

A Case for Personal Meetings with the Federal Ethics Commissioner¹

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Abstract: Every province and territory in Canada has an independent ethics commissioner, along with ethics rules, and so too does the House of Commons, the Senate, and cabinet. The ethics regime for the House of Commons and the cabinet, however, appears to be the least successful of these ethics regimes in preventing breach of the rules. This article identifies the major weaknesses of the federal ethics regime. While in most other jurisdictions the ethics commissioner meets annually with all legislators to explain the rules, the extensive mandate of the federal ethics commissioner makes fulfilling the primary function – prevention through education – challenging. Face-to-face meetings between the ethics commissioner and members of the House of Commons and cabinet rarely occur. The author reviews inquiries made by the two House of Commons commissioners since 2004, and argues that many of the inquiries would have been unnecessary if face-to-face meetings had been held.

The “Canadian model” for parliamentary ethics² was born in Ontario in 1988. In reaction to three major conflict-of-interest scandals in his government, and several minor ones, Ontario Premier David Peterson’s government brought in legislation prohibiting cabinet ministers and other MPPs from making decisions when in conflict of interest and established rules that would prevent members from getting into conflict-of-interest situations in the first place (see Greene and Shugarman 1997). In addition to the new rules, the legislation created an office for an independent ethics commissioner (later known as the integrity commissioner). MPPs, including cabinet ministers, are now required to file an annual disclosure of assets and liability statements with the commissioner; the commissioner is required by law to meet with newly elected MPPs within sixty days after an election, and annually after that. (See Section 20 (3) of the Members’ Integrity Act, 1994 [S.O. 1994, c. 38].)

The purpose of these meetings is to give the commissioner the opportunity to explain the conflict-of-interest rules in greater detail and to advise the member about how to avoid breaking them, given the member’s personal situation. (A “real” conflict of interest occurs when a member is in a position to use public office for personal gain, or to favour family or friends, and no appropriate action – such as recusal from decision-making or divestment of assets – is taken to ameliorate the conflict of interest.) Part of the purpose of these meetings is to establish a relationship of trust between the commissioner and members, such that members will contact the commissioner for advice when they are uncertain about appropriate ethical behaviour. On average, individual Ontario MPPs ask for the integrity commissioner’s advice five to seven times a year (Ontario, Office of the Integrity commissioner, various years). If there is an allegation of breach of the ethics rules by another MPP, then the commissioner is required to investigate, as long as there is *prima facie* evidence that the rules may have been broken.

This “Canadian model” of promoting high ethical standards among members of legislatures has taken hold in most respects in every province and territory, at the federal level in

the Senate, and very recently in a number of cities. This kind of ethics regime seems to be working well in most provinces and the Senate because there have been relatively few allegations that the rules have been broken since the regimes were implemented. Prior to the introduction of these regimes, there was nearly always a much higher number of allegations that members of legislatures, and especially cabinet ministers, were guilty of conflicts of interest. The Canadian model was also partly adopted in 2004 for the House of Commons. However, the legislation departed from the model because it did not require annual face-to-face meetings between the commissioner and members of Parliament. One consequence is that the number of allegations of breaches of the rules by MPs and cabinet ministers in Ottawa is high.

Outside of the House of Commons, allegations of breaches of the conflict of interest rules serious enough to warrant inquiries by an ethics commissioner occur on average about once every two years (Greene 2010). In contrast, from 2005 to the close of 2010, the federal ethics commissioner issued nineteen investigation reports about allegations of conflict of interest against cabinet ministers or MPs, and two more reports were pending. This average of four reports a year is higher than is the case in the provinces, even taking into account that the House of Commons is three times the size of the two largest provincial legislatures – Ontario and Quebec. There have been no inquiries by the Senate ethics officer since he was appointed in 2005, and only one “opinion” has been published.³ This article argues that one of the major weaknesses of the ethics regime for the House of Commons and the federal cabinet is that MPs and cabinet ministers are not required to have annual face-to-face meetings with the ethics commissioner in the way that they are required to in the eight provinces and territories, including Ontario, Alberta and British Columbia, and as is the practice in the Senate. (I have argued elsewhere that two other weaknesses in the ethics regime in the House of Commons and cabinet are the methods used for selecting the commissioner and the fact that cabinet ministers must comply with two sets of overlapping rules (Greene 2010). The annual reports of the commissioners in Ontario, Alberta and British Columbia, and in the Senate, stress that a key reason for the success of their ethics regimes in preventing conflicts of interest is the positive impact of these face-to-face meetings (see the various annual reports for Ontario’s Office of the Integrity Commissioner, Alberta’s Office of the Ethics Commissioner, British Columbia’s Office of the Conflict of Interest Commissioner, and the Office of the Senate Ethics Officer). For example, note this excerpt from the Senate ethics officer’s 2009—2010 *Annual Report*: “I began the practice of annually meeting with individual senators in 2005 The meetings ensure that the information I use to prepare a public disclosure summary for each senator, which is placed in the Public Registry, is current and accurate, and allows me to provide sound and timely advice,” (Canada, Office of the Senate Ethics Officer 2010: 5).

The current parliamentary ethics regime was established in 2004 by the Paul Martin government. Prior to this time, the federal cabinet – but not other MPs – was subject to the Conflict of Interest and Post-Employment Code for Public Office Holders, which had been in place, with some amendments, since 1994.⁴ In 2004, the first independent ethics commissioner – Dr. Bernard Shapiro – for both the House of Commons and the federal cabinet was appointed. Concurrent with Shapiro’s appointment, the House of Commons adopted a Conflict of Interest Code for Members of the House of Commons, so that, for the first time, MPs other than cabinet ministers had their own established conflict-of-interest rules with which they had to comply. As

ethics commissioner, Shapiro's job was to enforce both the Conflict of Interest Code for Members of the House of Commons and the Code for Public Office Holders. This situation was obviously cumbersome for federal cabinet ministers, who were subject to both codes.

Shapiro's appointment was treated, erroneously, as I have argued elsewhere, as a partisan Liberal appointment by the Harper government (Greene 2010). Following the Harper government's victory in the general election of 2006, the new prime minister was therefore determined to replace Shapiro. However, because Shapiro was an independent officer of Parliament, the only way to eject Shapiro was to abolish his office and replace it with a new office. This objective was attempted through the Federal Accountability Act (S.C. 2006, c. 9), which in 2007 replaced the Office of the Ethics Commissioner with the Office of the Conflict of Interest and Ethics Commissioner. Amendments to the act by the opposition would have allowed Shapiro to continue in the new office, but Shapiro nevertheless resigned in 2007. Ms. Mary Dawson has been the conflict of interest and ethics commissioner from 2007 to the time of writing.

The Federal Accountability Act also replaced the Code of Conduct for Public Office Holders with the Conflict of Interest Act (S.C. 2006, c. 9 s. 2). Both documents have a good deal of overlap. The Harper government's reason for replacing the code with the act was that the act would be stronger, allowing for a higher level of enforcement for ethical standards for cabinet ministers and other public office holders. This claim, however, is open to debate.⁵ The Conflict of Interest Act also applies to ministerial staff and ministerial advisers.

Mr. Jean Fournier was appointed Senate ethics officer in 2005 and has served up to the time of writing. In 2005, the Senate created the Conflict of Interest Code for Senators that established this position. This document is identical to the code adopted by the House of Commons in 2004 in some regards, and similar in many others.

I will review several of the nