourageant les personnes qui possèdent l'expérience et les compétences requises à solliciter et à accepter une charge publique;
- b) tout en facilitant les échanges entre les secteurs privé et public;
- c) en établissant à l'intention des titulaires de charge publique des règles de conduite claires au sujet des conflits d'intérêts et de l'après-mandat; et
- d) en réduisant au minimum les possibilités de conflit entre les intérêts personnels des titulaires de charge publique et leurs fonctions officielles, et en prévoyant les moyens de régler de tels conflits, le cas échéant, dans l'intérêt public.

APPLICATION

5.(1) Le présent code contient des indications générales et des directives précises visant à aider les titulaires de charge publique à se conformer aux principes énoncés à l'article 7,

(2) Le respect du présent code ne dispense en aucune manière les titulaires de charge publique de l'obligation de prendre les dispositions supplémentaires qui s'imposent pour éviter les conflits d'intérêts réels, potentiels ou apparents.

(3) Le respect du présent code ne dispense en aucune manière les titulaires de charge publique de l'obligation de se conformer aux lignes de conduite prescrites dans les lois qui régissent leur ministère ou leur bureau ainsi qu'aux dispositions pertinentes des lois de portée plus générale, telles que le *Code criminel*, la *Loi canadienne sur les droits de la personne*, la *Loi sur la protection des renseignements personnels*, la *Loi sur l'administration financière* et la *Loi sur l'emploi dans la Fonction publique*.

6.(1) Aucune disposition du présent code ne doit être interprétée de manière à gêner les ministres et les secrétaires parlementaires dans l'exercice de leurs fonctions en tant que membres du Sénat ou de la Chambre des communes.

(2) Le respect du présent code ne dispense pas les ministres et les secrétaires parlementaires de l'obligation de se conformer à la fois au code, au Règlement du Sénat ou de la Chambre des communes et aux dispositions de la *Loi sur le Sénat et la Chambre des communes* qui ont trait aux conflits d'intérêts.

PRINCIPES

7. Le titulaire d'une charge publique doit se conformer aux principes suivants:

- a) il doit exercer ses fonctions officielles et organiser ses affaires personnelles de façon à préserver et à faire accroître la confiance du public dans l'intégrité, l'objectivité et l'impartialité du gouvernement;
- b) il doit avoir une conduite si irréprochable qu'elle puisse résister à l'examen public le plus minutieux; pour s'acquitter de cette obligation, il ne lui suffit pas simplement d'observer la loi;
- c) il ne doit pas conserver d'intérêts personnels, autres que ceux autorisés par le présent code, sur lesquels les activités gouvernementales auxquelles il participe pourraient avoir une influence quelconque;
- d) dès sa nomination, il doit organiser ses affaires personnelles de manière à éviter les conflits d'intérêts réels, potentiels ou apparents; l'intérêt public doit toujours prévaloir dans les cas où les intérêts du titulaire entrent en conflit avec ses fonctions officielles;
- e) mis à part les cadeaux, les marques d'hospitalité et les autres avantages d'une valeur minime, il lui est interdit de solliciter ou d'accepter les transferts de valeurs économiques, sauf s'il s'agit de transferts résultant d'un contrat exécutoire ou d'un droit de propriété;
- f) il lui est interdit d'outrepasser ses fonctions officielles pour venir en aide à des personnes, physiques ou morales, dans leurs rapports avec le gouvernement, lorsque cela peut donner lieu à un traitement de faveur;
- g) il lui est interdit d'utiliser à son propre avantage ou bénéfice des renseignements obtenus dans l'exercice de ses fonctions officielles et qui, de façon générale, ne sont pas accessibles au public;
- h) il lui est interdit d'utiliser directement ou indirectement les biens du gouvernement, y compris les biens loués, ou d'en permettre l'usage à des fins autres que les activités officiellement approuvées; et
- i) à l'expiration de son mandat, il a le devoir de ne pas tirer un avantage indu de la charge publique qu'il a occupée.

COMMUNICATION

Attestation

8.(1) Avant ou au moment d'assumer leurs fonctions officielles, le titulaire d'une charge publique de la catégorie A et le titulaire d'une charge publique de la catégorie B, au sens de l'article 14, ainsi que le titulaire d'une charge publique au sens de l'article 54, doivent signer un document attestant qu'ils ont lu et compris le présent code et qu'ils s'engagent à l'observer pour demeurer en fonction.

(2) Le titulaire d'une charge publique de la catégorie A et le titulaire d'une charge publique de la catégorie B au sens de l'article 14, ainsi que le titulaire d'une charge publique au sens de l'article 54, doivent signer dans les 120 jours qui suivent l'entrée en vigueur du présent code, le document visé au paragraphe (1).

Revue annuelle

9. Le titulaire d'une charge publique de la catégorie A et le titulaire d'une charge publique de la catégorie B au sens de l'article 14, ainsi que le titulaire d'une charge publique au sens de l'article 54, doivent revoir au moins une fois l'an les obligations que leur impose le présent code.

Contrats

10.(1) Le titulaire d'une charge publique de la catégorie A et le titulaire d'une charge publique de la catégorie B au sens de l'article 14 sont tenus de prévoir, dans les contrats de services personnels qu'ils concluent, des dispositions appropriées concernant l'observation du présent code, conformes aux directives émises par le Conseil du Trésor.

(2) Le titulaire d'une charge publique de la catégorie A et le titulaire d'une charge publique de la catégorie B au sens de l'article 14 qui négocient un contrat pour le compte du gouvernement doivent s'assurer que le contrat prévoit des dispositions, conformes aux directives émises par le Conseil du Trésor, interdisant à tout ancien titulaire d'une charge publique au sens de l'article 54, qui déroge aux mesures d'observation exposées à la partie III, de tirer profit du contrat.

Éducation et centre de ressources

11.(1) De concert avec le secrétaire du Conseil du Trésor, le SRGA doit établir, à l'intention des titulaires de charge publique et du public en général, des documents d'information et d'éducation concernant le présent code. Il doit également prendre les dispositions nécessaires pour la conception et la mise en oeuvre d'un programme de formation destiné aux titulaires de charge publique et portant sur leur comportement quant aux conflits d'intérêts et à l'après-mandat, afin de promouvoir l'observation du présent code.

(2) Le SRGA doit établir un centre de ressources rassemblant des imprimés, des films, des bandes magnétoscopiques et d'autre matériel concernant les conflits d'intérêts, le comportement durant l'après-mandat et d'autres questions d'éthique pouvant intéresser les titulaires de charge publique et le gouvernement.

MESURES D'OBSERVATION SUPPLÉMENTAIRES

12.(1) Le sous-chef d'un ministère auprès duquel le Conseil du Trésor représente le gouvernement en tant qu'employeur peut ajouter aux mesures d'observation figurant aux parties II ou III des procédures et des directives supplémentaires

- a) qui tiennent compte des responsabilités uniques ou spéciales du ministère ayant trait aux conflits d'intérêts et à l'après-mandat; et
- b) qui traduisent toute exigence spéciale concernant le comportement ou les intérêts des employés, que prévoient les lois régissant les activités du ministère.

(2) Les procédures et les directives visées au paragraphe (1) sont soumises à l'approbation du Conseil du Trésor.

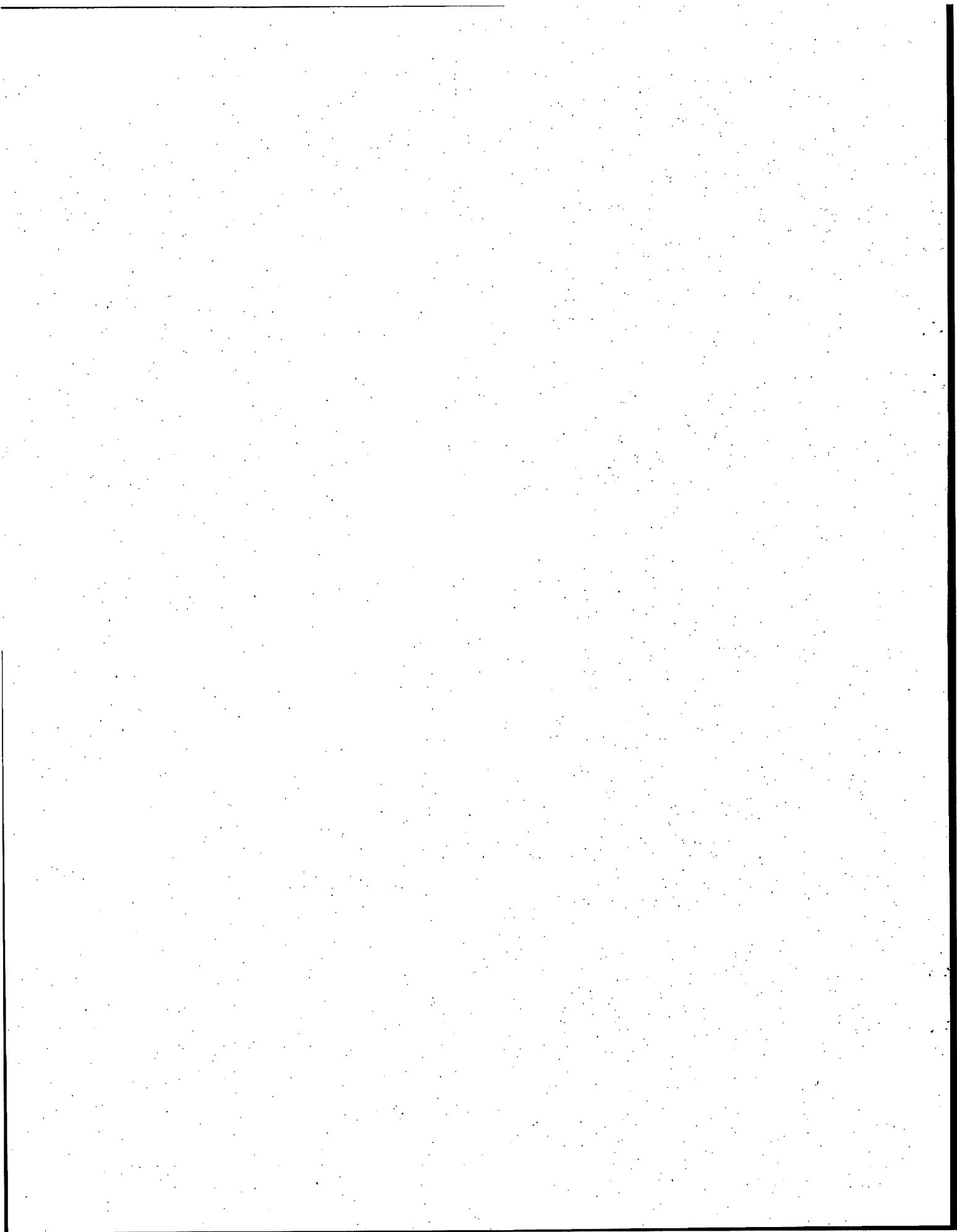
RELATIONS AVEC LES ANCIENS TITULAIRES DE CHARGE PUBLIQUE

Obligation de faire rapport

13.(1) Le titulaire d'une charge publique de la catégorie A et le titulaire d'une charge publique de la catégorie B au sens de l'article 14, qui entretiennent des relations officielles avec un ancien titulaire d'une charge publique au sens de l'article 54 qui est ou pourrait être soumis aux mesures énoncées à la Partie III, sont tenus d'en faire rapport à l'administrateur désigné au sens de l'article 14, sauf s'il s'agit de services assurés couramment au public.

(2) Sur réception du rapport prévu au paragraphe (1), l'administrateur désigné au sens de l'article 14 vérifie sans délai si l'ancien titulaire d'une charge publique, au sens de l'article 54, s'est conformé aux mesures d'observation énoncées à la partie III.

(3) Le titulaire d'une charge publique de la catégorie A et le titulaire d'une charge publique de la catégorie B au sens de l'article 14 doivent s'abstenir d'avoir, dans le cadre d'une transaction, des relations officielles avec un ancien titulaire d'une charge publique, au sens de l'article 54, s'il est établi selon le paragraphe (2) que celui-ci ne se conforme pas pour cette transaction aux mesures d'observation énoncées à la partie III.



Partie II

MESURES D'OBSERVATION RÉGISSANT LES CONFLITS D'INTÉRÊTS

DISPOSITIONS GÉNÉRALES

DÉFINITIONS

14. Les définitions qui suivent s'appliquent à la présente partie et à l'annexe.

«Registre public» Registre tenu par le SRGA et dans lequel les documents publics sont versés pour examen par le public. (*Public Registry*)

«titulaire d'une charge publique» Le titulaire d'une charge publique de la catégorie A ou le titulaire d'une charge publique de la catégorie B. (public office holder)

«administrateur désigné»

a) Le SRGA, dans le cas d'un titulaire d'une charge publique de la catégorie A ou d'un titulaire d'une charge publique visé à l'alinéa c) de la définition de «titulaire d'une charge publique de la catégorie B»;

b) le sous-chef du ministère, dans le cas d'un titulaire d'une charge publique visé aux alinéas a) et b) de la définition de «titulaire d'une charge publique de la catégorie B». (designated official)

«autorité désignée»

a) Le Premier ministre, dans le cas d'un titulaire d'une charge publique de la catégorie A ou d'un titulaire d'une charge publique visé à l'alinéa c) de la définition de «titulaire d'une charge publique de la catégorie B»;

b) le Conseil du Trésor, dans le cas d'un titulaire d'une charge publique visé aux alinéas a) ou b) de la définition de «titulaire d'une charge publique de la catégorie B». (designated authority)

«titulaire d'une charge publique de la catégorie A»

a) Ministre;

b) Secrétaire parlementaire désigné titulaire d'une charge publique de la catégorie A par le ministre auprès duquel il est affecté;

c) cadre supérieur du personnel soustrait d'un ministre ou tout autre membre de ce personnel que le ministre désigne titulaire d'une charge publique de la catégorie A;

d) sous réserve de l'article 3, personne nommée à une charge à plein temps par le gouverneur en conseil, à l'exception:

- (i) du lieutenant-gouverneur d'une province,
- (ii) d'un chef de mission au sens de la *Loi sur le ministère des Affaires extérieures*,
- (iii) d'un juge qui touche un traitement en vertu de la *Loi sur les juges*,
- (iv) d'un officier, autre que le commissaire, de la Gendarmerie royale du Canada;
- e) personne nommée à une charge à plein temps par un ministre et désignée par lui comme titulaire d'une charge publique de la catégorie A. (Category A public office holder)

«titulaire d'une charge publique de la catégorie B»

- a) employé d'un ministère auprès duquel le Conseil du Trésor représente le gouvernement en tant qu'employeur;
- b) chef de mission au sens de la *Loi sur le ministère des Affaires extérieures*;
- c) membre du personnel soustrait d'un ministre ou toute personne nommée à une charge à plein temps par un ministre mais non désignée titulaire d'une charge publique de la catégorie A. (Category B public office holder)

OBJET

15. La présente partie énonce les procédures et les modalités administratives que le titulaire d'une charge publique est tenu d'observer afin de réduire au minimum les risques de conflits d'intérêts et de permettre le règlement, dans l'intérêt public, de tout conflit d'intérêts qui pourrait se produire.

MÉTHODES D'APPLICATION

16. Les méthodes suivantes permettent au titulaire d'une charge publique de se conformer aux exigences de la présente partie:

- a) la prévention, qui consiste à éviter les activités ou les situations qui placent le titulaire dans une situation de conflit d'intérêts réel, potentiel ou apparent, compte tenu de ses fonctions officielles;
- b) le rapport confidentiel, qui est une déclaration écrite dans laquelle le titulaire fait connaître à l'administrateur désigné les biens qu'il possède, les cadeaux, les marques d'hospitalité ou autres avantages qu'il a reçus ou les emplois ou activités qu'il exerce à l'extérieur. L'administrateur désigné ne doit pas divulguer le contenu du rapport confidentiel.

Lorsque le titulaire d'une charge publique exerce ses fonctions sous l'autorité d'un supérieur, il suffit habituellement qu'il présente le rapport confidentiel précité pour se conformer aux mesures énoncées dans la présente partie. Lorsque le rapport confidentiel n'est pas jugé suffisant pour l'observation de ces mesures, il est suivi d'une déclaration publique, de l'abandon des activités ou d'un dessaisissement;

- c) la déclaration publique, qui est une déclaration écrite dans laquelle le titulaire énumère les biens qu'il possède, les cadeaux, les marques d'hospitalité ou autres

avantages qu'il a reçus, de même que ses emplois ou activités à l'extérieur, si ces biens, avantages, emplois ou activités risquent de donner lieu à un conflit d'intérêts ou de l'empêcher de s'acquitter en toute objectivité de ses fonctions officielles;

d) le dessaisissement, qui consiste pour le titulaire à vendre à un tiers avec qui il n'a aucun lien de dépendance ou à mettre en fiducie les biens qu'il possède et qui risquent de susciter un conflit d'intérêts réel ou potentiel avec ses fonctions officielles. Les exigences relatives au dessaisissement dépendent des responsabilités du titulaire. Plus celles-ci sont grandes, plus le dessaisissement sera étendu. Par contre, plus les responsabilités sont restreintes, plus la portée du dessaisissement sera limitée.

17. En cas de doute quant aux méthodes visées à l'article 16 qu'il convient de choisir pour se conformer aux mesures énoncées dans la présente partie, le titulaire d'une charge publique consulte l'administrateur désigné qui tentera d'en arriver à un accord avec lui quant au choix des méthodes d'application, en tenant compte:

- a) des responsabilités précises du titulaire;
- b) de la valeur et de la nature des biens et intérêts en cause; et
- c) des frais réels que comporte le dessaisissement des biens et intérêts, en regard des risques de conflit d'intérêts que présentent les biens et intérêts en cause.

INTERDICTION DE VENDRE DES BIENS POUR CONTOURNER LES MESURES D'OBSERVATION

18. Le titulaire d'une charge publique ne peut vendre ni transférer des biens aux membres de sa famille ni à d'autres personnes dans le but de contourner les mesures d'observation énoncées dans la présente partie.

BIENS EXEMPTÉS

19. Les biens et les intérêts à l'usage personnel du titulaire d'une charge publique et de sa famille ainsi que les biens de nature non commerciale ne sont pas visés par les méthodes d'application prévues à l'article 16. Désignés ci-après «biens exemptés», ces biens comprennent:

- a) le domicile principal ou secondaire et les propriétés agricoles réservés à l'usage personnel présent et futur du titulaire ou de sa famille;
- b) les articles ménagers et les effets personnels;
- c) les oeuvres d'art, les meubles et objets anciens et les objets de collection;
- d) les automobiles et autres moyens personnels de transport;
- e) les liquidités et les dépôts;
- f) les obligations d'épargne du Canada et autres titres à valeur fixe émis ou garantis par un ordre de gouvernement au Canada ou par des organismes de celui-ci;
- g) les régimes enregistrés d'épargne-retraite qui ne sont pas autogérés;
- h) les régimes enregistrés d'épargne-logement;

- i) les investissements dans des sociétés d'investissement à capital variable;
- j) les certificats de placements garantis et les instruments financiers du même genre;
- k) les rentes et les polices d'assurance-vie;
- l) les droits à des pensions;
- m) les créances à recouvrer d'un ancien employeur, client ou associé;
- n) les prêts personnels consentis par le titulaire aux membres de sa famille immédiate et les petits prêts personnels consentis à d'autres personnes.

MESURES D'OBSERVATION RÉGISSANT LES CONFLITS D'INTÉRÊTS S'APPLIQUANT AUX TITULAIRES DE CHARGE PUBLIQUE DE LA CATÉGORIE «A»

FONCTIONS DU SRGA

20.(1) Sous la direction générale du greffier du Conseil privé, le SRGA est chargé de l'administration du présent code et de l'application des mesures d'observation que prévoit la présente partie pour les titulaires de charge publique de la catégorie A.

(2) Les renseignements fournis au SRGA concernant les intérêts personnels du titulaire d'une charge publique de la catégorie A demeurent confidentiels tant qu'une déclaration publique n'a pas été faite à l'égard de ces renseignements.

(3) Il incombe au SRGA de s'assurer:

- a) que les renseignements visés au paragraphe (2) sont conservés en toute sécurité dans le dossier confidentiel et personnel de l'intéressé; et
- b) que les renseignements destinés au public qui sont fournis par le titulaire d'une charge publique de la catégorie A sont versés dans un dossier personnel non classifié, conservé dans le Registre public.

MÉTHODES D'APPLICATION

21. Le titulaire d'une charge publique de la catégorie A applique, pour observer conformément aux articles 24 à 35 les mesures énoncées dans la présente partie, les méthodes mentionnées à l'article 16, soit:

- a) la prévention;
- b) le rapport confidentiel;
- c) la déclaration publique;
- d) le dessaisissement.

PREUVE PUBLIQUE D'OBSERVATION

22.(1) Une fois que le titulaire d'une charge publique de la catégorie A a pris des dispositions pour se conformer aux mesures d'observation énoncées dans la présente partie, il signe la déclaration sommaire prévue au paragraphe (2) et les déclarations publiques visées aux articles 25, 32 et 35, dont une copie certifiée conforme est versée au Registre public.

(2) Dans sa déclaration sommaire, le titulaire d'une charge publique de la catégorie A:

- a) indique les méthodes qu'il a appliquées pour se conformer aux mesures d'observation énoncées dans la présente partie;
- b) atteste qu'il a pris connaissance des mesures d'observation énoncées dans la partie III.

(3) Les dispositions prises par le titulaire d'une charge publique de la catégorie A pour se conformer aux mesures d'observation énoncées dans la présente partie doivent être approuvées

- a) par le Premier ministre, dans le cas des ministres;
- b) par le SRGA, dans le cas des autres titulaires de charge publique de la catégorie A.

DÉLAIS

23. À moins d'avoir obtenu une autorisation spéciale du SRGA, le titulaire d'une charge publique de la catégorie A doit

- a) dans les 60 jours qui suivent sa nomination, présenter le rapport confidentiel visé aux articles 24 et 30;
- b) dans les 120 jours qui suivent sa nomination:
 - (i) faire les déclarations publiques visées aux articles 25 et 32,
 - (ii) se dessaisir des biens contrôlés, conformément à l'article 27, et
 - (iii) signer les déclarations publiques requises et la déclaration sommaire, lesquelles sont versées au Registre public conformément à l'article 22;
- c) dans les 30 jours suivant la réception d'un cadeau, d'une marque d'hospitalité ou de tout autre avantage, en informer le SRGA conformément à l'article 35; et
- d) dans les 60 jours suivant la réception d'un cadeau, d'une marque d'hospitalité ou de tout autre avantage, faire une déclaration publique conformément à l'article 35.

BIENS ET EXIGIBILITÉS

Rapport confidentiel

24. Le titulaire d'une charge publique de la catégorie A doit présenter au SRGA un rapport confidentiel indiquant tous les biens lui appartenant qui ne font pas partie des biens exemptés visés à l'article 19, ainsi que tous ses engagements et ses exigibilités directes. Les biens qui ne sont pas des biens exemptés sont soit des «biens pouvant être déclarés», soit des «biens contrôlés», sauf si le SRGA, après avoir pris connaissance du rapport confidentiel, considère que leur valeur est si minime qu'ils ne risquent pas de donner lieu à un conflit d'intérêts.

Biens pouvant être déclarés

25.(1) Le titulaire d'une charge publique de la catégorie A peut choisir de faire une déclaration publique concernant les biens qui ne sont pas des biens contrôlés au sens de l'article 26, auquel cas il peut gérer lui-même ces biens à la condition de faire preuve de vigilance et de veiller à ce que les transactions qu'il effectue ne donnent pas lieu à un conflit d'intérêts.

(2) Les biens pouvant être déclarés comprennent les suivants:

- a) les intérêts dans une entreprise familiale et dans une société locale qui ne passe pas

de contrats avec le gouvernement, qui ne possède ni ne contrôle des titres de sociétés publiques, sauf accessoirement, et dont les actions ne sont pas cotées en bourse;

b) les propriétés agricoles exploitées à des fins commerciales;

c) les biens immobiliers qui ne font pas partie des biens exemptés visés à l'article 19; et

d) les biens dont il est le véritable propriétaire, qui ne font pas partie des biens exemptés visés à l'article 19 et dont la gestion est libre de tout lien de dépendance.

(3) Pour l'application de l'article 27, les biens pouvant être déclarés qui ne font pas l'objet d'une déclaration publique selon le paragraphe (1) sont réputés être des biens contrôlés et doivent faire l'objet d'un dessaisissement.

Biens contrôlés

26.(1) Aux fins du présent article et de l'article 27, les «biens contrôlés» sont ceux dont la valeur peut être influencée directement ou indirectement par les décisions ou les politiques du gouvernement.

(2) Les biens contrôlés, autres que ceux dont la valeur est jugée minime selon l'article 24, doivent faire l'objet d'un dessaisissement.

(3) Les biens contrôlés comprennent:

a) les valeurs cotées en bourse de sociétés ou de gouvernements étrangers;

b) les régimes enregistrés d'épargne-retraite autogérés, sauf ceux qui sont composés exclusivement de biens exemptés visés à l'article 19; et

c) les marchandises, les marchés à terme et les devises étrangères détenus ou négociés à des fins de spéculation.

Dessaisissement des biens contrôlés

27.(1) Sous réserve du paragraphe (5), le dessaisissement des biens contrôlés se fait habituellement par la vente à un tiers avec qui l'intéressé n'a pas de lien de dépendance ou par leur dépôt dans une fiducie dont les plus courantes sont décrites à l'annexe.

(2) Une confirmation de la vente ou une copie de l'acte de fiducie doit être remise au SRGA. À l'exception de la déclaration confirmant la vente ou la création de la fiducie, tous les renseignements concernant la vente ou la fiducie demeurent confidentiels.

(3) Pour l'application du présent code, les conditions du contrat de fiducie doivent être libellées de manière à ne laisser au titulaire d'une charge publique de la catégorie A aucun pouvoir de gestion ou de décision sur les biens placés en fiducie. Le SRGA peut agir à titre de fiduciaire pour une fiducie en compte bloqué ou une fiducie de conservation, mais non pour une fiducie sans droit de regard.

(4) Il incombe au SRGA de déterminer si la fiducie répond aux exigences du présent code. Le SRGA doit être consulté à cette fin avant que la fiducie soit établie ou lorsqu'un changement de type de fiducie est envisagé.

(5) Sous réserve de l'approbation du SRGA, le titulaire d'une charge publique de la catégorie A n'est pas tenu de se dessaisir des biens contrôlés qui:

- a) servent déjà à garantir des prêts consentis par des institutions de crédit;
- b) ont une valeur si minime qu'ils sont en réalité non négociables; ou
- c) sont perdus ou ne peuvent pas faire l'objet d'un dessaisissement.

(6) Sur la recommandation du SRGA, le titulaire d'une charge publique de la catégorie A peut se faire rembourser les frais de fiducie ne dépassant pas les montants prévus à l'annexe.

ACTIVITÉS EXTÉRIEURES

Dispositions générales

28. La participation du titulaire d'une charge publique de la catégorie A à des activités non liées à ses fonctions officielles sert souvent l'intérêt public. Sous réserve des articles 29 à 32, une telle participation est admissible dans la mesure où elle n'est pas incompatible avec les fonctions officielles du titulaire et qu'elle ne remet pas en question sa capacité d'accomplir les devoirs de sa charge en toute objectivité.

Activités interdites

29. Sous réserve de l'article 31, le titulaire d'une charge publique de la catégorie A n'est pas autorisé, en dehors de ses fonctions officielles:

- a) à exercer une profession;
- b) à diriger ou à exploiter directement une affaire commerciale ou financière;
- c) à conserver ou à accepter un poste d'administrateur ou un autre poste dans une société commerciale ou financière;
- d) à occuper un poste dans un syndicat ou une association professionnelle; et
- e) à agir comme consultant rémunéré.

Rapport confidentiel sur les activités extérieures

30. Le titulaire d'une charge publique de la catégorie A doit présenter au SRGA un rapport confidentiel de toutes ses activités extérieures, y compris celles auxquelles il a participé au cours des deux années précédant son entrée en fonction. Ce rapport doit faire mention de toutes les activités de nature philanthropique, charitable ou non commerciale, ainsi que des activités exercées à titre de fiduciaire ou exécuteur testamentaire ou en vertu d'une procuration.

31.(1) Lorsque les activités mentionnées à l'article 29 se rapportent aux fonctions officielles du titulaire d'une charge publique de la catégorie A, celui-ci peut, à titre exceptionnel, exercer de telles activités avec l'approbation visée au paragraphe 22(3) sans toutefois recevoir de rémunération sauf ce qui est prévu au paragraphe (3).

(2) Le titulaire d'une charge publique de la catégorie A peut, avec l'approbation visée au paragraphe 22(3), demeurer ou devenir membre du conseil d'administration d'un organisme de nature philanthropique, charitable ou non commerciale, mais il doit faire preuve de prudence afin d'éviter toute situation de conflit d'intérêts.

(3) Si le Premier ministre ou une personne désignée par lui estime que l'intérêt public l'exige, toute personne nommée à plein temps par le gouverneur en conseil à un poste au sein d'une société d'État désignée dans la *Loi sur l'administration financière* peut demeurer ou devenir membre du conseil d'administration d'une société financière ou commerciale, ou conserver ou accepter un poste au sein d'une telle société, et toucher une rémunération pour ce poste, conformément aux politiques établies relativement à la rémunération des personnes nommées par le gouverneur en conseil.

Déclaration publique des activités extérieures

32.(1) Le titulaire d'une charge publique de la catégorie A doit faire une déclaration publique des activités visées à l'article 31 et des postes d'administrateur ou autres qu'il occupe et qui sont mentionnés dans le rapport confidentiel visé à l'article 30.

(2) Le SRGA prépare, en collaboration avec le titulaire d'une charge publique de la catégorie A, la déclaration publique que doit faire ce dernier au sujet de ses activités extérieures.

CADEAUX, MARQUES D'HOSPITALITÉ ET AUTRES AVANTAGES

Interdiction d'accepter

33. Sous réserve de l'article 34, le titulaire d'une charge publique de la catégorie A doit refuser tout cadeau, marque d'hospitalité ou autre avantage qui risque d'avoir une influence sur son jugement et l'exercice de ses fonctions officielles.

Acceptation admissible

34.(1) Le titulaire d'une charge publique de la catégorie A peut, à l'occasion d'activités liées à ses fonctions officielles, accepter des cadeaux, des marques d'hospitalité ou d'autres avantages d'une valeur peu importante, si ceux-ci :

- a) sont conformes aux règles de la bienséance, de la courtoisie, du protocole ou de l'hospitalité;
- b) ne sont pas de nature à laisser planer des doutes quant à l'objectivité ou à l'impartialité du titulaire; et
- c) ne compromettent aucunement l'intégrité du gouvernement.

(2) Le titulaire d'une charge publique de la catégorie A peut accepter des cadeaux, des marques d'hospitalité et d'autres avantages de valeur peu importante des gouvernements, ou à l'occasion d'une fonction officielle ou d'un événement public, de même que des cadeaux, des marques d'hospitalité et d'autres avantages des membres de sa famille et des amis intimes.

Cas exigeant une déclaration publique

35.(1) Nonobstant l'article 34, lorsque le titulaire d'une charge publique de la catégorie A reçoit directement ou indirectement un cadeau, une marque d'hospitalité ou un autre avantage d'une valeur de 200 \$ ou plus d'une personne autre qu'un membre de sa famille ou un ami intime, il doit en aviser le SRGA et faire une déclaration publique à ce sujet. Celle-ci doit contenir une description adéquate du cadeau, de la marque d'hospitalité ou de l'avantage reçu et préciser le nom du donateur et les circonstances du don.

(2) En cas de doute quant à la nécessité d'une déclaration publique ou quant à l'opportunité d'accepter un cadeau, une marque d'hospitalité ou un autre avantage, le titulaire d'une charge publique de la catégorie A doit consulter le SRGA.

REFUS D'ACCORDER DES TRAITEMENTS DE FAVEUR

36.(1) Il est interdit au titulaire d'une charge publique de la catégorie A d'accorder, relativement à des questions officielles, un traitement de faveur à des parents ou amis, ou à des organismes dans lesquels lui-même, ses parents ou amis ont des intérêts.

(2) Le titulaire d'une charge publique de la catégorie A doit éviter de se placer ou sembler se placer dans des situations où il serait redevable à une personne ou à un organisme qui pourrait tirer parti d'un traitement de faveur de sa part.

DÉSACCORD

37. En cas de désaccord entre le titulaire d'une charge publique de la catégorie A et le SRGA quant aux dispositions à prendre pour se conformer au présent code, celles-ci sont déterminées par le Premier ministre ou par la personne désignée par lui.

INOBSERVATION

38. Le titulaire d'une charge publique de la catégorie A qui ne se conforme pas aux dispositions des parties I et II s'expose aux mesures qu'aura établies l'autorité désignée, y compris, le cas échéant, le renvoi ou la révocation de sa nomination.

CHANGEMENTS ULTÉRIEURS

39. Le titulaire d'une charge publique de la catégorie A doit informer sans délai le SRGA de tout changement touchant ses biens, ses exigences et ses activités extérieures qui pourrait faire l'objet d'un rapport confidentiel.

MESURES D'OBSERVATION RÉGISSANT LES CONFLITS D'INTÉRÊTS S'APPLIQUANT AUX TITULAIRES DE CHARGE PUBLIQUE DE LA CATÉGORIE «B»

FONCTIONS DE L'AUTORITÉ DÉSIGNÉE

40. L'autorité désignée peut élaborer les procédures et les modalités administratives nécessaires à l'administration et à l'application des mesures d'observation que prévoit la présente partie pour les titulaires de charge publique de la catégorie B.

CARACTÈRE CONFIDENTIEL DES RENSEIGNEMENTS

41. Les renseignements fournis à l'administrateur désigné concernant les intérêts personnels du titulaire d'une charge publique de la catégorie B sont confidentiels. L'administrateur désigné doit s'assurer que ces renseignements sont conservés en toute sécurité dans le dossier confidentiel et personnel du titulaire.

MÉTHODES D'APPLICATION

42. Le titulaire d'une charge publique de la catégorie B applique, pour observer conformément aux articles 44 à 49 les mesures d'observation énoncées dans la présente partie, les méthodes suivantes mentionnées à l'article 16, soit:

- a) la prévention;
- b) le rapport confidentiel;
- c) le dessaisissement.

DÉLAIS

43. À moins d'avoir obtenu une autorisation spéciale de l'administrateur désigné, le titulaire d'une charge publique de la catégorie B doit:

- a) dans les 60 jours qui suivent sa nomination, présenter le rapport confidentiel visé aux articles 44 et 47; et
- b) dans les 120 jours qui suivent sa nomination, se dessaisir de ses biens conformément à l'article 46.

BIENS ET EXIGIBILITÉS

Rapport confidentiel

44. Le titulaire d'une charge publique de la catégorie B doit présenter à l'administrateur désigné un rapport confidentiel indiquant tous les biens lui appartenant qui ne sont pas des biens exemptés mentionnés à l'article 19, ainsi que ses exigibilités directes et ses engagements, dans les cas où ceux-ci risquent de susciter un conflit d'intérêts avec ses fonctions officielles.

Biens et exigibilités devant faire l'objet du rapport confidentiel

45. Les biens et exigibilités visés à l'article 44 comprennent:

- a) les valeurs cotées en bourse de sociétés et de gouvernements étrangers et les régimes enregistrés d'épargne-retraite autogérés qui se composent de tels titres;
- b) les intérêts dans une société en nom collectif, une entreprise personnelle, une entreprise en coparticipation, une société privée ou une entreprise familiale et, en particulier, dans une société ou entreprise qui possède ou contrôle des actions de sociétés publiques ou qui fait des affaires avec le gouvernement;
- c) les propriétés agricoles exploitées à des fins commerciales;
- d) les biens immobiliers qui ne font pas partie des biens exemptés mentionnés à l'article 19;
- e) les marchandises, les marchés à terme et les devises étrangères détenus ou négociés à des fins de spéculation;
- f) les biens dont le titulaire est le véritable propriétaire, qui ne sont pas des biens exemptés mentionnés à l'article 19 et dont la gestion est libre de tout lien de dépendance;
- g) les prêts, garantis ou non, consentis à des personnes autres que les membres de la famille immédiate du titulaire;
- h) tout autre bien ou exigibilité qui pourrait susciter un conflit d'intérêts réel ou potentiel, vu la nature particulière des fonctions officielles du titulaire; et
- i) les exigibilités directes et les engagements relatifs aux biens mentionnés dans le présent article.

Dessaisissement

46.(1) Si l'administrateur désigné juge, après étude du rapport confidentiel présenté par le titulaire d'une charge publique de la catégorie B, qu'un bien particulier comporte un risque réel ou potentiel de conflit d'intérêts, le titulaire doit se dessaisir de ce bien. Il peut soit le vendre à un tiers avec qui il n'a aucun lien de dépendance, soit le déposer dans une fiducie, dont les plus courantes sont décrites à l'annexe.

(2) Pour l'application du présent code, les conditions du contrat de fiducie doivent être libellées de manière à ne laisser au titulaire d'une charge publique de la catégorie B aucun pouvoir de gestion ou de décision sur les biens placés en fiducie. Le SRGA peut agir à titre de fiduciaire pour une fiducie en compte bloqué ou une fiducie de conservation, mais non pour une fiducie sans droit de regard.

(3) Il incombe au SRGA de déterminer si la fiducie répond aux exigences du présent code. Le SRGA doit être consulté à cette fin avant que la fiducie soit établie ou lorsqu'un changement de type de fiducie est envisagé.

(4) Le titulaire d'une charge publique de la catégorie B peut, sur la recommandation du SRGA, obtenir de son ministère le remboursement des frais de fiducie ne dépassant pas les montants prévus à l'annexe.

ACTIVITÉS EXTÉRIEURES

47. Le titulaire d'une charge publique de la catégorie B peut occuper un emploi extérieur ou participer à d'autres activités, dans la mesure où cet emploi ou ces activités ne le soumettent pas à des exigences incompatibles avec ses fonctions officielles ou ne remettent pas en question sa capacité d'accomplir les devoirs de sa charge en toute objectivité. Le titulaire d'une charge publique de la catégorie B doit présenter à l'administrateur désigné un rapport confidentiel des activités extérieures auxquelles il participe et qui sont directement ou indirectement liées à ses fonctions officielles. L'administrateur désigné peut exiger que ces activités soient réduites, modifiées ou abandonnées s'il a été déterminé qu'il existe un risque réel ou potentiel de conflit d'intérêts.

CADEAUX, MARQUES D'HOSPITALITÉ ET AUTRES AVANTAGES

Interdiction d'accepter

48.(1) Sous réserve de l'article 49, le titulaire d'une charge publique de la catégorie B doit refuser tout cadeau, marque d'hospitalité ou autre avantage qui risque d'avoir une influence sur son jugement ou l'exercice de ses fonctions officielles.

(2) Il est interdit au titulaire d'une charge publique de la catégorie B d'accepter directement ou indirectement un cadeau, une marque d'hospitalité ou un avantage non visé au paragraphe 49(1), offert par une personne, un groupe ou un organisme qui entretient des rapports avec le gouvernement.

Acceptation admissible

49.(1) Le titulaire d'une charge publique de la catégorie B peut, à l'occasion d'activités liées à ses fonctions officielles, accepter des cadeaux, des marques d'hospitalité ou d'autres avantages d'une valeur peu importante, si ceux-ci:

- a) sont conformes aux règles de la bienséance, de la courtoisie, du protocole ou de l'hospitalité;
- b) ne sont pas de nature à laisser planer des doutes quant à l'objectivité ou à l'impartialité du titulaire; et
- c) ne compromettent aucunement l'intégrité du gouvernement.

(2) Lorsque le titulaire d'une charge publique de la catégorie B se voit dans l'impossibilité de refuser un cadeau, une marque d'hospitalité ou un autre avantage, il doit le signaler immédiatement à l'administrateur désigné. L'administrateur désigné peut exiger qu'un cadeau de ce genre soit conservé par le ministère ou soit cédé à des fins charitables.

REFUS D'ACCORDER DES TRAITEMENTS DE FAVEUR

50.(1) Il est interdit au titulaire d'une charge publique de la catégorie B d'accorder, relativement à des questions officielles, un traitement de faveur à des parents ou amis, ou à des organismes dans lesquels lui-même, ses parents ou amis ont des intérêts.

(2) Le titulaire d'une charge publique de la catégorie B doit éviter de se placer ou sembler se placer dans des situations où il serait redevable à une personne ou à un organisme qui pourrait tirer parti d'un traitement de faveur de sa part.

(3) Le titulaire d'une charge publique de la catégorie B doit obtenir l'autorisation de son supérieur avant de venir en aide à des personnes, physiques ou morales, dans leurs rapports avec le gouvernement, si une telle intervention n'entre pas dans ses attributions.

DÉSACCORD

51. En cas de désaccord entre le titulaire d'une charge publique de la catégorie B et l'administrateur désigné quant aux dispositions à prendre pour se conformer au présent code, les procédures de grief applicables aux titulaires de charge publique de la catégorie B doivent être suivies.

INOBSERVATION

52. Le titulaire d'une charge publique de la catégorie B qui ne se conforme pas aux dispositions des parties I et II s'expose aux mesures qu'aura établies l'autorité désignée, y compris, le cas échéant, le renvoi ou la révocation de sa nomination.

CHANGEMENTS ULTÉRIEURS

53. Le titulaire d'une charge publique de la catégorie B doit informer sans délai l'administrateur désigné de tout changement touchant ses biens, ses exigibilités et ses activités extérieures qui pourrait faire l'objet d'un rapport confidentiel.

Partie III

MESURES D'OBSERVATION S'APPLIQUANT AUX ANCIENS TITULAIRES DE CHARGE PUBLIQUE ET AUX TITULAIRES DE CHARGE PUBLIQUE QUI S'APPRÊTENT À QUITTER LEUR POSTE

DÉFINITIONS

54. Les définitions qui suivent s'appliquent à la présente partie.

«administrateur désigné»

a) Le SRGA, agissant sous la direction générale du greffier du Conseil privé, dans le cas d'un titulaire d'une charge publique visé à l'alinéa a) de la définition d'«autorité désignée»;

b) le sous-chef du ministère dont relève le titulaire, ou la personne désignée par le sous-chef pour administrer le présent code, dans le cas d'un titulaire d'une charge publique visé à l'alinéa b) de la définition d'«autorité désignée»;

c) le chef de l'état-major, de la défense ou la personne désignée par lui pour administrer le présent code, dans le cas d'un titulaire d'une charge publique visé à l'alinéa c) de la définition d'«autorité désignée»;

d) la personne désignée par le commissaire de la Gendarmerie royale du Canada pour administrer le présent code, dans le cas d'un titulaire d'une charge publique visé à l'alinéa d) de la définition d'«autorité désignée». (designated official)

«autorité désignée»

a) Le Premier ministre, dans le cas des titulaires de charge publique suivants:

(i) les ministres,

(ii) les secrétaires parlementaires,

(iii) les personnes nommées à une charge à plein temps par un ministre,

(iv) les membres du personnel soustrait d'un ministre, désignés par lui comme étant soumis aux dispositions de la présente partie,

(v) les personnes nommées à une charge à plein temps par le gouverneur en conseil, à l'exception des officiers de la Gendarmerie royale du Canada et des chefs de mission au sens de la *Loi sur le ministère des Affaires extérieures*;

b) le Conseil du Trésor, dans le cas des titulaires de charge publique suivants:

(i) les employés d'un ministère auprès desquels le Conseil du Trésor représente le gouvernement en tant qu'employeur,

(ii) les chefs de mission au sens de la *Loi sur le ministère des Affaires extérieures*;

- c) le ministre de la Défense nationale, dans le cas des titulaires de charge publique qui sont des officiers ou des membres sans brevet d'officier des Forces armées canadiennes;
- d) le commissaire de la Gendarmerie royale du Canada, dans le cas des titulaires de charge publique qui sont membres de la Gendarmerie royale du Canada. (designated authority)

«titulaire d'une charge publique»

- a) Ministre;
- b) Secrétaire parlementaire;
- c) personne nommée à une charge à plein temps par le gouverneur en conseil, à l'exception du lieutenant-gouverneur d'une province et d'un juge qui touche un traitement en vertu de la *Loi sur les juges*;
- d) employé d'un ministère qui occupe un poste de gestionnaire supérieur ou d'un niveau équivalent ou plus élevé et auprès duquel le Conseil du Trésor représente le gouvernement en tant qu'employeur;
- e) membre du personnel soustrait d'un ministre, désigné par lui comme étant soumis aux dispositions de la présente partie;
- f) personne nommée à une charge à plein temps par un ministre, désigné par lui comme étant soumis aux dispositions de la présente partie;
- g) officier des Forces armées canadiennes qui est au rang de colonel ou à un rang équivalent ou supérieur;
- h) officier de la Gendarmerie royale du Canada;
- i) titulaire d'un poste désigné aux termes de l'article 55. (public office holder)

POSTES DÉSIGNÉS

55.(1) Le Conseil du Trésor peut, sur la recommandation du ministre responsable d'un ministère auprès duquel le Conseil du Trésor représente le gouvernement en tant qu'employeur, désigner comme étant assujéti à la présente partie tout poste de ce ministère qui est classé à un niveau inférieur à celui de gestionnaire supérieur, ou l'équivalent, et qui comporte des fonctions et des responsabilités qui soulèvent des inquiétudes quant aux possibilités mentionnées à l'article 57 à l'égard de l'après-mandat.

(2) Le ministre de la Défense nationale peut désigner comme étant assujéti à la présente partie tout poste des Forces armées canadiennes qui est de rang inférieur à celui de colonel, ou l'équivalent, et qui comporte des fonctions et des responsabilités du genre décrit au paragraphe (1).

(3) Le Solliciteur général peut désigner comme étant assujéti à la présente partie tout poste de la Gendarmerie royale du Canada qui est de rang inférieur à celui d'officier, ou l'équivalent, et qui comporte des fonctions et des responsabilités du genre décrit au paragraphe (1).

EXCLUSIONS

56.(1) Le Conseil du Trésor peut, sur la recommandation du ministre responsable d'un ministère auprès duquel le Conseil du Trésor représente le gouvernement en tant qu'employeur, exclure de l'application des articles 59 et 60 certains postes ou groupes de postes de ce ministère qui sont classés au niveau de gestionnaire supérieur ou à un niveau équivalent ou plus élevé, si ces postes ou groupes de postes répondent aux critères énoncés au paragraphe (4).

(2) Le ministre de la Défense nationale peut exclure de l'application des articles 59 et 60 certains postes ou groupes de postes des Forcés armées canadiennes classés au rang de colonel ou à un niveau équivalent ou supérieur, si ces postes ou groupes de postes répondent aux critères énoncés au paragraphe (4).

(3) Le Solliciteur général peut exclure de l'application des articles 59 et 60 certains postes ou groupes de postes de rang d'officier au sein de la Gendarmerie royale du Canada, si ces postes ou groupes de postes répondent aux critères énoncés au paragraphe (4).

(4) Peuvent être exclus en vertu des paragraphes (1) à (3) les postes ou groupes de postes:

- a) dont les fonctions et responsabilités ne suscitent aucune inquiétude quant aux possibilités mentionnées à l'article 57 à l'égard de l'après-mandat; ou
- b) qui sont occupés par des personnes dont les connaissances et les compétences devraient, dans l'intérêt public, passer rapidement au secteur privé ou à d'autres secteurs gouvernementaux.

OBJET

57. Le titulaire d'une charge publique doit, après l'expiration de son mandat, se comporter de façon à ne pas tirer d'avantages indus de sa charge antérieure au service du gouvernement. L'observation des mesures énoncées dans la présente partie lui permettra de réduire au minimum les possibilités:

- a) de se trouver dans des situations de conflits d'intérêts réels, potentiels ou apparents en raison des offres d'emploi qui lui viennent de l'extérieur alors qu'il est au service de l'État;
- b) d'obtenir un traitement de faveur ou un accès privilégié au gouvernement après qu'il aura quitté sa charge publique;
- c) d'utiliser pour son profit personnel les renseignements obtenus dans l'exercice de ses fonctions officielles avant qu'ils ne soient connus du public;
- d) de tirer un avantage indu de sa charge pour obtenir des occasions d'emploi à l'extérieur.

MESURES D'OBSERVATION

Avant de quitter son poste

58.(1) Le titulaire d'une charge publique doit, dans l'exercice de ses fonctions officielles, éviter de se laisser influencer par des perspectives ou des offres d'emploi émanant de l'extérieur.

(2) Sous réserve du paragraphe (4), le titulaire d'une charge publique doit divulguer par écrit à l'administrateur désigné toutes les offres sérieuses d'emploi émanant de l'extérieur qui risquent de le placer dans une situation de conflit d'intérêts.

(3) Sous réserve du paragraphe (4), le titulaire d'une charge publique doit divulguer immédiatement par écrit à l'administrateur désigné toute offre d'emploi de l'extérieur qu'il accepte. Si l'administrateur désigné estime que le titulaire entretient des rapports officiels importants avec son futur employeur, le titulaire sera affecté à d'autres fonctions le plus tôt possible. La durée de cette nouvelle affectation entre dans le calcul de la période de restriction relative à un emploi qui est prévue aux articles 60 et 61.

(4) Les renseignements requis aux paragraphes (2) et (3) sont divulgués

- a) au Premier ministre, dans le cas d'un ministre;
- b) à la personne désignée par le Premier ministre, dans le cas d'un sous-chef;
- c) au ministre, dans le cas du personnel soustrait d'un ministre et d'une personne nommée à une charge à plein temps par un ministre ou le gouverneur en conseil autre qu'une personne visée à l'alinéa b);
- d) au ministre à qui il est affecté, dans le cas d'un secrétaire parlementaire.

Après avoir quitté son poste

Activités interdites

59. Il est interdit à un ancien titulaire d'une charge publique d'agir au nom ou pour le compte d'une personne, d'une société commerciale, d'une association ou d'un syndicat relativement à une procédure, à une transaction, à une négociation ou à une cause à laquelle le gouvernement du Canada est partie et

- a) dans laquelle il a représenté ou conseillé un ministère; et
- b) qui donnerait lieu à un avantage particulier ou de nature strictement commerciale ou privée.

Période de restriction

60. Sauf dans le cas des ministres, pour qui la période prescrite est de deux ans, il est interdit à un ancien titulaire d'une charge publique, dans l'année qui suit la cessation de ses fonctions:

- a) d'accepter une nomination au conseil d'administration d'une entité avec laquelle il a eu des rapports officiels importants au cours de l'année ayant précédé la fin de son mandat, ou un emploi au sein d'une telle entité;

b) d'intervenir pour le compte ou au nom d'une autre personne ou d'une entité auprès d'un ministère avec lequel il a eu des rapports officiels importants au cours de l'année ayant précédé la fin de son mandat;

c) de donner des conseils, touchant les programmes ou les politiques du ministère pour lequel il travaillait ou avec lequel il entretenait d'importants rapports directs durant l'année précédant la fin de son mandat, à une personne qui pourrait se servir de ces conseils à des fins commerciales.

Réduction de la période de restriction

61.(1) À la demande du titulaire d'une charge publique ancien ou actuel, l'autorité désignée peut réduire la période de restriction relative à un emploi qui est prévue à l'article 60.

(2) Pour décider s'il convient de réduire la période de restriction relative à un emploi qui est prévue à l'article 60, l'autorité désignée tient compte des facteurs suivants:

a) les circonstances du départ du titulaire d'une charge publique ancien ou actuel qui a fait la demande;

b) les perspectives générales d'emploi du titulaire;

c) l'importance que le gouvernement attache aux renseignements obtenus par le titulaire dans le cadre de ses fonctions officielles;

d) l'opportunité de transférer rapidement au secteur privé ou à d'autres secteurs gouvernementaux les connaissances et compétences du titulaire;

e) la mesure dans laquelle le nouvel employeur pourrait tirer un avantage commercial indu de l'embauche du titulaire;

f) l'autorité et l'influence qu'exerce le titulaire dans l'accomplissement de ses fonctions officielles;

g) les dispositions prises dans d'autres cas.

(3) L'autorité désignée communique sa décision par écrit au demandeur visé au paragraphe (1), ainsi qu'à tous les ministères touchés par la décision.

COMITÉS CONSULTATIFS

62. L'autorité désignée peut mettre sur pied des comités consultatifs qui sont chargés de la conseiller sur l'application à des cas précis des mesures énoncées dans la présente partie et d'aider les titulaires de charge publique anciens ou actuels à comprendre comment ces mesures les touchent. Ces comités consultatifs doivent répondre sans délai aux demandes de conseils.

ARRANGEMENTS DE DÉPART

63. Avant le départ officiel du titulaire d'une charge publique, l'administrateur désigné communique avec lui pour le renseigner au sujet des exigences relatives à l'après-mandat et faciliter ainsi l'observation des mesures énoncées dans la présente partie.

NOUVEL EXAMEN

64. Le titulaire d'une charge publique ancien ou actuel peut demander à l'autorité désignée que soit réexaminée toute décision concernant les méthodes qu'il a à appliquer en vertu de la présente partie ou la réduction de la période de restriction. L'autorité désignée qui reçoit une telle demande peut charger un comité consultatif de lui soumettre des recommandations sur la question.

INOBSERVATION

65. Le titulaire d'une charge publique qui ne se conforme pas aux mesures d'observation énoncées dans la présente partie s'expose aux mesures qu'aura établies l'autorité désignée, y compris, le cas échéant, le renvoi ou la révocation de sa nomination.

Partie IV

MESURES D'OBSERVATION S'APPLIQUANT AUX EMPLOYÉS DES SOCIÉTÉS D'ÉTAT ET AUX TITULAIRES DE CHARGE PUBLIQUE, AU SENS DE L'ARTICLE 2, QUI NE SONT PAS SOUMIS AUX PARTIES II OU III

SOCIÉTÉS D'ÉTAT

66. Les sociétés d'État assujetties aux sections I à IV de la partie XII de la *Loi sur l'administration financière* seront sujettes à des mesures d'observation qu'elles établiront elles-mêmes en conformité avec les pratiques déjà en vigueur au sein de leur propre organisation.

LIEUTENANT-GOUVERNEUR

67. Les dispositions pertinentes de la partie II sont portées à l'attention des lieutenants-gouverneurs au moment de leur nomination.

FORCES ARMÉES CANADIENNES

68. Les officiers et les membres sans brevet d'officier des Forces armées canadiennes sont soumis à la partie I ainsi qu'au Code de discipline militaire et aux règlements et ordonnances pris en vertu de la *Loi sur la défense nationale* au sujet des conflits d'intérêts, qui remplacent les mesures d'observation énoncées à la partie II.

GENDARMERIE ROYALE DU CANADA

69. Les membres de la Gendarmerie royale du Canada sont soumis à la partie I ainsi qu'aux dispositions sur les conflits d'intérêts contenues dans la *Loi sur la Gendarmerie royale du Canada* et les ordres permanents du commissaire, qui remplacent les mesures d'observation énoncées à la partie II.

ÉCHANGES CANADA

70.(1) Avant de conclure une entente visant l'affectation d'une personne dans le cadre du programme Échanges Canada, les parties à l'entente doivent s'assurer qu'il n'y a aucun risque important de conflit d'intérêts. Dans le cas contraire, elles doivent prendre les mesures qui s'imposent pour éviter toute situation de conflits d'intérêts.

(2) Les personnes qui acceptent une affectation au service du gouvernement dans le cadre du programme Échanges Canada doivent agir, après la cessation de leurs fonctions, de façon à ne pas tirer un avantage indu de leur affectation antérieure.

OFFICES, COMMISSIONS ET AUTRES TRIBUNAUX

71.(1) Les fonctionnaires, les commis et les employés des offices, commissions ou autres tribunaux fédéraux, au sens de la *Loi sur la Cour fédérale*, sont soumis aux mesures d'observation établies par leur organisme respectif.

(2) Les offices, commissions et autres tribunaux fédéraux, au sens de la *Loi sur la Cour fédérale*, doivent établir en consultation avec le SRGA des mesures d'observation écrites qui seront adoptées dans l'année qui suit la mise en vigueur du présent code et publiées dans le premier rapport annuel de l'organisme qui suivra l'adoption de ces mesures.

EMPLOYEURS DISTINCTS

72.(1) Les dispositions de la partie II qui visent les titulaires de charge publique de la catégorie B s'appliquent, compte tenu des adaptations de circonstance, aux employés d'un employeur distinct, au sens de la *Loi sur les relations de travail dans la Fonction publique*, sauf que l'autorité désignée pour ces employés est le premier dirigeant, ou l'équivalent, de l'employeur distinct.

(2) La partie III s'applique, compte tenu des adaptations de circonstance, aux employés d'un employeur distinct, au sens de la *Loi sur les relations de travail dans la Fonction publique*, qui sont classés au niveau de gestionnaire supérieur ou à un niveau équivalent ou plus élevé, sauf que l'autorité désignée pour ces employés est le premier dirigeant, ou l'équivalent, de l'employeur distinct.

Partie V

DISPOSITIONS TRANSITOIRES

73. La personne qui a été nommée à titre inamovible avant la date d'entrée en vigueur du présent code peut se conformer ou non de son plein gré; elle doit cependant s'y conformer si elle est nommée à nouveau après cette date.

74. Le titulaire d'une charge publique de la catégorie A, le titulaire d'une charge publique de la catégorie B au sens du paragraphe 2(2) ou le titulaire d'une charge publique au sens de l'article 54 qui, immédiatement avant l'entrée en vigueur du présent code, était tenu de respecter les lignes directrices du gouvernement relatives aux conflits d'intérêts durant ou après le mandat, continue d'y être assujéti, plutôt qu'au présent code, jusqu'à ce que l'administrateur désigné ait terminé l'examen des dispositions prises pour assurer l'observation du présent code. L'administrateur désigné termine cet examen dans l'année qui suit la date de la signature par le titulaire du document visé au paragraphe 8(2).

Annexe

FIDUCIES

1. Les fiducies suivantes, qui sont parmi les plus courantes, peuvent être établies par le titulaire d'une charge publique pour réaliser les dessaisissements requis par le présent code:

a) *LA FIDUCIE SANS DROIT DE REGARD*

La fiducie sans droit de regard est une formule selon laquelle le fiduciaire décide de tout investissement concernant la gestion des biens en fiducie, sans instructions ni surveillance de la part du titulaire d'une charge publique qui a placé ses biens dans la fiducie.

Le titulaire d'une charge publique (le constituant) ne reçoit que les renseignements requis aux fins des déclarations exigées par la loi. Le titulaire d'une charge publique qui établit une fiducie sans droit de regard peut en toucher les revenus, y déposer ou en retirer des capitaux et être informé de la valeur globale des fonds en fiducie.

b) *LA FIDUCIE EN COMPTE BLOQUÉ*

La fiducie en compte bloqué est une formule selon laquelle le fiduciaire conserve les biens essentiellement dans le même état que celui où ils étaient au moment de l'établissement de la fiducie. Le titulaire d'une charge publique qui établit une telle fiducie est habilité à en toucher les revenus. La fiducie en compte bloqué n'est pas indiquée pour les biens qui exigent de fréquentes décisions de la part du fiduciaire (par exemple, valeurs convertibles et biens immobiliers) et pour les biens facilement influencés par les décisions du gouvernement.

c) *LA FIDUCIE DE CONSERVATION*

La fiducie de conservation est une formule selon laquelle le fiduciaire conserve les droits dans une société de portefeuille constituée à des fins de planification successorale, essentiellement dans le même état que celui où ils étaient au moment de l'établissement de la fiducie.

Le constituant prend des dispositions pour qu'une tierce partie exerce son droit de vote relativement aux actions qu'il détient dans la société de portefeuille et veille à ce que ces dispositions ne donnent pas lieu à un conflit d'intérêts. La fiducie de conservation n'engendre habituellement aucun revenu pour le constituant.

Cette forme de dessaisissement est pratique pour le titulaire d'une charge publique qui possède des biens devant être gérés de façon particulière par l'entremise d'une société de portefeuille à des fins de planification successorale.

DISPOSITIONS COMMUNES AUX FIDUCIES

2. Les dispositions communes aux fiducies sont les suivantes:

a) La garde des biens:

Les biens placés en fiducie sont dévolus au fiduciaire.

b) Pouvoir de gestion ou de contrôle:

Le titulaire d'une charge publique (le constituant) ne peut exercer aucun pouvoir de gestion ni de contrôle sur les biens en fiducie. Pour sa part, le fiduciaire ne peut demander ni recevoir des instructions ou des conseils du titulaire au sujet de la gestion ou de l'administration des biens.

c) Liste des biens:

La liste des biens en fiducie est annexée au contrat de fiducie.

d) Durée de la fiducie:

La fiducie continue d'exister tant que le titulaire d'une charge publique qui l'a établie occupe un poste auquel ce genre de dessaisissement convient. La fiducie peut être dissoute dès qu'elle ne contient plus de biens.

e) Remise des biens en fiducie

Le fiduciaire remet les biens en fiducie au titulaire d'une charge publique dès que la fiducie est dissoute.

FIDUCIAIRES

3. Il importe de choisir le fiduciaire avec soin, quelle que soit la formule de fiducie adoptée. Si un seul fiduciaire est nommé, autre que le SRGA, il doit être:

a) un fiduciaire public;

b) une société reconnue qui a qualité pour s'acquitter des fonctions de fiduciaire, telle qu'une compagnie de fiducie ou une société de placement; ou

c) un particulier qui s'acquitte de ce genre de tâches dans le cadre de son travail.

4. Si un seul fiduciaire est nommé, aucun lien de dépendance ne doit exister entre lui et le titulaire d'une charge publique.

5. S'il y a plusieurs fiduciaires, au moins l'un d'eux doit être un fiduciaire public ou une société n'ayant aucun lien de dépendance avec le titulaire d'une charge publique.

CONTRATS DE FIDUCIE

6. Le SRGA peut fournir des modèles de contrat acceptables pour la fiducie sans droit de regard, la fiducie en compte bloqué ou la fiducie de conservation. Toute modification à ces modèles est soumise à l'approbation du SRGA.

DÉPÔT DES DOCUMENTS DE FIDUCIE

7. Quelle que soit la formule de fiducie adoptée, le titulaire d'une charge publique est tenu de transmettre au SRGA une copie de tout instrument portant création d'une fiducie. Les renseignements complets sur la fiducie sont versés dans le dossier confidentiel du titulaire et ne peuvent être consultés en aucun cas. Le seul renseignement qui peut être divulgué à ce sujet est la confirmation de l'existence de la fiducie.

REMBOURSEMENT DES FRAIS

8. Sur la recommandation du SRGA, les frais qui suivent peuvent être remboursés lorsque la fiducie a été établie pour l'observation des mesures énoncées dans le présent code:

- a) les honoraires d'avocat et les frais de comptabilité et de transfert raisonnables liés à la création de la fiducie;
- b) les honoraires d'avocat et les frais de comptabilité et de transfert raisonnables engagés pour la dissolution de la fiducie;
- c) les frais annuels, réels et raisonnables, engagés pour le maintien et l'administration de la fiducie, à savoir:
 - (i) un maximum de 500 \$ pour un portefeuille ayant une valeur marchande d'au plus 100 000 \$, et
 - (ii) un maximum de 5 000 \$ pour un portefeuille ayant une valeur marchande de plus de 100 000 \$, soit 0,5 pour cent sur les premiers 400 000 \$ et 0,25 pour cent sur la fraction en sus de 400 000 \$.

Le titulaire d'une charge publique est responsable de tout rajustement de l'impôt sur le revenu qui pourrait découler du remboursement des frais de fiducie.

CONFIDENTIAL

**Guidance
for
Ministers**

Privy Council Office

June 1984

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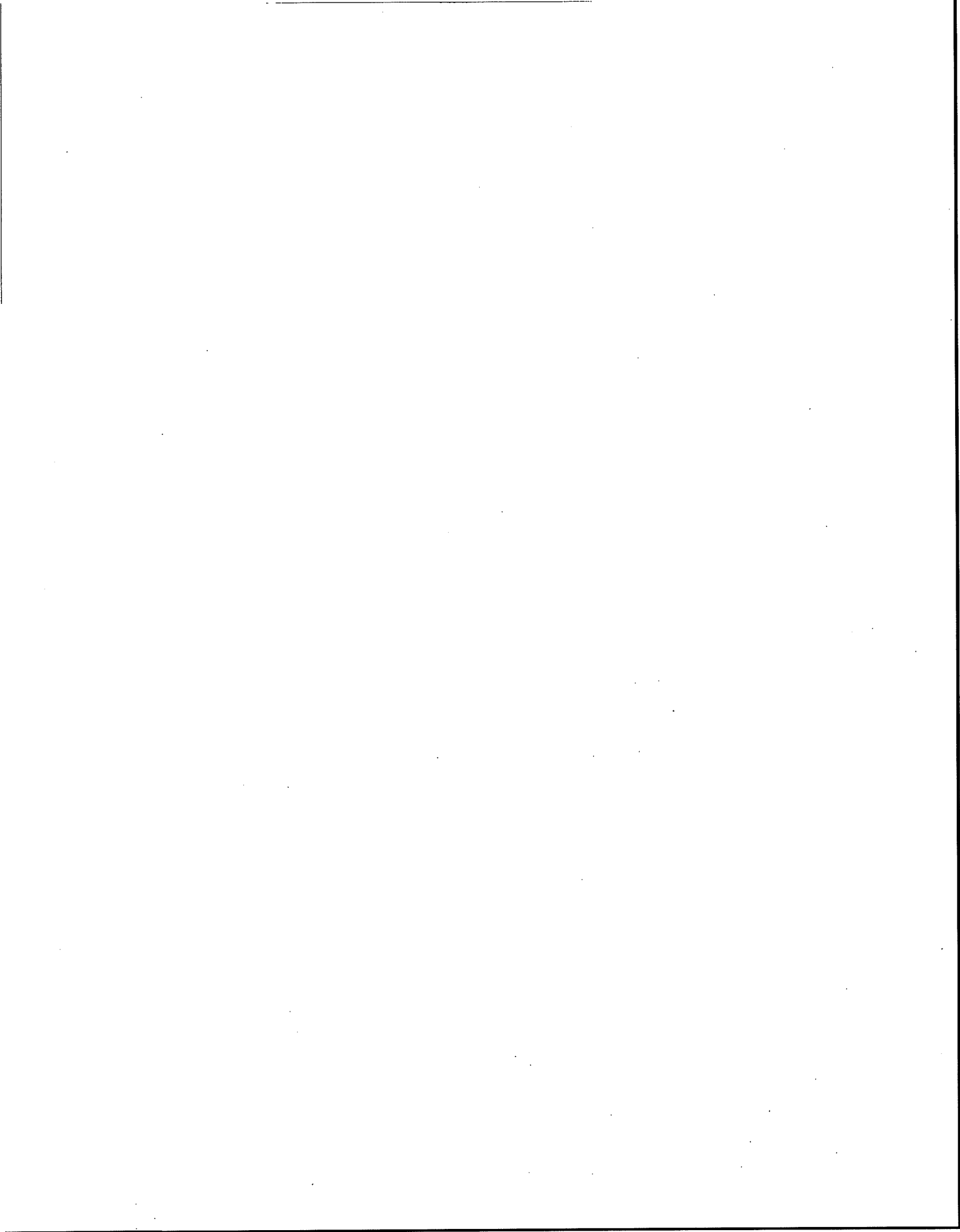


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I. INTRODUCTION

This document is circulated to Ministers by the Prime Minister in order to provide them with guidance and information on their ministerial responsibilities. It is therefore treated as a confidence of the Queen's Privy Council.

The document deals with key aspects of a Minister's work, from the constitutional and parliamentary dimensions, through the role and responsibilities of Ministers individually and as members of the Cabinet collectively, to personal considerations and considerations affecting their personal staff. "Guidance for Ministers" reflects current Government policy, although building on policies and practices that in many cases have evolved over a number of years and Governments. At the same time it is not exhaustive in its discussion and for greater certainty on any question Ministers should consult with their Deputy Ministers or the sources indicated in Appendix 1 p.64. The Secretary to the Cabinet is also available to discuss particular questions.

This volume contains the following:

- A summary of the constitutional framework of Cabinet Government (pp 3 to 6) and a discussion of Ministers' parliamentary roles (pp 7 to 10).
- An outline of ministerial roles and responsibilities in relation to their departments and non-departmental bodies (pp 11 to 19).
- Background information on the Cabinet and Cabinet committee system (pp 20 to 31), including matters relating to Governor in Council recommendations (pp 32 to 34).
- The handling of and access to Cabinet, departmental and personal papers (pp 35 to 42).

- Personal matters, including guidelines on conflict of interest, post-employment and relations with the judiciary; ministerial salaries and allowances; security and matters relating to Ministers' offices, exempt staff appointments, and staff budgets (pp 43 to 54).
- An outline of the function and role of the Prime Minister's Office (pp 55 to 56); the Privy Council Office (p. 57) and the Federal-Provincial Relations Office (p. 58).
- Considerations relating to external affairs, including official and private travel by Ministers, composition of governmental delegations and foreign orders and decorations (pp 59 to 61).
- The Appendices include a list of all reference documents referred to in the text, a summary of ministerial non-departmental responsibilities, and additional information on salaries, office budgets and the Policy and Expenditure Management System.

II. CONSTITUTIONAL SETTING

1. Swearing In Ceremony

Ministers usually are sworn to office as a group at the beginning of the life of a new Government. It is the prerogative of the Prime Minister to recommend to the Governor General for her approval the appointment of Ministers. If they have not already done so, Ministers must take the Oath of Allegiance and be sworn to the Privy Council before taking the oath of office for their particular portfolio. With the exception of the Prime Minister, all Ministers are appointed by Commissions of Office issued by the Governor General under the Great Seal of Canada. If Ministers transfer from one portfolio to another, they are issued a new Commission and take the appropriate oath of office.

2. The Governor General

Ministers are appointed to office by Her Excellency the Governor General as The Queen's representative in Canada. The Governor General acts on the advice of her Ministers. As discussed later in this section, the Prime Minister has certain prerogatives with regard to offering advice to the Governor General, and only he may offer individual advice to Her Excellency. Other "advice" (as for the passage of Orders in Council) comes to the Governor General from the Ministry as a whole. (The only partial exceptions are: a very few communications from the Secretary of State for External Affairs to the Governor General regarding agreement for the appointments of High Commissioners and Ambassadors following Cabinet discussion and approval of the Prime Minister; and advice from the Minister of National Defence to the Governor General with respect to military commissions).

3. The Privy Council

The Privy Council is an advisory body of the Sovereign. Membership is conferred for life, and Privy Councillors are entitled to style themselves "Honourable" and use the letters "P.C." after their names. Members of the Privy Council take precedence according to the date and time of their being sworn to the Privy Council. It is exceedingly rare for the Privy Council to meet as a body, and such meetings generally would be for purely ceremonial

purposes. Privy Councillors may only attend meetings of the Council on the invitation of the Sovereign, the Governor General, or the Prime Minister.

The formal Order of Precedence, based on the order in which Ministers are sworn to the Privy Council, may be used to determine the seating at the Cabinet table, and has a bearing on the seating of the Ministry in the House. Acting Prime Ministers are often designated in accordance with the Order of Precedence. However, these uses are purely customary.

4. The Ministry

The Ministry advises the Crown with respect to the conduct of the Government of Canada. Constitutionally speaking, the Ministry is that part of the Privy Council which commands the support of the House of Commons and which advises the Sovereign and Her representative the Governor General on matters relating to the Government of Canada (i.e., the Governor in Council). It consists of those members of the Queen's Privy Council for Canada currently holding ministerial office.

Ministers of the Crown are charged with two distinct responsibilities. First, they must discharge their portfolio responsibilities in accordance with powers provided them by statute. For this they may be held individually responsible before Parliament. Second, they must participate with their colleagues in overseeing the orderly conduct of national affairs. Cabinet Government relies upon the principle of collective responsibility before Parliament for the actions of the executive. This requires that the members of a Ministry observe the conventions of collective decision-making, the confidentiality of Cabinet proceedings, and the concept that each Minister is responsible for the decisions of the Ministry as a whole.

5. The Cabinet

Unlike the Ministry, the Cabinet has no formal standing in constitutional terms. In theory it is an unofficial committee of the Privy Council, drawn by the Prime Minister from amongst his Ministry to be the effective locus of collective decision-making in the Government (it is in that sense the consultative mechanism used by the Prime Minister to forge the collective responsibility and direction of his Ministry). Currently all members of the Ministry also are members of Cabinet.

6. The Prime Minister

The selection of Ministers is the prerogative of the Prime Minister and he allocates functions among them. It is the Prime Minister's prerogative to recommend to the Governor General:

- (a) the appointment of Ministers and the allocation of portfolios and responsibilities among them;
- (b) the dismissal or the acceptance of the resignation of Ministers;
- (c) the relaxation of the rules of confidentiality to permit a resigning Minister to explain his or her resignation;
- (d) the summoning and dissolution of Parliament.

It is also his prerogative to recommend numerous senior appointments including all Deputy Ministers and most heads of agencies, High Commissioners and Ambassadors, Lieutenant-Governors and Provincial Administrators, Chief Justices of all courts, Senators and the Speaker of the Senate. In practice, the appointments of High Commissioners and Ambassadors usually have been recommended to Cabinet by the Secretary of State for External Affairs, and the appointments of Provincial Administrators by the Secretary of State.

The Prime Minister is principally responsible for providing the cohesion and direction necessary to the unity of the Ministry, which is essential if the Government is to retain the confidence of Parliament. This is done through the exercise of the prerogatives described above and through the Cabinet which he chairs and for whose organization and procedures the Prime Minister is responsible. The Prime Minister decides:

- (a) when and where the Cabinet shall meet;
- (b) the establishment and membership of Cabinet committees;
- (c) the organization and functions of the Privy Council Office and the Federal-Provincial Relations Office, which are his public service departments.

In addition, the Prime Minister provides the cohesion necessary to the Ministry by deciding the organization of the structure of government. He exercises this responsibility subject to action by Parliament or by Order in Council if legal changes are involved. Ministers should be alert to ensure that proposals for organizational change which may affect the mandates of other Ministers or organizations are referred to the Prime Minister.

III. PARLIAMENT

1. Attendance in the House of Commons

Ministers who are members of the House of Commons are expected to be in the House each day for the whole of Question Period, except that a limited number of Ministers may be permitted to be absent on certain specified days. Proposed absences must be cleared with the office of the Prime Minister's Legislative Assistant before Ministers make firm commitments. Ministers will arrange to be replaced for Question Period by an Acting Minister set out in the roster established by Order in Council (explained in more detail on p. 12) and/or by their Parliamentary Secretary. Ministers also attend the House at specified times assigned on a mandatory basis. This House duty for Ministers takes precedence over all other Cabinet and Government business. Ministers are personally responsible for arranging for another Minister to replace them when forced to miss a duty day and for informing the Chief Government Whip of the change. The schedule for House duty is prepared after taking into account the membership of Cabinet's committees and their meeting times. Ministers should appreciate, therefore, that it is very difficult to change the schedule for House attendance once it has been approved.

Ministers must attend the House to pilot through their own legislation, and they will give priority to appearances before House and Senate committees considering such legislation and to House committees examining their department's Estimates. Ministers must be available to participate in all votes unless they can arrange a guaranteed pair with a member of the official opposition. The House Leader assigns prime responsibility to a particular Minister to co-ordinate the Government's reply to Opposition Day motions. In addition, Ministers will arrange for their Parliamentary Secretary to respond to "Late Show" questions, and for their department to prepare the appropriate response to Written Questions.

2. The Legislative Program

The content of the legislative program is ultimately the responsibility of the Prime Minister. Its main thrusts are determined by the Cabinet, and every Bill is examined by the Cabinet Committee on Legislation and House Planning. Cabinet gives the program final approval.

The handling of the program in Parliament is the direct responsibility of the Leader of the Government in the House. Although the House Leader has a great deal of flexibility in establishing priorities for consideration of Bills by the House and in deciding on strategy and tactics, "Business of the House" is a standing item on the agenda of the Cabinet.

The legislative program is made up of (a) URGENT measures which have statutory time constraints; (b) ESSENTIAL items reflecting the Government's priorities or which must be dealt with by a particular date (e.g., Acts that might otherwise expire if not extended), or other administrative requirements, and; (c) OTHER non-priority measures which may be introduced as parliamentary time becomes available.

Following Cabinet approval of the policy memorandum setting forth the intent of a proposed item of legislation, Bills are drafted by the Legislation Section of the Department of Justice upon instructions from the sponsoring Department or Agency, and according to priorities established by the Legislation and House Planning Committee. The resulting Bill is then scrutinized by Legislation and House Planning to ensure that it satisfactorily conveys the policy agreed to by Cabinet. No Bill goes to Cabinet unless it has been approved by the sponsoring Minister and the Legislation and House Planning Committee, and no Bill is introduced in Parliament unless it has been approved by Cabinet. The Prime Minister, or in his absence the Acting Prime Minister or other Minister, signs the copy of the Bill that is deposited with the Clerk of the House or the Clerk of the Senate. For more detailed information on the preparation of legislation, Ministers should refer to a booklet prepared by the Privy Council Office, 'The Preparation of Legislation'. (For a complete listing of documents and circulars referred to in Guidance for Ministers, see Appendix 1, p. 64).

3. Parliamentary Secretaries

Parliamentary Secretaries are Private Members of Parliament. They are not members of the Ministry and may not speak on its behalf, although they may speak for their Minister when instructed to do so. They are not, therefore, bound by the conventions of collective responsibility.

Because they are not members of the Ministry, Parliamentary Secretaries do not attend meetings of Cabinet. Neither do they attend Cabinet Committee

meetings. Although Parliamentary Secretaries are not bound by the principles of collective responsibility, it is not considered appropriate for them to criticize the Minister or Department they serve. This restriction does not apply to other policies of the Government, although in practice it might be difficult for Parliamentary Secretaries to criticize the Government and continue to serve their Ministers.

a) Appointment

Parliamentary Secretaries are appointed and assigned to particular Ministers by the Governor in Council on the recommendation of the Prime Minister. At the present time, the effective total number of Parliamentary Secretaries provided for by statute is 31. A Minister may have more than one Parliamentary Secretary, and a Parliamentary Secretary may serve under more than one Minister at the same time. By statute, their appointments are for fixed terms of twelve months, but they are automatically terminated when Parliament is dissolved. Their appointments may be renewed and they may be removed from office at any time by Order in Council. It has become the practice for them to take an oath of office, swearing not to disclose without the authority of their Ministers matters that have come to their knowledge by reason of their office.

b) Functions

Parliamentary Secretaries assist Ministers as the latter see fit. As a general rule Parliamentary Secretaries should, when their Minister is absent from the House of Commons, be present and may at the discretion of the Minister answer routine questions on his or her behalf. However, questions relating to matters affecting government policy are normally handled by the Acting Minister.

In the House Parliamentary Secretaries generally assist in carrying out the more routine responsibilities of their Ministers. They may arrange responses to questions on the Order Paper, and speak for their Ministers during Private Members' Hour and in the adjournment debate. They may organize the Government's response to Private Members' Bills and Motions. In recent years Parliamentary Secretaries have begun to pilot

through all stages Bills that do not raise major policy questions, although Ministers must move and second each motion involved in securing passage. Parliamentary Secretaries also organize the Government's participation in Opposition Day debates.

Parliamentary Secretaries can play a large role in the Committees of the House, and may explain the Government's policy on behalf of their Ministers. They may also be called upon to maintain liaison between their Ministers and other Members and Senators; to represent their Ministers in dealing with members of the public; and, in appropriate portfolios, to perform certain specific functions of their Ministers. At their Ministers' discretion, Parliamentary Secretaries may be actively involved in assisting Ministers in departmental activities, including policy matters. Although Parliamentary Secretaries may assist in these departmental activities, they may never have a Minister's legal responsibilities delegated to them. It is nonetheless important to ensure that Parliamentary Secretaries are thoroughly briefed on departmental matters about which they will be expected to be knowledgeable when they speak for their Ministers. For more information on the duties of Parliamentary Secretaries, Ministers should consult 'Briefing Notes for Parliamentary Secretaries' circulated by the President of the Privy Council.

c) Conflict of Interest

The Senate and House of Commons Act applies to Parliamentary Secretaries, and in addition the Prime Minister indicates in writing to each new appointee the general responsibilities and standards expected of them with respect to conflict of interest. Since there is no detailed and comprehensive formal conflict of interest régime for Parliamentary Secretaries as a group, it is all the more important that they examine their particular responsibilities on a continuing basis and ensure that there is no possibility that a real or apparent conflict of interest or any undue benefit may arise. Ministers should be consulted where problems emerge.

Parliamentary Secretaries must observe the Post-Employment Guidelines issued in 1980 for Parliamentary Secretaries. They may obtain the guidelines from the Office of the Assistant Deputy Registrar General. These guidelines apply both to current and past holders of the office of Parliamentary Secretary.

IV. PORTFOLIO CONSIDERATIONS

1. Individual Ministerial Responsibility

In addition to the convention of collective responsibility, Ministers are individually responsible to Parliament (and to the Prime Minister) both for their own actions and for the actions of all officials under their management and direction. The departmental Acts which create the offices to which Ministers are appointed, and any other Act for which they may be responsible, also provide a basic framework of authorities and responsibilities for which they are accountable.

Powers are vested in the Minister himself, who delegates authority to his officials. The individual responsibility of Ministers requires that they answer directly to the House of Commons for their own and their officials' actions, as officials may not speak in their own defence. If shortcomings are revealed in departmental procedures and these have led to an error, the Deputy Minister may take remedial measures including the suspension of the official or officials involved if circumstances warrant. The responsibility for such discipline rests with the Deputy Minister, who is responsible to the Minister for the operation of the department. Apart from flagrant cases where an official has indulged in illegal activity, it is not constitutionally proper for Ministers to distinguish between their actions as Ministers and those of their officials.

As established in Beauchesne, a parliamentary question, oral or written, must not seek from an ex-Minister (including one who has remained in the Cabinet in another portfolio) information with reference to transactions during his term of office in a previous portfolio.

2. Ministers of State

Ministers are ordinarily appointed under a departmental Act. However, Ministers of State to assist are appointed under the provisions of the Ministries and Ministers of State Act to assist departmental Ministers in carrying out their portfolio responsibilities. These Ministers are full members of the Ministry, but their duties depend on the Order in Council assigning them to a

particular portfolio and on delegations of authority from the senior Minister, approved by the Prime Minister. These Ministers of State do not have their own department, but rely on the departmental resources of the senior Minister they are obliged to assist.

Ministers of State also may be appointed under the Act without assigned portfolio responsibilities, although since the passage of this Act, Ministers without portfolio have been appointed only rarely.

A third category of Ministers of State may be appointed under the Ministries and Ministers of State Act to be responsible for Ministries of State -- which are separate departments of government -- established following procedures laid down in the Act. These Ministries of State generally are assigned policy coordination responsibility within the Cabinet system.

3. Acting Ministers

Acting Ministers are appointed to exercise the powers, duties, and functions of Ministers when the latter are absent from Ottawa, are unable for other reasons to fulfill their responsibilities, or if they resign from the Ministry. The Prime Minister also may appoint Acting Ministers in cases in which he does not wish to name a Minister to a vacant portfolio. Acting Ministers exercise all the powers, duties, and functions conferred on the Minister by statute. They are required to be Privy Councillors and members of the Cabinet but are not entitled to additional indemnities for carrying out their duties as Acting Ministers.

It is usual to appoint Ministers to cover for each other's temporary absences by designating Ministers to be Acting Ministers for one or more of their colleagues on a continuing basis. The Prime Minister establishes a roster of Acting Ministers which is formalized by an Order in Council. The roster is circulated to all Ministers and tabled in Parliament. The Order in Council specifies an Acting Minister and, to provide for his or her possible absence, an alternative Acting Minister for each member of the Cabinet responsible for a department or Ministry of State. The Prime Minister also can act for every Minister, but normally he does so only when neither the designated Acting Minister nor his alternate is available.

Ministers' offices should provide the Prime Minister's Legislative Assistant and the Deputy Secretary to the Cabinet (Operations) with their Ministers' itineraries. This is necessary to monitor the availability of Ministers and to ensure they can be reached at short notice or alternatively to determine that recourse to an Acting Minister is necessary.

Ministers should ensure that in their absences Acting Ministers will be provided with every assistance to make decisions based on a full explanation of the nature and importance of specific issues. Acting Ministers should refrain from making major decisions in the temporary absence of the Minister, unless a matter is of real urgency, in which case they should consult if possible with the Minister, with the Prime Minister or, failing that, with appropriate members of Cabinet.

4. Acting Prime Minister

The Order in Council setting out the roster of Acting Ministers also establishes the basis for a Minister to exercise the powers, duties and functions of the Prime Minister on an Acting basis when he is absent from Ottawa. The list customarily is compiled on the basis of precedence and the order embodied in this roster is strictly adhered to in connection with House business and the chairing of Cabinet meetings. Ministers are notified by the Deputy Secretary to the Cabinet (Operations) on the occasions where they must assume the duties of Acting Prime Minister, and are provided with any appropriate briefings.

5. Deputy Ministers

Deputy Ministers are appointed by the Governor in Council on the recommendation of the Prime Minister, and usually in consultation with the Minister. They hold office "during pleasure" and may be moved from one department to another on the basis of the Prime Minister's decision as to the needs of various departments from time to time and of the Government generally. Deputy Ministers have a responsibility both to support the fulfillment of their Minister's individual responsibilities and to contribute to the overall achievement of the Government's program.

Deputy Ministers are responsible for the management of their department and play a significant role in formulating advice for their Ministers on policy

matters and on alternative means of implementing effectively the Government's policies and programs. The Deputy Minister also is in a position to provide continuity at a time of change of Minister or of Government, and has certain ongoing statutory responsibilities.

Deputy Ministers are answerable to their respective Ministers, who have the final responsibility for the policies and actions of their departments. Deputy Ministers advise Ministers and respond as directed by Ministers in developing new proposals. The working relationship between the two is most important, their mutual trust and confidence being the cornerstone of a successfully operating department. (Any serious differences should be discussed by the Minister or Deputy Minister with the Prime Minister or the Secretary to the Cabinet.)

Deputy Ministers have a particular responsibility to exercise on the Minister's behalf his or her "management and direction" of the department. In so doing Deputies are required to observe standards and practices established across the Government. In establishing Government-wide management standards the Treasury Board acts on behalf of the Ministry as a whole.

Deputy Ministers may, therefore, be said to support both the individual and collective responsibilities of their Ministers. They are responsible to their Ministers for development of advice regarding policies and programs, for the administration of programs, and for the management of their departments. They are required to carry out these responsibilities with due regard for the overall objectives established by the Prime Minister and the Ministry as a whole. In short, the Deputy Minister must endeavour to administer the Minister's department in such a way that policy and program development will be best served; that the overall objectives of the Ministry are promoted; that adequate financial and other management practices are followed; and that there be compatibility between the Deputy's obligations to the Prime Minister to contribute to the overall achievements of the Government and his obligation to support the fulfillment of his Minister's individual responsibilities. Additional information on the role of the Deputy Minister is provided in a paper prepared by the Privy Council Office, 'The Office of the Deputy Minister'.

6. Non-Departmental Bodies

In addition to the departments and ministries of state of the federal government, there are a large number of 'non-departmental bodies' including both Crown corporations and independent agencies, tribunals, boards and commissions. Most Ministers have several of these bodies within their realm of responsibility*, and, as will be apparent from this and the following sections on Crown corporations and independent agencies and tribunals, references to a "responsible" Minister cover a wide range of relationships. (This section provides information on non-departmental bodies generally, while the next two sections comment on the two major sub-groupings.)

Non-departmental bodies often have been established to achieve a degree of independence and to separate the administration of a function from the personnel and budgetary constraints and procedures that apply to departments.

It follows therefore that Ministers' relationships to these bodies and their powers of direction and control over them are usually significantly different from relationships with and powers with regard to their department. In the case of a department, the responsibility for its management and direction has been vested with the Minister by the departmental Act, and the Minister is accountable to Parliament for the conduct of his or her department and of its officials. However, with respect to the many different types of non-departmental bodies, Ministers exercise varying degrees of control and responsibility in accordance with the body's constituent Act -- and, in the case of some Crown corporations, their articles of incorporation or letters patent. In addition, the Financial Administration Act sets out the financial framework for the relationship between many of the non-departmental bodies, their appropriate Minister and the Government.

In order to determine the exact nature of their relationship with both the non-departmental bodies and the individual or group of individuals who lead each of them, Ministers should familiarize themselves thoroughly with the Acts and other legal documents pertaining to non-departmental bodies under their responsibility. Because of the number of combinations and permutations of non-departmental bodies, Ministers should consult with

* A list is provided in Appendix 2, p. 67

their Deputy Minister, their departmental legal advisor and, if necessary, the Secretary to the Cabinet if they have questions concerning their exact responsibilities for the bodies under their jurisdiction.

a) Independent Agencies and Tribunals

A large number of bodies have been constituted by Parliament to make certain sorts of decisions outside the ordinary Cabinet and government decision-making process. Some hear cases concerning parole, labour relations or restriction of trade matters; others review disputes between individuals and the Government concerning such matters as pensions, tariffs or immigration; there are bodies which award grants for research, study, and the arts, while others adjudicate among competing interests for licenses to operate broadcasting or transportation undertakings, or set rates in monopolistic situations.

In undertaking these functions many of these bodies act very much like courts of law and are provided with many of the powers and duties of courts. Parliament has usually gone to great lengths to protect this adjudicative process from intervention by either the government of the day or by government officials, although in the case of some regulatory bodies there is authority for Governor in Council review or approval of their decisions and for broad policy direction to the agency. Any such intervention is visible to Parliament and the public, and the intervenors therefore clearly can be held to account.

Ministers, in their relationships with these bodies and in answering parliamentary questions relating to them, should be very careful not to violate or appear to violate the independent nature of the adjudicative process (i.e., by intervening or appearing to intervene in a case under consideration). Guidelines issued in 1976 prohibit Ministers from communicating with officials of judicial and quasi-judicial tribunals on a case which is before them. (For a more detailed discussion, see p. 46).

b) Crown Corporations

In terms of size, as well as policy and financial impact, Crown corporations are probably the most important single group of non-departmental bodies. The demands of ministerial responsibility for some of the larger Crown corporations are formidable tasks in themselves and will usually occupy a considerable amount

of ministerial time and energy. Problems regarding the control, direction and accountability of Crown corporations have from time to time given rise to a great deal of public and parliamentary criticism about Ministers' activities in this area.

The relationship between Ministers and the Crown corporations under their jurisdiction requires a careful balance. On the one hand, the Government must ensure that corporations can be directed, held accountable and perform in a manner consistent with their role as instruments of public policy. On the other, there is an essential need for a flexible relationship that allows corporations to operate effectively in a corporate form, manner and milieu and in accordance with sound business behaviour and practices.

Ministers, in their role as trustee owner for the Crown, are responsible for communicating Government policy to Crown corporations, and are also responsible for the policy framework within which Crown corporations operate, for ensuring that policy is implemented, and also for ensuring that any management errors and omissions that come to their attention are corrected effectively and expeditiously. It is important therefore that Ministers establish effective communication links with the Crown corporations under their jurisdiction. These links should be used to ensure that the chairman and board of directors of the corporation are kept informed of Government objectives, that the board's accountability to the Government is maintained, and that in return Ministers are aware of problems and issues requiring their attention.

The powers which a Minister has over a given Crown corporation will be defined by a combination of the corporation's special act of incorporation, or if incorporated under company law, its articles, letters patent and related documents; Part VIII of the Financial Administration Act; the Government Companies Operation Act; and other Acts. If a corporation has been established under the Canada Business Corporations Act (CBCA), the Minister is the "trustee shareholder" and his or her powers of direction and control will be defined as well by the CBCA.

An important tool that Ministers have available to them in controlling, directing and correcting errors of Crown corporations is through the corporations' annual budgetary and corporate submissions. Each corporate plan must be approved by the appropriate Minister before it is considered by the Treasury Board, the Minister of Finance and the relevant Cabinet policy committee.

In general the major powers of a Minister vis-à-vis Crown corporations are:

i) The approval of capital budgets, operating budgets, corporate plans, by-laws, borrowings, and the acquisition or disposal of subsidiaries (in some cases as a prelude to approval by Governor in Council).

ii) As prescribed by statute, the appointment of directors in those cases where the Minister is the appointing authority, or where he has responsibility for recommending such appointments to the Governor in Council.

iii) To request minutes of boards of directors meetings and Crown corporation audit committees' reports. In some cases, Ministers may wish to ask for reports where there are variances between projected and actual performance.

iv) The power, in many cases, to direct a Crown corporation pursuant to the constituent act or to enter into a "unanimous shareholders agreement" under the Canada Business Corporations Act.

Ministers should refer to the Prime Minister's 1982 letter of administrative direction on Crown corporation reform for more detailed information.

c. Parliamentary Questions Concerning Non-Departmental Bodies

Questions frequently are posed in Parliament relating to the affairs of Crown corporations and other non-departmental bodies. Ministers, in responding to these questions, should be as clear and informative as possible but with the following considerations in mind:

- In view of the many different types of non-departmental bodies and the varying degrees of control which Ministers have over them, a Minister should not, in responding to a question, take or appear to take responsibility for a matter over which he or she has no statutory authority. Ministers are generally responsible for the policy framework within which Crown corporations and certain other non-departmental bodies operate, the expeditious and

effective correction of errors and any other duty or responsibility vested with the Minister pursuant to an act of Parliament. In response to questions involving these areas a Minister must take direct responsibility in answering questions. On the other hand, the managements of non-departmental bodies are usually accountable through the responsible Minister to Parliament for internal management and operation. In responding to questions relating to these areas the Minister should take no direct responsibility and answer instead on behalf of the body, using the "I am informed..." formula.

- Ministers should not intervene, and should not appear to take responsibility for or have the intention of intervening in any matter which is sub judice before a regulatory commission, administrative tribunal or appeal tribunal.

- Ministers should not, in responding to questions, provide information regarding Crown corporations which could reasonably be expected to harm a corporation's competitive position or detract from its ability to perform commercial undertakings.

7. Security

Ministers have the personal responsibility of ensuring that adequate security is maintained with respect to their office (p. 54), staff appointments (p. 54), Governor in Council appointments (p. 33), and their personal physical security (p. 49). Ministers also are personally responsible for the safe handling of Cabinet documents (p. 35).

Departmental security is the responsibility of each Deputy Minister or agency head, who in turn designates a responsible officer as Security Officer. This individual is available to provide information, briefings, or other services required and should be consulted about any security problem. The Security Officer is responsible within the department or agency for the application of government security policies. These policies are available through the Security Officer and should be referred to in order that breaches of security or potentially embarrassing situations do not occur.

At all times, the Assistant Secretary to the Cabinet (Security and Intelligence) is available to Ministers should special assistance or interpretation be required on physical security or security policy matters.

V. CABINET AND THE CABINET'S COMMITTEES

1. Collective Ministerial Responsibility

From its origins the proceedings of Cabinet have been governed by the rules of confidentiality whereby all items of business and discussion are considered internal to the Cabinet. The formal manifestation of this convention is the Privy Councillor's Oath. These rules are essential for the maintenance of Cabinet solidarity and of collective responsibility -- the constitutional principle that allows and requires the forging of the individual responsibilities and actions of Ministers into a coherent government program and direction.

The convention of the collective responsibility of Ministers is central to the operation of the Cabinet and of our system of government. Based on the need to achieve consensus in the Cabinet's activities, the convention holds that each member of the Ministry is equally responsible for the advice proffered to the Governor General and the decisions made as a result. Ministers are collectively responsible for the actions of each, and if in the extreme and despite all efforts at compromise a Minister cannot acquiesce in a particular decision of the Cabinet he or she must resign. (Ministers also are considered to have tendered their resignations automatically when the Prime Minister resigns, but in that circumstance they continue to be responsible for their departments until a replacement has been appointed.) Cabinet government works through a process of compromise and consensus. It is quite unusual for Cabinet to vote on questions before it.

It is a fundamental prerogative of a Minister to bring any item in his area of responsibility to the attention of the Cabinet for its information, advice, or agreement. It is, however, difficult to describe with any precision matters that should or should not be taken to Cabinet. The line is very hard to define between overburdening the Cabinet with non-essential business, or business that should be concluded elsewhere, and neglecting to inform Cabinet of potentially troublesome matters for which Ministers will be held collectively responsible, and of which they should be aware. At times Ministers will have difficult judgments to make about whether to bring particular issues to Cabinet, and

Ministers must exercise their best judgment, consulting their colleagues, and, if necessary, the Prime Minister about doubtful matters.

There are discretionary matters that Ministers individually, or in consultation with those colleagues most obviously concerned, may decide without submission to the Cabinet. These may include matters of policy that relate clearly to one department only, provided that they do not have implications of a broader character.

There are also matters that, although they do not directly or obviously involve "policy", can have implications of political significance, either generally or regionally, in Parliament or with the general public. Because such matters involve or affect either the Cabinet as a whole or certain Ministers in particular, they may be brought to the Cabinet for consideration.

2. Meetings of the Cabinet

Meetings of the Cabinet are convened on the instructions of the Prime Minister. Ministers are expected to attend all Cabinet meetings. Cabinet's agenda is made up of matters referred to it by Cabinet committees, items of special urgency, Parliamentary business, political communications issues, the discussion of senior appointments, and any other issues of concern to Ministers. Cabinet's agenda normally is circulated to Ministers, together with documentation for the agenda items (where it has not already been circulated), at least 48 hours before a Cabinet meeting. Cabinet meets each Thursday morning at 9:30 a.m. throughout the year, except for approximately three weeks in the summer and one or two weeks at Christmas and Easter during the Parliamentary recess. If Cabinet does not meet during these periods, a Special Operating Committee of Cabinet may deal with any urgent matters that may arise.

Most Cabinet committees also meet at regular times -- usually weekly or bi-weekly -- in order to assist Ministers in determining their personal schedules and provide a degree of certainty to planning for and timing of submissions to Cabinet.

3. Cabinet Procedure

Most Cabinet decision-making is based on consideration of written Memoranda to Cabinet (MCs) submitted by Ministers. These Memoranda state the issue,

its background, and alternative courses of action, concluding with recommendations that provide the focus for Ministerial discussion. Usually MC's will be covered by a three page executive summary. MCs signed by the sponsoring Minister are circulated to Ministers by the Privy Council Office, and are discussed initially in a committee of Cabinet, which is intended to give the issue a thorough airing and resolve it to the extent possible. In order to allow Ministers sufficient time for consideration of proposals, a minimum interval of 48 hours must normally elapse between circulation of a Memorandum to Cabinet and consideration of the item in committee. The Minister chairing the committee must approve any exception to this rule.

The decisions of committees, issued in the form of Committee Reports (CRs), ordinarily are placed on the annex to the agenda of the next meeting of either full Cabinet or the Priorities and Planning Committee, depending on their content and timing. It is expected that most CRs would receive routine ratification by Cabinet or the Priorities and Planning Committee. In cases where Ministers wish to reopen a particular matter, they must raise their concerns first with the Minister chairing the committee. If the issue cannot be resolved, the Minister may, through the committee chair, ask for reconsideration in Cabinet or the Priorities and Planning Committee. In such cases, the Deputy Secretary to the Cabinet (Operations) must be notified 24 hours before the meeting so the Prime Minister may be consulted. In the rare cases where no decision is reached in committee, or if a matter is such as to require the consideration of all Ministers, the committee report takes the form of a recommendation or a referral to the Cabinet.

A minimum interval of 48 hours must normally elapse between committee and Cabinet consideration of an item, unless the Prime Minister approves an exception to the rule.

Once a committee report has been ratified by Cabinet or the Priorities and Planning Committee, with or without discussion or modification, the decision is recorded in a Record of Decision (RD), which is circulated to all Ministers and Deputy Ministers and serves as the basis for appropriate follow-up. (For additional information on the handling of Cabinet papers see pp 35 to 37 below.)

4. Cabinet Committees

The Prime Minister may establish standing and ad hoc (temporary special-purpose) committees of the Cabinet as he sees fit. The Cabinet committee system has been in continuous use since the Second World War and was developed as a result of the rapidly increasing complexity and number of issues which needed Cabinet attention. A basic goal of this system is to settle as many questions as possible at the committee stage in order to lessen the workload of the Priorities and Planning Committee and full Cabinet and thereby allow them to concentrate on priority issues.

Six of the Cabinet's standing committees form the basis of the Policy and Expenditure Management System (PEMS - see below at page 25):

Priorities and Planning;
Treasury Board;

and four policy committees which deal with policy and expenditure decisions in specific areas of Government activity:

Economic and Regional Development;
Social Development;
Government Operations;
Foreign and Defence Policy.

In addition, the Cabinet Committee on Legislation and House Planning coordinates the Government's legislative program and the process of translating policy decisions into Bills. Responsibility for considering the communications aspects of proposals to Cabinet rests with the relevant policy committee of Cabinet, which must also consider any new expenditures on communications initiatives.

The following specialized committees of Cabinet meet as required:

Labour Relations;
Public Service;
Security and Intelligence;
Special Committee of Council.

From time to time other committees of Ministers are established on a temporary basis to examine particular issues.

The Special Committee of Council was formed for the specific purpose of approving routine Orders in Council. There are certain actions of the Ministry that require formal measures by the Governor in Council supported by appropriate instruments for their execution. These actions may be taken by the full Cabinet acting as the "Committee of the Council" for the purpose of recommending approval to the Governor General of Orders and Minutes of Council. However, in the majority of cases where the Orders in Council are routine in character or where they raise no new policy issues, the work is handled by a sub-committee known as the Special Committee of Council. Meetings of the Special Committee are held on a regular basis each week, usually immediately before the weekly Cabinet meeting.

All Ministers can attend any Cabinet Committee meeting except Priorities and Planning Committee, Treasury Board, and the Security and Intelligence Committee. However, the Prime Minister has designated Ministers as ongoing members of certain Committees which they are required to attend regularly.

5. Operation of Cabinet Committees

a) Membership of Cabinet Committees

The Ministers sitting in each standing committee are chosen by the Prime Minister to provide a balanced representation of departmental interests and responsibilities, personal interests and capacities, and regional and other factors. However, membership does not limit participation: as mentioned above, any Minister may attend meetings of any committee except the Priorities and Planning, Treasury Board and Security and Intelligence committees. In the case of these three, the Chairman's invitation is required. Membership lists of Cabinet committees are tabled in Parliament.

b) Ministers Chairing Cabinet Committees

The Prime Minister chairs Cabinet, the Committee on Priorities and Planning and the committees on the Public Service and Security and Intelligence. The selection of chairmen for other standing and ad hoc committees of Cabinet is made by the Prime Minister.

c) Meetings of Cabinet Committees

Most Cabinet committees maintain a schedule throughout the year similar to Cabinet's, meeting at regular times. They usually recess for some time in the summer. Documents and agendas are submitted and circulated and minutes are kept in the same way as for full Cabinet.

The agendas for committee meetings consist primarily of the various memoranda that Ministers have submitted to Cabinet, although Cabinet may from time to time refer items to committee. The allocation of particular memoranda to Cabinet committees is made by the Deputy Secretary to the Cabinet (Operations), subject to direction from the Prime Minister and the Secretary to the Cabinet.

6. Priority Setting and Resource Allocation

a) Policy and Expenditure Management System

The Policy and Expenditure Management System is intimately related to the Cabinet Committee system. It organizes collective ministerial decision-making in a way that brings together policy discussion and resource allocation. This allows Ministers to establish objectives and priorities consistent with available resources.

Under the system, total government expenditures are divided into ten resource envelopes, with each envelope defining a particular policy sector. The Priorities and Planning Committee and the four policy committees of Cabinet each are assigned two envelopes in accordance with their committee's policy area. The level of each envelope is set annually by the Priorities and Planning Committee as part of a larger exercise which includes the setting of the Government's fiscal framework and fiscal plan. Once the envelope levels are set they may only be amended by Priorities and Planning Committee. Cabinet policy committees are free, however, to reallocate resources within their envelopes in accordance with their changing policy priorities and subject to ratification of committee decisions by Priorities and Planning. Several times each year "auctions" or "banking days" are designated by each Policy Committee at which time a portion of the envelope reserve is allocated among competing proposals. This allows the committee to compare and rank proposals as a group at one time.

Additional information on the PEMS is provided in Appendix 5 (p.76) and in a booklet prepared by the Privy Council Office, "The Policy and Expenditure Management System."

b) Cabinet Committee on Priorities and Planning

The Cabinet Committee on Priorities and Planning is chaired by the Prime Minister. It is comprised of the Minister of Finance, the President of the Treasury Board, the Ministers who chair policy committees and other senior Ministers. Attendance of Ministers at meetings of the Priorities and Planning Committee normally is restricted to the members of the Committee. Exceptions must be approved by the Prime Minister.

The Committee considers the essential strategic issues facing the Government. It operates as a forum for discussion of the Government's central priorities and directions and for reconciling its policy objectives with available resources. The Committee's procedures are similar to those of Cabinet. It has the authority to ratify decisions of other committees and usually considers policy committee decisions with resource implications. It plays a pivotal role in the Policy and Expenditure Management System through its responsibilities in the annual process of setting the levels of the resource envelopes into which government expenditures are divided. Cross-envelope issues and important and contentious policy issues also are dealt with by the Committee, which meets weekly on Tuesday morning at 10:00 a.m.

c) Minister of Finance

The Minister of Finance is responsible for the management of the Consolidated Revenue Fund, the revenue budget, the national debt, the Government's fiscal, tax and macroeconomic policy generally and the regulation of financial institutions. The Minister also plays a central role in the PEMS which includes preparing the fiscal framework, recommending envelope levels (and adjustments to those levels in the course of the year), and speaking in policy committees and the Priorities and Planning Committee to the macro-economic implications of ministerial policy proposals, including suggestions made relating to tax expenditures. The Department of Finance supports the Minister in these roles.

d) The Treasury Board

The Treasury Board is a statutory Committee of the Privy Council and receives direction from the Governor in Council. It consists of the President of the Treasury Board, the Minister of Finance, and four other Ministers appointed by Order in Council. A number of other Ministers are appointed as alternates.

The role of the President of the Treasury Board in the PEMS is to maintain an overview of the Government's expenditure plan. He is the "accountant" of the envelope system and advises policy committees on both the resource implications and the efficiency aspects of existing Government programs and of policy proposals from Ministers for new programs. In addition to supporting the President in that role, the Treasury Board Secretariat (TBS) also advises the Board on specific proposals from departments for access to funds to cover workload or cost increases (as opposed to policy changes which are handled by policy committees) and for personnel resources (person years), to carry out programs previously given policy approval by Cabinet (and by Parliament as appropriate). The Treasury Board approves contracts entered into by departments and sets rules of administrative procedure. It is responsible for classification and compensation questions, serving as the employer in collective bargaining with the public service, and is also concerned with the internal organization of Government departments and with official languages policy. In the personnel management field the Treasury Board Secretariat shares responsibility with the Public Service Commission, which oversees the application of the merit principle to hiring, promotions and dismissals in the public service.

The Treasury Board also is supported by the Comptroller General, a public servant who heads the Office of the Comptroller General (OCG). He is responsible for overseeing the Government's financial management practices, including the form in which the Estimates are presented to Parliament and internal audit procedures. The OCG also has been active in developing techniques for program effectiveness evaluation and in assisting departments in developing their internal management practices and program evaluation capabilities.

7. Official Support to Cabinet Committees

a) Central Agency Support

Public service support to Cabinet is built on the distinction between "line" departments, which under the direction of their Ministers are responsible for developing and carrying out operational programs; and central agencies, which generally have no operational responsibilities but support collective decision-making by Ministers.

Each Cabinet Committee (with the exception of the Treasury Board, whose secretariat is a separate department of government) is supported by a permanent secretariat in the Privy Council Office. The Privy Council Office serves under the Prime Minister's direction as Cabinet's secretariat. It is organized into two main divisions (Operations and Plans), each headed by a Deputy Secretary to the Cabinet. They service Cabinet and its Committees by preparing agendas, organizing meetings, and recording decisions and minutes. Individual secretariats within the two divisions parallel the present structure of Cabinet's committees. Each secretariat is headed by an Assistant Secretary to the Cabinet who serves as secretary to the Cabinet committee.

The Secretary to the Cabinet also is responsible for the secretariat which services the Cabinet Committee on Security and Intelligence (chaired by the Prime Minister) and related interdepartmental committees. This secretariat assists the Prime Minister in his general responsibility for security and intelligence matters.

The Economic and Regional Development and the Social Development Committees each are supported by their respective PCO secretariats and by a Ministry of State reporting to the Minister chairing the Committee. These Ministries of State provide advice to the Committees on substantive sectoral strategy and priorities, cross-departmental coordination, resource allocation and management, and the analysis of program effectiveness. For the Cabinet Committee on Government Operations this support is provided by a PCO secretariat with the assistance of other interdepartmental mechanisms and central agencies. In the case of the Committee on Foreign and Defence Policy, a unit within the Department of

External Affairs provides much of the Ministry of State-type support, and the secretariat services again are provided by the PCO.

b) Interdepartmental Coordination

The other major institutional support to each Cabinet policy committee is its committee of Deputy Ministers, chaired by the public service head of the Ministry of State. (Because membership parallels that of the Cabinet committee, these Deputies' committees are sometimes referred to as 'mirror committees'.) The mirror committees often discuss draft Memoranda to Cabinet before they have been signed by the sponsoring Minister. The mirror committees do not have any formal decision-making authority with respect to these drafts, and their discussion is intended to ensure that there has been adequate consultation on policy proposals. The Deputies' committees also improve the awareness of Deputies of overall and sectoral priorities and concerns of the Government, and provide additional information to them which is useful in briefing their Ministers for Cabinet discussions.

c) Officials at Cabinet and Cabinet Committee Meetings

The Secretary to the Cabinet attends meetings of full Cabinet but does not sit at the Cabinet table. The Secretary to the Cabinet does not participate in the discussion, but may contribute if asked to do so. The Deputy Secretary to the Cabinet (Operations) and the Deputy Secretary (Plans) also attend, as does an Assistant Secretary, who takes the minutes. Other officials do not ordinarily attend but can be summoned to Cabinet meetings to give information on particular matters. This procedure is seldom used, and when it has been, officials usually have been asked to withdraw as soon as they have provided the required information. The rules governing the attendance of officials at meetings of the Committee on Priorities and Planning closely resemble those adopted by Cabinet, except that the Secretary to the Cabinet for Federal-Provincial Relations and the Deputy Minister of Finance attend meetings of Priorities and Planning.

With respect to other Cabinet committees, the Assistant Secretaries to the Cabinet, who head the sections of the Cabinet Secretariat that service the

respective committees of the Cabinet, attend meetings of their particular Cabinet committee and are assisted by a member of their Secretariat, who takes the minutes. Generally, the Assistant Secretary to the Cabinet is expected to remain in the room even when other officials are asked by the chairman to withdraw.

The attendance of other officials at Cabinet committee meetings is limited to the minimum number necessary to address the items on the agenda. Accordingly, attendance by officials is:

- (i) on the invitation of their Minister and in his or her company, in which case a Minister is expected to ensure that not more than one official attends; or,
- (ii) by a Deputy Minister or Assistant Deputy Minister (and no other official) in the absence of his or her Minister, with the approval of the committee chairman, if the Minister thinks that there is a matter of prime concern to his or her department on the agenda of the meeting in the discussion of which the Minister's Deputy Minister might be required to intervene on the Minister's behalf; or,
- (iii) when the committee or its chairman request the attendance of an official to provide information necessary for the committee's discussion.

Officials are present only for the items on an agenda in which they and their departments have a direct concern. Attendance of officials is, at all times, subject to the discretion of the chairman, who determines whether attendance is, in fact, required for a particular item, or whether, in his or her judgment, having regard for all circumstances, it is desirable that any or all departmental officials be asked to withdraw from the meeting. The Assistant Secretary to the Cabinet will act to implement the chairman's decisions in this regard.

Because of the large number of items in the four policy committees in the Policy and Expenditure Management System which may involve expenditures or have financial implications, the Minister of Finance and the President of

the Treasury Board are ex officio members of these committees and are regularly represented at committee meetings by their Deputies or by another senior official. On occasion a similar arrangement may be made for the attendance of the Deputy Minister of Justice, or if required, another Justice officer, in cases in which legal advice is required or contemplated. The attendance of any of these officials, as in the case of all other officials, is subject to the general discretion of the chairman.

Ministers are urged to keep the number of accompanying officials to a minimum. All Ministers should be mindful that the presence of numerous officials tends to inhibit free discussion among Ministers. Ministers' exempt staff may not attend meetings of Cabinet or its committees.

8. Use of English and French in Cabinet Operations

Ministers are urged to submit all memoranda to the Cabinet in both official languages. Agendas indicate both the English and French title of the document. Cabinet and Cabinet Committee minutes and Committee reports are produced in the official language in which they were written by the recording secretary. The Cabinet Record of Decision is, however, issued in both official languages. Ministers are encouraged to use either English or French in Cabinet and Cabinet committee discussions. Simultaneous translation services are available for meetings of Cabinet committees when needed.

VI. GOVERNOR IN COUNCIL RECOMMENDATIONS

All recommendations to the Governor in Council must be made over the signature of the responsible Minister. Submissions that do not raise policy issues that should be addressed in Cabinet ordinarily are considered by the Special Committee of Council. The Assistant Clerk of the Privy Council (Orders in Council) and the departmental legal officer are responsible for processing draft Orders in Council and can provide advice on procedures for making submissions. It is important to bear in mind that public announcements regarding Orders in Council should not be made until after the Orders have been approved by the Governor General and have been returned to the Privy Council Office. This normally requires thirty-six hours following the adoption of the submission by Council. Ministers should consult the reference manual 'Directives on Submissions to the Governor in Council and Statutory Instruments' prepared by the Privy Council Office for more detailed information on the procedures to follow.

1. Appointments

a) General

There are approximately four hundred and fifty full-time Governor in Council appointments, for which individual members of the Ministry are required by statute to recommend candidates. Most full-time appointments are made either on the Prime Minister's recommendation or on that of one of his colleagues in consultation with him. Ministers also are responsible for recommending candidates for the numerous part-time appointments to the Boards of Crown corporations and agencies.

Both the Prime Minister's Office and the Privy Council Office participate in gathering information and advising with respect to full-time and part-time appointments. Vacancies in both full and part-time positions are identified on a regular basis by the Senior Personnel Secretariat in PCO under the direction of the Senior Advisor on Personnel Management and circulated to all Ministers. Recommendations from Ministers for appointments are vetted through the Prime Minister's Office to ensure that necessary political consultations have occurred. The Senior Personnel Secretariat in PCO also ensures that procedural and statutory requirements have been satisfied and provides advice on issues of

classification and remuneration. Ministers are invited to draw upon these facilities in making recommendations for the senior appointments for which they are responsible.

It is particularly important in the case of appointments to ensure that submissions to the Governor in Council are in both official languages, and that they state the full name and place of residence of the appointee. Bearing in mind that Governor in Council appointees in full-time positions are subject to conflict of interest guidelines for Governor in Council appointments, care should be taken to ensure that candidates do not harbour potential conflicts of interest. Ministers also should ensure that candidates for full-time positions understand the full-time nature of their responsibilities. Ministers should always agree with potential appointees on the date they will report for duty and insert in the draft Order in Council that date as the effective date. Ministers should remember that if no date is inserted, then the effective date of appointment is the date the Order in Council is passed.

b) Remuneration

Ministers also should remember that salaries of Governor in Council positions are set or approved by the Governor in Council on the recommendation of the Prime Minister, and Ministers (and the corporations for which they are responsible) therefore should avoid quoting salary figures to proposed appointees without the approval of the Prime Minister. The Senior Advisor on Personnel Management in the Privy Council Office can provide additional information to Ministers in this regard. Ministers also should take care to ensure that Boards of Directors of corporations for which they are responsible do not implement compensation packages (bonuses, loans at reduced rates, etc.) beyond those approved by the Governor in Council. In this regard, Ministers might request assistance from the Crown Corporation units in their departments.

c) Security

When it is the responsibility of a Minister to recommend a person for appointment by the Governor in Council, all such appointees will be subject to a pre-appointment records check by the RCMP. The Minister should request such a check through his departmental Security Officer. The Minister is responsible for ensuring that such checks are requested prior to the

appointment. If the position is one which involves security considerations, the necessary security clearance must be obtained before the appointment is recommended. The departmental Deputy Minister or the Privy Council Office can normally advise whether security considerations apply to any particular position.

d) Official Languages

Ministers should ensure that appointments and appointment recommendations take into account the requirements of the official languages policy. The main element of this policy is that candidates considered for senior full-time classified position (technically those at the DM or GIC-8 level) in an organization which is covered by the Official Languages Act, must be minimally bilingual (at the "B" level). This prerequisite for appointment may mean that certain new appointees will have to be tested to confirm the candidate's level of proficiency in his or her second language. In those situations, or for additional information on this requirement, Ministers should contact the Senior Advisor on Personnel Management in the PCO who will make the necessary arrangements. (Candidates who do not meet the language requirements of the positions could be exempted by the Prime Minister.)

2. Regulations

Ministers from time to time will seek Orders in Council enacting or amending regulations pursuant to particular sections of statutes for which they are responsible. It should be noted that the Governor in Council cannot authorize action on regulations to be taken retroactively unless there is statutory authority to do so. Accordingly, Ministers should ensure that their Departments arrange matters in such a way that proposed regulations reach the Privy Council Office well before the desired date of implementation so they may be verified in accordance with prescribed standards.

VII. HANDLING OF AND ACCESS TO CABINET,
DEPARTMENTAL AND PERSONAL PAPERS

1. Introduction

Ministers usually will have in their own offices papers falling into three general categories: Cabinet papers; departmental and other official papers; and personal and political papers. Each of these groups of documents is subject to its own set of considerations under the provisions of the Access to Information Act, the Privacy Act, and the Canada Evidence Act. In addition to these statutory requirements, certain Parliamentary and conventional practices affect the way in which documents are handled.

2. Cabinet Papers

The efficient operation of the Cabinet is enhanced by its system of records. In order to protect the convention of the collective responsibility of Ministers to Parliament and allow for the fullest and frankest possible discussion among Ministers in the Cabinet and Cabinet committee decision-making process, it is important that Ministers safeguard the confidentiality of all Cabinet papers under all circumstances. They should only be seen by authorized individuals. They should always be in the custody of either the Minister or a member of the Minister's personal staff who has received the necessary security clearance and who is specifically charged with the security and custody of the Minister's Cabinet papers.

Ministers are personally responsible for the safe handling of classified material, including Cabinet documents. Cabinet papers and documents may be circulated outside the National Capital Region unless an exception (and additional measures for the handling of those documents) is approved by the Secretary to the Cabinet. Cabinet papers are never to be taken out of the country unless adequate security measures are taken and have been approved by the Privy Council Office. Cabinet papers and documents must not be retained by Ministers when they leave office; they are on loan from the Privy Council Office and must be returned.

a) Cabinet Memoranda

The provisions of the Access to Information Act do not apply to memoranda to Cabinet which have been in

existence for less than 20 years, but discussion papers -- the purpose of which is to present background explanations and analyses of problems -- become subject to the Act after a decision is announced, or after four years if no decision has been made public. Discussion papers may nevertheless be exempt from the provisions of the Act if their subject matter falls within one or more of the Act's exemption clauses. Ministers should ensure that material otherwise subject to disclosure under Access is not restricted solely because it has been incorporated in a Cabinet memorandum. To this end, departments often are able to prepare separate discussion papers for Cabinet proposals whose subject matter normally would be subject to disclosure under the Access to Information Act. A "Guidance Manual for the Preparation and Handling of Cabinet Papers", published by the Privy Council Office, provides comprehensive instructions on the preparation of Cabinet memoranda and discussion papers.

When an item has been disposed of and the papers are no longer needed, Ministers should ensure that the memorandum is returned to the Privy Council Office. Memoranda, and the other classes of papers to be returned that are mentioned below, are provided to recipients on an accountable basis as a means of protecting their confidentiality. No copies may be made. Ministers are urged to ensure that their offices observe the rules governing the circulation and prompt return of Cabinet papers.

b) Cabinet and Cabinet Committee Minutes

Minutes of the Cabinet and of Cabinet committees are for "Ministers' Eyes Only". While all Cabinet papers are governed by the rules of confidentiality pertaining to the advice offered by Privy Councillors, a special degree of confidentiality attaches to the minutes of Cabinet and its committees. The minutes reflect the discussion, although they do not usually make attributions unless so directed by the Minister or Ministers concerned. Ministers are urged to ensure that minutes are quite literally seen by "Ministers' Eyes Only". The minutes are not distributed but they may be examined in the Privy Council Office on request by any Minister who was a member of the Ministry at the time of the meeting. No copies may be made.

c) Agendas and Committee Reports

Agendas of the Cabinet and Cabinet Committees and reports of all Cabinet committees, with the exception of the Security and Intelligence Committee, are circulated to all Ministers and Deputy Ministers. These documents also may be circulated by Ministers to officials who need them in order to brief their Minister. Agendas should be returned immediately following the meeting for which they were issued, and committee reports should be returned as soon as they have been superseded by a Cabinet decision. Copies should not be made.

d) Records of Decision

Records of Decision by Cabinet are circulated to all Ministers and Deputy Ministers. These may be retained on special files, although Ministers must return their copies to the Privy Council Office when they leave the Ministry.

3. Departmental Papers

Departmental papers are those records relating to the continuing operations or business of a department or agency which the Minister has under his or her jurisdiction. These include records created by departments, and records pertaining to administrative activities. Such official papers should be deposited in departmental registries. When leaving office Ministers should not remove departmental files or parts thereof pertaining to the business of the department.

4. Personal Papers

Personal papers are those records pertaining to personal subjects relating to the Minister's constituency and political matters as opposed to departmental official matters. The personal and political papers kept by Ministers are excluded from the application of the Access to Information Act if they are kept separate from departmental files. Letters and papers that are personal, or which are primarily political as distinct from official in nature, should be kept on separate ministerial files. These may be retained by Ministers.

On leaving office with any papers, Ministers may and should avail themselves of the secure storage facilities and archival services offered by the Public

Archives to all members and former members of the Government. Ministers naturally will be particularly careful to ensure the security of papers touching on sensitive issues or subjects.

Ministers should consider from the outset maintaining separate Personal and Departmental files. For further suggestions on their office filing system, they should refer to the "Records Management Guide of Ministers' Offices", issued by Public Archives Canada. Ministers also should refer to "Ministerial Records and the Access to Information Legislation" (September 1983) and "Interim Policy Guide: Access to Information Act and the Privacy Act", both of which are issued by the Treasury Board and are available from departmental Information and Access Co-ordinators.

5. Access to Information

a) Introduction

The Access to Information Act provides a right of access to information in records under the control of Government institutions. It is based on the twin principles that Government information should be available to the public and that necessary exceptions should be limited and specified by law. The Act is an expression of the policy of openness in government. Ministers are expected to operate in accordance with the intent of the Act when dealing with requests from the public for information, and should be kept fully informed by their departments of requests for access which are being granted.

The Privacy Act and the amendments to the Canada Evidence Act (Public Interest Immunity rules) are complementary to the Access to Information Act. The Privacy Act sets out the principles governing the use, disclosure, collection, retention, and disposal of personal information and expands previously existing statutory protection for personal information held by a government institution. The Public Interest Immunity rules apply to instances where a court of law seeks information from the Government that is relevant to a case before it.

It is important that Ministers and their staffs become familiar with the provisions of the Access to Information Act and the Privacy Act. In particular, Ministers should be aware of the role which the Acts

assign to them in making decisions about requests. They also should be familiar with the implications of the Access to Information Act in relation to advice provided to themselves and to Cabinet (see the section on Cabinet Records for more detail). Each department has established internal machinery for responding to requests for access to records and personal information, and Ministers should ensure that they are briefed in more detail on these matters by their Deputy Minister.

b) Request for Access Procedures

Those records which fall under the category of confidences of the Privy Council are excluded from the application of the Act for a period of 20 years in the case of confidences in general and for up to four years in the case of discussion papers. Ministers should take care, however, to ensure that this protection afforded the Cabinet decision making process is not abused, and that material is not included in Cabinet papers in a manner that violates the intent of the Access to Information and Privacy Acts. All access requests involving Cabinet confidences should be answered in consultation with the Privy Council Office. The Deputy Minister and/or Access Coordinator in each department can assist in arranging such consultation.

6. Special Cases of Access to Papers

a) Access to Papers of Former Ministries

The principle of the confidentiality of Cabinet discussions is fundamental to the maintenance of the collective responsibility of Ministers to Parliament. It seeks both to preserve the confidentiality of relations between the Crown and its Ministers and to allow for the fullest and frankest possible discussion between Ministers, both orally and on paper. In order to preserve this confidentiality and thus the usefulness of Cabinet papers and records, it has become a well established convention that a new Ministry may not have access to the Cabinet, Cabinet Committee, and Ministerial records of preceding Governments.

The convention was first formally articulated in 1957 by Mr. Diefenbaker and his Cabinet. Since then the Secretary to the Cabinet has played the role of an intermediary, confirming arrangements with both outgoing and incoming Prime Ministers. The convention was described in 1963 in an exchange of letters between Mr. Diefenbaker, the Secretary to the Cabinet and

Mr. Pearson. This procedure was followed in 1979 and again in 1980 in confirming arrangements between Mr. Trudeau and Mr. Clark.

Since 1957, all Cabinet records of outgoing governments have been left in the custody of a senior public servant in whom the outgoing Prime Minister places his confidence, traditionally the Clerk of the Privy Council and Secretary to the Cabinet, on condition that they are to be seen only by persons who were Ministers at the time to which the records related and, in order to ensure continuity of government, by that senior official or the very few Privy Council Office staff whom he authorizes to see them. The convention thus applies to new Ministers in a continuing administration as well as to Ministers of an incoming administration. In working with material on departmental files originating with a previous government, departmental officials also adhere to those principles. Officials may, however, brief Ministers on the substance of decisions and actions taken by previous governments and on the necessary background. When there is doubt as to the propriety of such briefings, the Secretary to the Cabinet should be consulted.

In addition to the full range of Cabinet papers and minutes, this arrangement applies to correspondence between Ministers containing the expression of their views and opinions as well as other documents reflecting any such views and opinions even though contained in departmental files. It also applies to all documents and information concerning the private interests of the members of a Ministry, which Ministers are obliged to file with the Office of the Assistant Deputy Registrar General under the Conflict of Interest Guidelines.

The convention has been fully respected by succeeding Governments from its inception, and the arrangements afford the protection desired for the confidences of the outgoing Government while involving the minimum disruption to the continuity of Government business.

b) The Production of Papers in Parliament

Ministers are asked frequently by Members of Parliament to make information public. The production of papers in response to an M.P.'s Notice of Motion is an important means of assisting Members to fulfill their role

as Parliamentarians by making information available to the public. Ministers should endeavour to meet these requests as far as is possible without jeopardizing effective administration, individual rights to privacy, or the security of the state. They should also be guided by the provisions of the Access to Information Act, the Privacy Act, and the Canada Evidence Act (Public Interest Immunity rules) and should ensure that their approaches to production of papers in the House and to requests under the various facets of the Access régime are consistent. Ministers accepting Motions to Produce should state that acceptance is "subject to the usual reservations". Ministerial correspondence of a personal nature, or which deals with constituency or general political matters, is regarded as private and is not subject to production in the House, nor of course are Cabinet Papers and other Privy Council confidences.

c) Studies by Consultants

In considering whether studies conducted by consultants should be released, Ministers should take into account the provisions contained in the Access to Information Act and the Privacy Act. The terms of reference and consulting contracts should stipulate that the report be produced in two or more volumes -- one volume incorporating recommendations and the other presenting supporting evidence and analysis. As much of the completed study should be released to the public as possible, and consultants should be encouraged to prepare the study so that those parts of the study which may not be released under the Access régime are easily severable from those that may be released. If Ministers are in doubt over the status of a study, or parts of a study under the Access to Information and Privacy Acts, they should seek advice from their Deputy Minister and departmental legal counsel.

d) Memoirs and Access by Former Ministers

It is a convention that former Ministers may have access to departmental and Cabinet records and files dating from the period of time when they held office, but only from this period. Former Ministers may have access to the departmental files only of the department of which, and for the periods when, they were Minister or Acting Minister. Usually former Ministers will avail themselves of this privilege for the purpose of preparing memoirs or

other accounts of the issues with which they dealt when Ministers. When contemplating publication, former Ministers remain, of course, responsible for ensuring that there is no contravention of their oath as a Privy Councillor. In all cases former Ministers intending to write about their tenure as members of the Cabinet must seek the guidance of the Secretary to the Cabinet, who can provide them with advice in particular circumstances on the requirements and conditions related to their Privy Council Oath. Access by former Ministers to Cabinet papers covering their period in office will be provided only within PCO office space.

The former Minister of a particular department may not publish memoirs or other material relating to that department if he or she continues to hold ministerial office in another portfolio.

VIII. PERSONAL MATTERS

1. Ethical Conduct and Conflict of Interest

It has been said that the elementary qualification demanded of a Minister is honesty and incorruptibility. But it is not enough to have those qualities. The attitudes and conduct of Ministers must be such as to reflect them. Moreover, it is by no means sufficient for a Minister, or indeed for anyone in a position of responsibility in the Government, to act within the law. That goes without saying. Much more is required. There is an obligation not simply to observe the law but to act in a manner so scrupulous that it will bear the closest public scrutiny. The conduct of public business must be beyond question in terms of moral standards, objectivity and equality of treatment. It is in this context of fundamental principle that the conflict of interest guidelines have been developed.

The purpose of the Conflict of Interest Guidelines is to assist Ministers in observing these principles and in maintaining the high standard of conduct expected of them throughout their activities. As the Guidelines are general in nature, conforming to the letter of them may not afford complete protection for individual Ministers in all cases. Each Minister therefore is responsible for taking whatever action may be necessary to ensure that conflicts of interest may be avoided.

In accordance with these principles, Ministers may not hold directorships in business corporations or engage in the practice of a profession or in the management or operation of any business or commercial enterprise, union or professional association. Offers of directorships or offices in organizations of a philanthropic or charitable character should be carefully examined and must be refused where these organizations are in receipt of federal public funds.

At the time of their appointment to the Cabinet, Ministers must make a full report to the Prime Minister, through the Assistant Deputy Registrar General (ADRG), of all their assets and liabilities and the partnerships, directorships and corporate executive positions held by them in the two years preceding their appointment. These reports must be updated annually. The Conflict of Interest guidelines may be obtained from the office of the ADRG.

The assets of Ministers are divided into three basic categories:

(a) exempt assets - The first category consists of property which is for the personal use of Ministers and their families and is not of a commercial character. There are no requirements of public disclosure or restrictions applied to this category. Examples are: residence(s) actually used by Ministers or their families, household goods, automobiles, boats and aircraft for personal use, cash, bank balances, the securities of any government in Canada, registered retirement savings plan, and investments in mutual funds for the purpose of providing retirement income.

(b) disclosable assets - the second category consists of assets that cannot easily be affected by decisions of Government policy and therefore are unlikely to give rise to a conflict of interest. These include: real property (other than property under the first category) which is unlikely to create a conflict of interest; ownership of assets of trusts of which the administration is carried out at arm's length; and ownership interests in family businesses and real property and holdings in companies the shares of which are not traded on public exchanges, do not contract with the government, are of a local character and do not own or control shares of public companies.

Ministers may retain and deal with such holdings if they file a declaration of ownership with the ADRG within 60 days of their appointment to the Ministry and file information on any subsequent sales, purchases or acquisitions of the assets with the ADRG within 30 days after the transaction has been completed. These declarations are open to public inspection. If no declarations are filed, the assets must be treated as "controlled assets" (see below).

(c) controlled assets - Ministers may not retain assets in the third category, which consists of property the value of which may be affected by decisions of Government policy. Divestment of

each such asset must take one of two forms: (i) sale; or (ii) the establishment of a blind trust. Under a blind trust, the trustee must be empowered to make all decisions on his own and without informing the Minister. The trust is to extend for the duration of a Minister's tenure of office. The costs of establishing and discharging blind trust arrangements shall be reimbursed by the Minister's department. Actual and reasonable costs for maintaining and administering such arrangements will be reimbursed up to a prescribed limit. (Information in this regard can be obtained from the ADRG.)

Ministers are required to file a copy of the trust agreement(s) with the ADRG for retention in a confidential file. Ministers also file with the ADRG a statement of compliance with the conflict of interest guidelines which is open for public inspection. This statement indicates only the kinds of arrangements made and in no way details a Minister's present or former holdings. Ministers must complete all arrangements necessary to achieve full compliance within 120 days of appointment, and they will be considered complete when approved by the Prime Minister. If questions related to compliance with these Guidelines cannot be resolved between a Minister and the ADRG, the matter will be referred to an advisory committee to the Prime Minister composed of the Clerk of the Privy Council and the Prime Minister's Principal Secretary.

The Conflict of Interest Guidelines do not directly apply to Ministers' spouses or dependent children. Ministers must not, however, transfer their assets to their spouses or dependent children with a view to avoiding the requirements of the Guidelines. Ministers should also bear in mind their individual responsibility to prevent conflicts of interest, including those that might conceivably arise or appear to arise out of dealings in property or investments which are owned or managed in whole or in part by their spouses or dependent children.

In the event that an item arises in Cabinet or its committees that affects personal interests Ministers may have, Ministers should declare the nature of their interests. The minutes of the meeting will indicate the action taken by the Minister in this regard.

2. Post-Employment Guidelines

Current Post-Employment Guidelines apply, amongst others, to Ministers and to exempt staff at the EX-1 equivalent levels and above. (The EX-1 salary level is \$51,410 to \$60,420, subject to change on July 1, 1984.) The post-employment guidelines may be obtained from the office of the Assistant Deputy Registrar General.

The Post-Employment Guidelines state that, while holding ministerial office, Ministers should not be influenced in their official duties by their plans for or pursuit of outside employment and that in any official dealings with former office holders, Ministers must ensure that they do not provide grounds or the appearance of grounds for allegations of improper influence, privileged access or preferential treatment. The Guidelines also place limitations on the employment and commercial activities of former Ministers. These limitations apply for one or two years, depending on the nature of the activity involved.

3. Relations with the Judiciary and Quasi-Judicial Tribunals

No member of the Cabinet may communicate with members of the judiciary concerning any matter which they have before them in their judicial capacities, except through the Minister of Justice, or through duly authorized officials of, or counsel acting for, that Minister. Neither may any member of the Cabinet communicate with members of quasi-judicial bodies which are constituted as courts of record concerning any matter which they have before them in their juridical capacities except through the Minister responsible, or through duly authorized officials of, or counsel acting for, that Minister.

4. Salaries and Allowances

Ministers receive an annual salary pursuant to the Salaries Act in addition to their House or Senate emoluments, and a tax-free motor vehicle allowance pursuant to the Senate and House of Commons Act. As a member of Parliament, a Minister receives a sessional indemnity and a tax-free sessional allowance. Ministers may participate in a special contributory pension scheme in addition to the scheme available to them as Members of

Parliament. Ministerial salaries and allowances are summarized in Appendix 3, p. 77. For more information, Ministers should consult the Administrator of the House of Commons or the Senate Finance Officer as appropriate.

Ministers receive no expense allowances as such, although in accordance with the Treasury Board Hospitality Policy they may be reimbursed by their departments for official entertainment and also may claim for travel expenses. Ministers should fill out the special claim forms provided by their departments when claiming expenses. In doing so, Ministers should be aware of the high standards expected of them as Ministers and consequently the necessity of avoiding the slightest suggestion of the use of public funds or facilities for anything other than purely official purposes. Further information regarding expenses can be obtained from the department's Deputy Minister or the Administrative Policy Branch in the Treasury Board Secretariat.

5. Cars

Ministers are provided by their departments with a Government car for their use on official business. If Ministers wish the official car to be made available for their personal use they must pay a monthly charge which is based on the capital costs of the vehicle and which varies according to whether the car is used on weekends. The total taxable benefit under the Income Tax Act will be calculated at the end of the year, and the net benefit, i.e.: the total benefit less the amount paid throughout the year, will be added to the Minister's T-4 slip. Travel between Ministers' residences and their office is considered personal use of the car. The policy is stated in detail in the Treasury Board Circular on Policy Respecting Provision of Motor Vehicles to Ministers for Use on Official Business.

6. Telephones

Ministers and either their Executive Assistant or their Private Secretary are entitled to the provision of a private telephone paid by public funds. Ministers may elect to exercise this privilege in any one of the following locations: their constituency residence, country residence, or Ottawa/Hull residence. Their Executive Assistant or Private Secretary may have a telephone installed in either their Ottawa/Hull or their

country residence. Ministers also receive codes enabling them to have access from anywhere in Canada to the government's cross-country telephone facilities.

7. Travel Facilities

Courtesy of Air Canada and CP Air, Ministers receive complimentary passes for First Class travel both within Canada and overseas. They also may avail themselves of the free railway travel provisions afforded all Members of Parliament and their families.

Ministers may travel on scheduled Department of National Defence flights without charge, and they may make use of executive aircraft provided by the Department of Transport and the Department of National Defence under certain circumstances. Such executive aircraft should be used only in cases where commercial air service is not available or suitable. They may never be used for party or constituency purposes or for purposes related to an election campaign. They may only be used when the purpose of the trip is to carry out ministerial or departmental business.

Ministers' departments are charged for the use of executive aircraft, with the rate they are charged depending upon the category to which the particular flight belongs. For more details on executive flights, Ministers should consult Guidelines for Use of Executive Flights, issued by the Prime Minister.

The Department of Transport also provides railway cars for the use of Ministers. These may not be used for party or constituency purposes or for purposes related to an election campaign. Users of government railway cars must bear any expenses that would not otherwise be incurred by the railways for their maintenance. This is to say that food, and any charges from Via Rail or other railway companies for special switching or unusual requirements, must be paid for by the Minister. Any accompanying individuals who are not entitled to passes should be in the possession of a coach fare ticket. Ministers will be charged for any special hauling arrangements they request. Ministers should consult Guidelines for the Use of Government Rail Cars, issued by the Department of Transport, for more details.

Ministers may be accompanied by their spouses on government planes and railway cars without charge. They may not, however, charge any out of pocket expenses to the government.

8. Gifts

Ministers must disclose to the Assistant Deputy Registrar General within thirty days of their receipt any personal gift or other benefit of a value exceeding two hundred dollars from any person not connected with them by blood relationship, marriage or adoption, together with the name and address of the donor. The ADRG will place disclosures in a registry he maintains which is open to public inspection.

Official gifts and hospitality received from other governments and hospitality received from personal friends are not subject to this rule. Ministers should consult with the Protocol Division of the Department of External Affairs concerning official gifts.

9. Security

A number of measures are taken to ensure the personal security of Ministers, including the provision of alarm systems for their homes, radio-telephones for their cars, and, in special circumstances, physical surveillance. For additional details Ministers should consult their departmental Security Officer. In addition, the Assistant Secretary to the Cabinet (Security and Intelligence) is available to Ministers at all times should special assistance or interpretation be required on physical security.

IX. MINISTERS' OFFICES

Each Minister receives a budget for a personal office with which he or she is entitled, under section 37 of the Public Service Employment Act (PSEA), to appoint a private or "exempt" staff. The purpose of this provision is to permit Ministers a limited number of personal appointments so that they may have at hand individuals personally selected by them. It is designed to ensure that the public service is not used for politically partisan purposes. Exempt staff must be paid wholly from within the exempt staff budget levels approved by the Treasury Board, which are set out in the circular "Information on Budgets and Guidelines on Terms and Conditions of Employment for Ministerial Staff" issued by the Treasury Board Secretariat.

Ministers also may be provided with public service departmental assistants by the Deputy Minister. Under no circumstances, however, may Ministers make use of public servants occupying public service positions to undertake work of a partisan nature in their personal offices. Specifically, Ministers may not seek departmental secretarial or clerical assistance for politically partisan matters normally dealt with by members or supporting members of the exempt staff, nor may they assign work of a constituency or personal nature to departmental officers assigned to them by the Deputy Minister.

Ministers may use their exempt staff in a variety of ways according to their individual needs. It is important that Ministers' exempt staff be chosen carefully so as to ensure the efficient and effective operation of their offices. In making appointments to their exempt staff, Ministers should ensure that an adequate bilingual capability is maintained.

Ministers and their exempt staff members, of necessity, must develop close working relationships. It is therefore of the greatest importance that exempt staff members know, in the clearest terms, the limits on the scope of their responsibilities and authority and that they are cautioned not to create the impression of speaking or acting on the Minister's behalf unless they clearly are directed to do so.

1. Staff Appointments and Facilities

Ministers may have as many aides and exempt support staff, within the salary levels established by the Treasury Board, as can be accommodated from within the Minister's overall staff budget (see also Appendix 4 and section on salaries, pp 52 and 53). A Minister may be provided with office space in federally-owned or rented buildings outside the National Capital Region as well as office furnishings and stationery. Ministers who are members of the House of Commons also may avail themselves of constituency office and other support provided by the House of Commons.* The House of Commons' funds may not be used to pay a member of the exempt staff working in the constituency, nor may the salaries of constituency staff engaged by the Minister as a Member of Parliament be charged to the exempt staff budget.

2. Ethical Conduct of Exempt Staff

Ministers should be aware of their responsibility for the actions of those who work for them. This is true of the Minister's public service staff in the department, but it holds even more strongly in the case of a Minister's exempt staff. These individuals are selected personally by the Minister and are exempt from the Public Service Commission's employment procedures. Therefore their conduct is linked clearly and directly to the Minister, who must ensure that they behave in a manner that does not give rise to the slightest appearance of impropriety.

Exempt staff members must not, directly or indirectly, use official information (whether classified or not) for their own interest or advantage, or for that of any friend or associate. They also must observe rigorously their obligation to maintain the confidentiality of classified information or of information about members of the public that comes to them in the discharge of their official duties.

* Details should be checked with the House of Commons. The amounts vary according to other options affecting the total budgets for the Parliamentary offices of Members of the House of Commons. See the Members' Allowances and Services Manual issued by the House of Commons.

The same high standards of ethical conduct as apply to Ministers also apply to their staff members and to all public servants in places of authority. More is required than simply acting honestly and within the law. The attitudes and conduct of Ministers' staffs must be so scrupulously ethical that they too may bear the closest public scrutiny. Like Ministers, staff members must not have a pecuniary interest that could even remotely conflict with the discharge of their public duty. Conflict of interest guidelines have been formulated to reflect these values (see below).

Ministers are held directly responsible by the Prime Minister and by Parliament for the conduct of their exempt staff. Ministers therefore must be prepared to take public responsibility for their actions. It should be remembered in this context that exempt staff are subject to certain Treasury Board personnel policies, in particular those respecting travel, relocation, and hospitality.

3. Conflict of Interest and Post-Employment Guidelines

All members of exempt staff, whether hired on salary or on contract or as temporary summer employees, are subject to the Public Servants' Conflict Of Interest Guidelines and in some cases, Ministerial Guidelines. Exempt staff at the EX-1 level and above also are subject to the Post-Employment Guidelines. Each Minister is responsible for designating those exempt staff members to whom the Ministerial Guidelines apply. At a minimum, they normally should apply to Executive Assistants and Special Assistant-Policy Advisors, although this is a matter of ministerial judgment. Ministers also may apply the Ministerial Guidelines to other members of their staff if they may have access to Cabinet documents or other sensitive classified information. To ensure compliance, Ministers are asked to make known their decisions in this regard to the Assistant Deputy Registrar General, with whom exempt staff subject to Ministerial Guidelines are required to make the necessary arrangements. For more detailed information, consult the Conflict of Interest Guidelines. They can be obtained through the Assistant Deputy Registrar General's Office.

4. Salaries

The Treasury Board sets the personnel budget for a Minister's office as well as the salary scales for exempt staff. Under the Treasury Board guidelines, each

Minister is entitled to an Executive Assistant, Special Assistants, and a Private Secretary, each of whom can be paid up to a specified minimum salary (see Appendix 4). An aide's salary may be above the permissible salary maximum only with the approval of the Treasury Board following formal submission to the Board. In addition, with the approval of the Treasury Board, a Special Assistant-Policy Advisor may be appointed and his or her salary level set. Treasury Board approval also should be sought in cases where Ministers wish to second a public service officer to their office whose salary is greater than the level set out in the guidelines. Supporting members of the exempt staff are paid at rates equivalent to comparable positions in the public service.

In the event that a member of a Minister's exempt staff ceases to be so employed they are entitled to a severance benefit. Depending on the circumstances of their departure, this benefit would take the form of (a) an entitlement to severance pay applied generally speaking as if he or she were a member of the Public Service, or (b) at the discretion of the Minister a payment of up to two months salary if the Minister terminates his or her employment without notice.

In the event a Minister ceases to be a Minister or in the event of a change of Government, the Minister or Ministers may grant separation payments to all members of their exempt staff before the Minister's or the Government's resignation takes effect. Where there is a change of Prime Minister in a continuing Government, Ministers who do not become members of the new Ministry may grant separation payments to all members of their exempt staff up to thirty days after the swearing in of the new Ministry.

Executive and Special Assistants and Private Secretaries who have held one or more of these appointments for three or more years have priority access without competition to positions in the Public Service for which they are qualified. Further information and details on staff budgets, salaries and conditions of employment are provided in the Treasury Board circular "Information on the Budgets and Guidelines on Terms and Conditions of Employment for Ministerial Staff".

5. Security

Ministers should be particularly sensitive to the importance of ensuring that all members of their personal staff are fully trustworthy. All prospective employees must be cleared for security purposes before their appointments take effect. Any commitment or promise to employ must be made subject to security clearance. Such clearances can be arranged by the Departmental Security Officer. Where a Minister does not head a department, clearances can be arranged by the Senior Security Advisor in the Privy Council Office. Security of offices and staffs is the personal responsibility of Ministers, for which the Prime Minister will hold them accountable.

X. THE PRIME MINISTER'S OFFICE

The Prime Minister's staff are personal to the Prime Minister in the same way that ministerial exempt staff are to their Minister. Headed by a Principal Secretary, who is the Prime Minister's senior political advisor, the Prime Minister's Office is comprised of: the Correspondence Division, which controls all correspondence to and from the Prime Minister and acts as an archival repository for the Prime Minister's papers; the Press Office, which handles press relations, organizes press conferences, maintains transcripts of the Prime Minister's speeches and interviews, and advises the Prime Minister on matters relating to the media; the Nominations Secretary, who coordinates the Government's political involvement in all Order in Council appointments and in particular those which fall under the Prime Minister's personal jurisdiction (see also the section on Governor in Council appointments, pp.32 to 34); the Legislative Assistant, who coordinates ministerial travel plans, attendance in the House, and other matters relating to House business; and a number of other staff functions such as political policy development, party liaison, or communications as required by the Prime Minister.

Ministers will want to ensure that they and their personal staff consult with the Prime Minister's Office on matters touching these and other areas of a political nature.

1. Public Statements and Announcements

Timing of major public statements by Ministers must normally be cleared with the Office of the Prime Minister. Ministers should pay close attention to the timing and content of announcements of government actions, grants, agreements or initiatives. All memoranda to Cabinet are required to include a communications plan which deals, among other things, with the means for announcing policy initiatives.

Ministers should appoint a member of their personal staff to be responsible for informing the designated persons in the Prime Minister's Office of impending announcements. The Prime Minister's Office should be given a minimum of 72 hours notice of any announcement a Minister intends to make and should at the same time be given a copy of the press release, even if only in draft form.

Once the Prime Minister's Office has indicated that the proposed time and location does not conflict with any other planned announcements, Ministers also should ensure that notice is given immediately to the regional Minister for the area that the announcement affects or in which it is to be made. Ministers also are responsible for contacting other Members of Parliament and local groups where appropriate.

2. Ministerial Travel

All proposed ministerial domestic travel outside of the National Capital Region must be cleared by the Prime Minister through the office of the Prime Minister's Legislative Assistant in consultation with the Government House Leader and the Chief Government Whip. When considering making arrangements for travel abroad, Ministers must consult the Secretary of State for External Affairs, the Government House Leader and the Chief Government Whip, and then receive personal clearance from the Prime Minister through the office of his Legislative Assistant. It is very important that Ministers go through the approval process well in advance, and before commitments are made, when planning domestic or foreign trips. In addition, the Deputy Secretary to the Cabinet (Operations) should be notified once approval has been given. For more information on foreign travel, see the section on External Affairs (pp. 59-61).

XI. THE PRIVY COUNCIL OFFICE

While the Privy Council Office performs the Cabinet secretariat functions (discussed earlier in this document at p.28), it also contains a number of directorates with no committee responsibilities whose prime function is to serve the Prime Minister. In particular, they provide advice on the organization and senior personnel of the Government, in support of the Prime Minister's responsibilities to apportion duties among Ministers and agencies, to protect the integrity and conduct of Cabinet government, and to recommend senior appointments. The PCO also includes several other administrative sections, including those which supervise the Cabinet paper system and process Orders in Council.

XII. FEDERAL-PROVINCIAL RELATIONS AND THE
FEDERAL-PROVINCIAL RELATIONS OFFICE

In general, each Minister is responsible for the federal-provincial aspects of policies and programs within his or her portfolio. However, it is important to ensure that arrangements or programs that may appear to be desirable in a particular area do not have implications that would be inconsistent with the Government's general approach to intergovernmental relations.

The Prime Minister has direct responsibility for the overall management of federal-provincial relations. This reflects the fact that relations with the provinces are an aspect of virtually all areas of federal government activity.

The Federal-Provincial Relations Office advises and assists the Prime Minister in his responsibility to oversee the federal-provincial relationship. The Office provides Cabinet with assistance in examining federal-provincial issues of current and long term concern. The Office also plays a lead role in coordinating preparations for the Prime Minister's bilateral and multilateral meetings with his provincial counterparts. In addition, it provides administrative support and coordinates the development of strategies and policy proposals for the federal delegation in preparation for and during First Ministers' Conferences. It maintains contact with provincial governments, collects and analyses information on developments in the provinces and provides advice and assistance to federal Ministers, departments and agencies in the conduct of their relations with provincial governments.

In order to be sure that the Office can play this role Ministers and departments should keep the FPRO informed of developments in their areas of responsibility that could affect the federal-provincial relationship. Consultation with FPRO also will assist Ministers and their departments to keep abreast of general developments in federal-provincial relations and in the Government's overall approach to the conduct of intergovernmental affairs.

XIII. EXTERNAL AFFAIRS

1. Official Travel by Ministers

From time to time, Ministers may be required to undertake visits outside Canada on behalf of the Government. As the Secretary of State for External Affairs is responsible for the overall development and conduct of Canada's external relations, all ministerial and departmental initiatives abroad should be undertaken in cooperation with the Department of External Affairs. This applies equally to ministerial travel abroad. The timing and substance of official ministerial visits abroad, and Cabinet level visits from other countries to Canada, must be carefully orchestrated in order to take into account the full range of Canadian interests both domestically and in the country or countries in question. This is especially true for the United States with whom bilateral relations are so close and interests so extensive. The Secretary of State for External Affairs is in the best position to advise Ministers on all aspects of foreign travel. In this respect, special attention is also given to coordinating the timing of visits in order to avoid conflicts with other visits and travels by Ministers.

Clearance for any foreign travel envisaged by Ministers, including that to communist and other "scheduled" countries, is obtained by addressing a letter of request to the Prime Minister with copies to the Secretary of State for External Affairs and the Government House Leader. No trip should be planned or in any way confirmed until these three offices have responded affirmatively to the proposal for foreign travel. Consultation in writing with the Secretary of State for External Affairs also should be undertaken before issuing invitations to Cabinet level counterparts in foreign governments to come to Canada. Once a ministerial visit abroad or an official invitation to Canada has been approved, the responsibility for coordination of these visits rests with the Secretary of State for External Affairs and his Department as the principal channel through which the procedural and substantive arrangements for such visits are made, including contact with host governments and program development.

2. Private Travel

Ministers planning to undertake travel on a private basis should, well before departure, inform the Secretary of State for External Affairs in writing. This will permit the Department of External Affairs to advise Ministers of any issues which could complicate their visit, even if undertaken on a personal basis. This practice especially applies to travel by Ministers (or their immediate dependents) to communist and other "scheduled" countries or those countries where the political situation appears unstable.

3. Composition of Governmental Delegations

All proposals involving the participation of the Government of Canada in international meetings or conferences, together with a list of proposed delegates should be reviewed by the Department of External Affairs. Normally the Secretary of State for External Affairs and the Minister or Ministers concerned will decide whether the nature of the conference or the proposed participation raises issues that should be considered by the Cabinet, in accordance with the provisions of Cabinet Directive No. 47 (March 28, 1976) which deal with the representation of the Government of Canada at international conferences.*

4. (Foreign) Orders and Decorations

Canadians may accept the Queen's personal decorations and those conferred by the Governor General without seeking permission. Orders and decorations recommended by foreign governments may be accepted by Canadians subject to the donor government obtaining the prior approval of the Government of Canada, and provided that they do not carry with them a title of honour or any implication of precedence or privilege. This restriction does not apply to the acceptance of academic degrees and the use of professional and academic titles conferred by institutions in other countries.

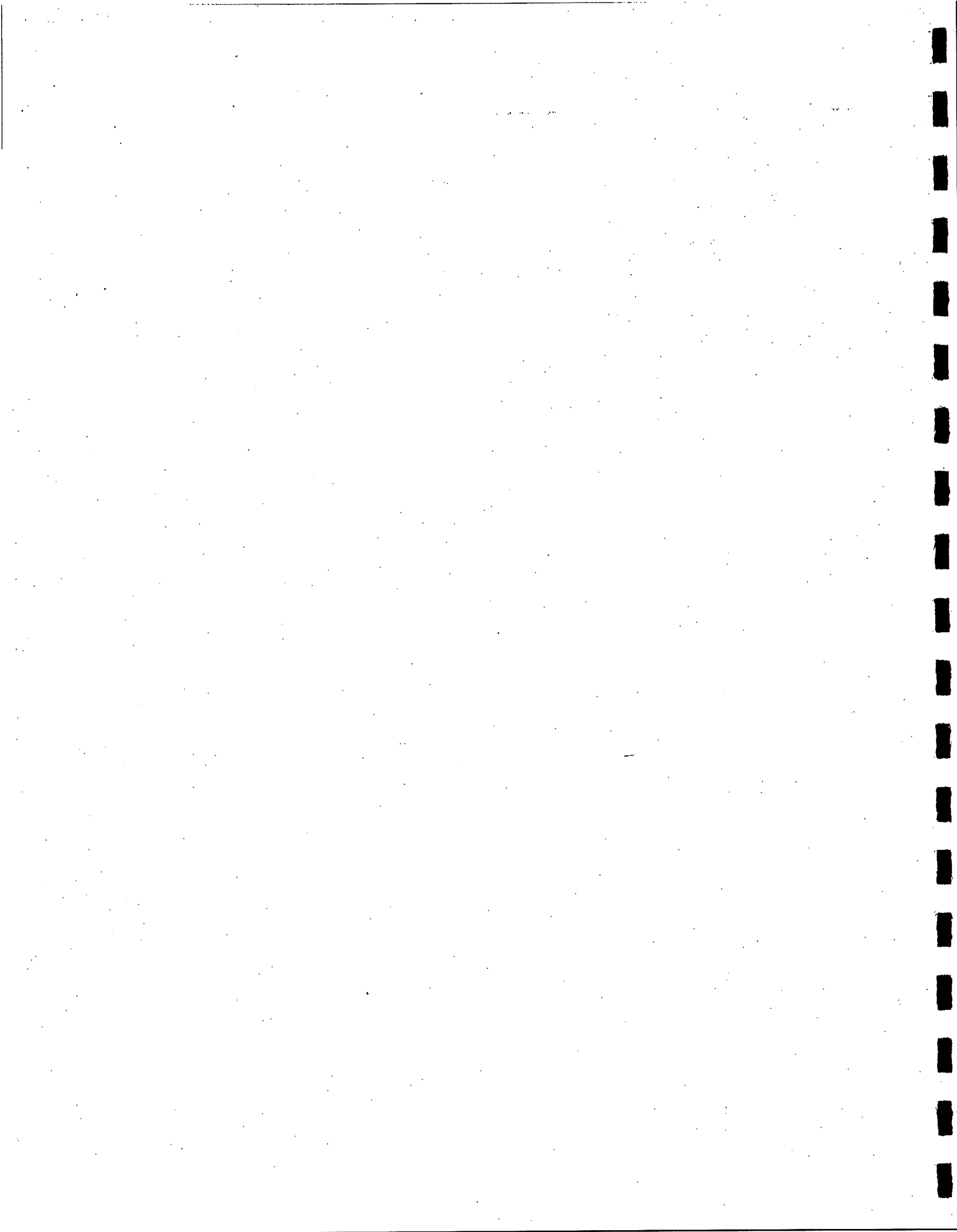
* Cabinet Directives are issued from time to time. They are used most often to establish normal operating procedures, and in practice have remained in force from Ministry to Ministry unless amended or rescinded. Ministers may secure copies of Cabinet Directives from their Deputy Ministers or from the Supervisor of Cabinet Documents in the Privy Council Office.

The conferral of foreign orders and decorations should be a relatively rare occurrence reserved only for achievements of the most outstanding character including extraordinary service to mankind, conspicuous bravery in saving or attempting to save life, important and personal service to the reigning Sovereign or to other members of the Royal Family, for services rendered while in the salaried appointment of the donor country, or in recognition of an exceptional achievement or service. Such foreign orders and decorations may only be accepted if conferred by a state recognized by Canada, and permission will be withheld if the decoration relates to events more than five years past or is considered to be at variance with considerations of general policy or the public interest.

So far as Ministers themselves are concerned, in no case should they seek the offer of, or accept, a foreign order or decoration either personally or on behalf of a colleague, without prior discussion with, and the approval of, the Prime Minister.

XIV. FURTHER INFORMATION AND GUIDANCE

Ministers who wish to have further information on our system of government and their role as Ministers or who would like guidance concerning other matters affecting their role, such as the organization of their offices, are invited to make known their needs to the Secretary to the Cabinet.



APPENDICES

1. Documents and Circulars Referred to in Guidance for Ministers
2. List of Ministers with their Principle Responsibilities
3. Ministerial Salaries and Allowances
4. Office Budget and Salaries for Exempt Staff
5. Further Information on the Policy and Expenditure Management System

APPENDIX 1

DOCUMENTS AND CIRCULARS REFERRED TO IN
GUIDANCE FOR MINISTERS

(N.B.: The reference documents are listed in the order in which they appear in Guidance for Ministers. Page numbers refer to the place in the text where the document is first mentioned.)

Subject

Preparation of Legislation	The Preparation of Legislation; issued by the Privy Council Office. (p.8)
Parliamentary Secretaries	Briefing Notes for Parliamentary Secretaries; circulated by the President of the Privy Council. (p.10)
Deputy Minister	The Office of the Deputy Minister, issued by the Privy Council Office. (p.14)
Crown corporations	Prime Minister's July 19, 1982 letter of administrative direction on Crown corporation reform, available from the Privy Council Office. (p.18)
PEMS	The Policy and Expenditure Management System; issued by the Privy Council Office and the Guide to the Policy and Expenditure Management System; issued by the Treasury Board Secretariat. (p.26)
Preparation of Governor in Council recommendations	Directives on Submissions to the Governor in Council and Statutory Instruments, issued by the Privy Council Office. (p.32)
Preparation and Handling of Cabinet Papers	Guidance Manual on the Preparation and Handling of Cabinet Papers; issued by the Privy Council Office. (p.36)

Access to
Information

Records Management Guide for
Ministers' Offices; issued by Public
Archives Canada.

(p.38)

Ministerial Records and the Access to
Information Legislation; Treasury
Board Circular, September 1983.

(p.38)

Interim Policy Guide: Access to
Information Act and Privacy Act,
issued by the Treasury Board
Secretariat.

(p.38)

Communications
with members of
the Judiciary
and Quasi-
Judicial
Tribunals

Statement by Prime Minister in the
House of Commons. See the Hansard,
March 12, 1976.

(p.46)

Hospitality

Treasury Board Hospitality Policy,
Chapter 260, Administrative Policy
Manual; issued by Treasury Board.

(p.47)

Cars

Policy Respecting Provision of Motor
Vehicles to Ministers for Use on
Official Business, April 1978 (as
amended); issued by the Treasury
Board.

(p.47)

Flights

Guidelines for Use of Executive
Aircraft; issued by the Prime
Minister.

(p.48)

Railways

Guidelines for Use of Government Rail
Cars; issued by the Department of
Transport.

(p.48)

Ministerial
Offices and
Exempt Staff

Information on Budgets and Guidelines
on Terms and Conditions of Employment
for Ministerial Staff; issued by the
Treasury Board.

(p.50)

Ministerial
Offices and
Exempt Staff
(cont'd)

Members' Allowances and Services
Manual - issued by the House of
Commons.

(p.51)

Conflict of
Interest and
Post-Employment
Guidelines

Conflict of Interest Guidelines for
Ministers of the Crown,
Post-Employment Guidelines for
Parliamentary Secretaries and
Post-Employment Guidelines for
Ministers, May 1980; available from
the Office of the Assistant Deputy
Registrar General.

(p.52)

International
Conferences

Cabinet Directive on the
Representation of the Government of
Canada at International Conferences;
available from the Supervisor of
Cabinet Documents in the Privy Council
Office.

(p.60)

Foreign
Orders and
Decorations

Regulations Respecting the Acceptance
and Wearing by Canadians of
Commonwealth and Foreign Orders,
Decorations and Medals; issued by the
Secretary of State.

(p.61)

APPENDIX 2

LIST OF MINISTERS WITH THEIR PRINCIPAL
RESPONSIBILITIES INCLUDING BOARDS, COMMISSIONS,
COMMITTEES, CROWN CORPORATIONS AND OTHER
AGENCIES FOR WHICH THEY REPORT TO PARLIAMENT*

o Minister of Agriculture

Department of Agriculture
Agricultural Products Board
Agricultural Stabilization Board
Canadian Dairy Commission
Canadian Grain Commission
Canadian Livestock Feed Board
Canagrex
Farm Credit Corporation
National Farm Products Marketing Council

o Minister of Communications

Department of Communications
Canada Council
Canada Museums Construction Corporation
Canadian Broadcasting Corporation
Canadian Cultural Property Export Review Board
Canadian Film Development Corporation
Canadian Radio-television and Telecommunications
Commission
National Arts Centre Corporation
National Film Board
National Library
National Museums of Canada
Public Archives of Canada
Telesat Canada Limited

*While this list is not intended to be exhaustive, it does attempt to provide a comprehensive list of departments and administrative, regulatory and quasi-judicial organizations established by statute and/or largely operating outside the framework of a department. It does not include all non-departmental bodies for which Ministers are responsible. Ministers should consult their Deputies for additional information agencies within their portfolio.

o Minister of Consumer and Corporate Affairs

Department of Consumer and Corporate Affairs
Advisory Council on the Status of Women**
Canadian Consumer Council
Copyright Appeal Board
Hazardous Products Review Board
Metric Commission
Office of the Coordinator, Status of Women** (by
delegation from the Secretary of State)
Patent Appeal Board
Restrictive Trade Practices Commission
Standards Council of Canada

o Minister of Employment and Immigration

Department of Employment and Immigration
Canada Employment and Immigration Advisory Council
Canada Employment and Immigration Commission
Immigration Appeal Board
Office of the Umpire
Refugee Status Advisory Committee

o Minister of Energy, Mines and Resources

Department of Energy, Mines and Resources
Atomic Energy of Canada Limited
Atomic Energy Control Board
Board of Examiners for Canada Land Surveyors
Canadian Permanent Committee on Geographical Names
Columbia River Treaty Permanent Engineering Board
Energy Supplies Allocation Board
National Energy Board
Petro-Canada
Petro-Canada International Assistance Corporation
Petroleum Compensation Board
Petroleum Monitoring Agency
Uranium Canada Limited

o Minister of the Environment

Department of the Environment
Canadian Environmental Advisory Council
Federal Environmental Assessment Review Panel
Historic Sites and Monuments Board of Canada
National Battlefields Commission

**Responsibility of the Minister by name rather than by
portfolio.

o Secretary of State for External Affairs

Department of External Affairs
Canadian Commercial Corporation
Canadian International Development Agency
Export Development Corporation
International Boundary Commission (Canadian Section)
International Development Research Centre
International Joint Commission (Canadian Section)
Roosevelt Campobello International Park Commission

o Minister for External Relations

o Minister of Finance

Department of Finance
Anti-Dumping Tribunal
Auditor General of Canada
Bank of Canada
Canada Deposit Insurance Corporation
Department of Insurance
Inspector General of Banks
Tariff Board

o Minister of Fisheries and Oceans

Department of Fisheries and Oceans
Canadian Saltfish Corporation
Fisheries Prices Support Board
Fisheries and Oceans Research Advisory Council
Freshwater Fish Marketing Corporation
St. Anthony Fisheries Limited

o Minister of Indian Affairs and Northern Development

Department of Indian Affairs and Northern Development
Government of the Northwest Territories
Government of the Yukon Territory
Northern Canada Power Commission
Northwest Territories Water Board
Yukon Territory Water Board

o Minister for International Trade

o Minister of Justice and Attorney General of Canada

Department of Justice
Canadian Human Rights Commission
Canadian Judicial Council

Minister of Justice and
Attorney General of Canada (cont'd)

Canadian Unity Information Office
Criminal Code Revision Commission
Federal Court of Canada
Information Commissioner
Law Reform Commission
Office of the Commissioner for Federal Judicial Affairs
Privacy Commissioner
Statute Revision Commission
Supreme Court of Canada
Tax Court of Canada

o Minister of Labour

Department of Labour
Canada Labour Relations Board
Canada Post Corporation**
Canadian Centre for Occupational Health and Safety
Merchant Seamen Compensation Board

o Minister of National Defence

Department of National Defence
Communications Security Establishment
Defence Construction (1951) Limited

o Minister of National Health and Welfare

Department of National Health and Welfare
Canada Pension Plan Advisory Committee
Medical Research Council
National Advisory Council on Fitness and Amateur Sport
National Council of Welfare
Pensions Appeals Board
Queen Elizabeth II Canadian Research Fund

o Minister of National Revenue

Department of National Revenue (Customs and Excise)
Department of National Revenue (Taxation)

o Prime Minister

Prime Minister's Office
Privy Council Office
Federal-Provincial Relations Office

**Responsibility of the Minister by name rather than by
portfolio.

Prime Minister (cont'd)

Canadian Intergovernmental Conference Secretariat
Commissioner of Official Languages
Economic Council of Canada
Office of the Secretary to the Governor General

o President of the Privy Council

Office of the President of the Privy Council
Chief Electoral Officer
Emergency Planning Canada (by delegation from the
Minister of National Defence)
Public Service Staff Relations Board

o Minister of Public Works

Department of Public Works
Canada Lands Company Limited
Canada Lands Co. (Mirabel) Ltd.
Canada Lands Co. (Le Vieux-Port-de-Montréal) Ltd.
Canada Lands Co. (Le Vieux-Port-de-Québec) Ltd.
Canada Mortgage and Housing Corporation
Harbourfront Corporation
National Capital Commission

o Minister of Regional Industrial Expansion

Department of Regional Industrial Expansion
Canadian Industrial Renewal Board
Canadian Patents and Development Limited
Cape Breton Development Corporation
Federal Business Development Bank
Foreign Investment Review Agency
Machinery and Equipment Advisory Board
National Design Council
Regional Development Incentives Board
Textile and Clothing Board

o Minister of State (Canadian Wheat Board)

o Minister of State (Finance)

o Minister of State (Fitness and Amateur Sport)

Canadian Sports Pool Corporation
Loto Canada Incorporated

o Minister of State (Mines)

- o Minister of State (Multiculturalism)
- o Minister of State (Small Businesses and Tourism)
- o Minister of State (Youth)
- o Minister of State for Economic and Regional Development

Ministry of State for Economic and Regional Development

- o Minister of State for Science and Technology

Ministry of State for Science and Technology
National Research Council
Natural Sciences and Engineering Research Council
Science Council of Canada

- o Minister of State for Social Development

Ministry of State for Social Development
Canada Development Corporation**
Canada Development Investment Corporation**
 Canadair Ltd.
 de Havilland Aircraft of Canada Ltd.
 Eldorado Nuclear Ltd.
 Eldorado Aviation Ltd.
Canada Harbour Place Corporation** (under
shareholders' agreement with the Minister
of Public Works)
Teleglobe Canada

- o Secretary of State of Canada

Department of the Secretary of State
Bilingual Districts Advisory Board
Public Service Commission
Social Sciences and Humanities Research Council

- o Leader of the Government in the Senate

Office of the Leader of the Government in the Senate
Northern Pipeline Agency**

- o Solicitor General

Department of the Solicitor General
Correctional Service of Canada

**Responsibility of the Minister by name rather than by portfolio.

APPENDIX 4

OFFICE BUDGET AND SALARY LEVELS FOR EXEMPT STAFF

Office budget \$260,400

(for Ministers with a
single portfolio)

Office budget** \$317,100

(for Ministers with
multiple portfolios
or special regional
responsibilities)

Exempt Staff salary maxima*

Special Assistant - Policy Adviser	individual salaries must be determined via a submission to the Treasury Board
Executive Assistant	up to \$42,850
Special Assistant	up to \$36,729
Private Secretary	up to \$28,161

* Ministers may, with the approval of the Treasury Board, pay an aide a salary above the permissible salary maximum. Treasury Board approval is required for the fixing of the salary in such instances and should be requested through a formal submission to the Board. For more detailed information, consult the Treasury Board Circular "Information on Budgets and Guidelines on terms and conditions of Employment for Ministerial Staff". These rates are subject to annual revision by the Board.

** Treasury Board approval is required for the establishment of the budget at this higher level and should be requested through a formal submission to the Board.

APPENDIX 5

THE ANNUAL PLANNING CYCLE AND
ALLOCATIONS DURING THE YEAR

The PEMS includes a five year planning cycle with expenditure projections at any given time that include:

- the current fiscal year;
- the limits for the coming fiscal year;
- planning projections for the three subsequent fiscal years.

Each year, and at other times as circumstances might dictate, the planning projections are adjusted: the current year is dropped; the third year projections, with whatever adjustment may be required, become the fixed limit for the coming fiscal year; and a projection for an additional year ahead is added.

Several processes are brought together in the planning cycle, which is summarized in the attached chart:

° Strategic Overviews

The Strategic Overviews are the basic planning documents submitted by departmental Ministers. They are solicited by the chairman of each Cabinet policy committee at the beginning of each calendar year and are prepared on the basis of planning guidelines issued by the committee and by Priorities and Planning Committee in the previous Fall. The departmental strategic overviews are submitted to the policy committees in March or April and considered by them in May and June. The overviews present each Minister's proposals for policy changes affecting his department for the planning period.

Based on the departmental overviews, a Sectoral Overview (or Overview of Overviews), is prepared which is the committee's statement of priorities and new policy

directions for its sector. The committee overviews are considered in July/August and are submitted to P&P in the form of a Memorandum to Cabinet signed by the committee chairman. The departmental overviews are not submitted as such to P&P.

° Operational Plans

At the same time as they are drafting their strategic overviews, departments also prepare their Multi-Year Operational Plans (MYOPs) for submission to Treasury Board. The MYOPs present to the Treasury Board a detailed description of the department's current programs and resource requirements to carry out those programs (taking into account changes in costs and workload, but assuming no change in policy) for the next fiscal year and two planning years after that. The MYOPs then are used by Treasury Board to set the reference level (i.e., the level of resources needed to continue existing programs) which it recommends to P&P for consideration in the Fall envelope-setting exercise.

° Envelope Setting

The exercise takes place in two stages in late Summer/early Fall, with the meetings held at meeting centres outside Ottawa -- because of their location the meetings are sometimes referred to as "Lakes and Lodges". In its first phase, the Priorities and Planning Committee is presented with the products of the various cycles that feed it: from the Prime Minister's Principal Secretary a report on the political situation; from the Minister of Finance the economic outlook and an assessment of the degree of fiscal room open to the Government; from the policy committee chairmen their sectoral strategic plans. An expenditure framework based on the MYOPs is also available from the President of the Treasury Board. The subsequent discussion, which usually lasts two days, is at this stage directed largely at digesting the material and in particular at considering the sectoral policy proposals and establishing

priorities among them. Often the same material is shortly thereafter presented to a meeting of the full Cabinet for its comments.

Following this stage, and in light of the overall and sectoral priorities adopted at the first meeting, the Minister of Finance -- after extensive consultation with the Prime Minister -- then brings to P&P concrete proposals for the total fiscal framework and for the individual envelope levels. These are considered at a follow-up two-day meeting of P&P that agrees on the fiscal framework, which is a major basis for the next Budget, and on the policy direction it wishes to give each committee for both the coming fiscal year and the subsequent planning cycle. In that light it agrees on the envelope levels, inter alia providing a key basis for the expenditure Estimates. These decisions then are ratified by full Cabinet. They also provide the basis for the Government's program in Parliament and, if a new Parliamentary session is to open in the course of the Fall, for a Speech from the Throne.

° Reserves and the Allocation of Funds During the Year

Ordinarily, when P&P sets envelope levels for a given fiscal year the allocation to each envelope has two elements:

- The forward projection in current year dollars of the cost of continuing programs, assuming no change in policy. (This is known as the reference level, although the term A-base is also used).
- A policy reserve, for use by the policy committee in funding new proposals, based on broad policy direction given by P&P. P&P also can decide to allocate no policy reserve, meaning that any new expenditures in that particular envelope would be funded by cuts in existing programs (see discussion of X-budget below).

The policy reserve provides the focus for a Cabinet policy committee's envelope management. All new proposals to the committee are costed on a multi-year basis, and the downstream funding requirements are charged against the appropriate policy reserve for up to three years, after which if the program is to continue it is included in the reference level.

A committee can allocate funds from its envelope policy reserve at any time, but since demand for policy reserve funds invariably outstrips supply, the committees have increasingly resorted to periodic "auctions" or "banking days" when a portion of the reserve is allocated among competing proposals in order to allow the committee to compare proposals and establish its priorities among them. A committee can replenish its reserve by reducing, deferring or eliminating existing programs (sometimes referred to as an X-budget exercise) and transferring the resulting savings to the policy reserve. Ordinarily departments do not retain savings from cuts in their programs that have been made by the Cabinet policy committee (although they normally do retain savings from reallocations that are made within the department on the Minister's own authority and initiative). Once the envelopes are set, it is rare that P&P will give a committee additional funds from outside the envelope.

Either as part of the annual cycle or in the course of the year P&P also can require X-budgets, either across the board or within particular envelopes, should major reallocation within the fiscal framework be required to meet major new priorities or emergencies.

While the Treasury Board does not have any policy envelopes, it does have under its control an operating reserve provided by P&P. The Board has discretion to allocate funds from this reserve to cover cost increases that are not related to policy changes but instead have to do with changes

in cost or workload. There is also a central reserve, administered by P&P on advice from the Minister of Finance, to cover major unforeseen contingencies, particularly in the major statutory programs. It is rarely resorted to and committees are actively discouraged from seeking access to it.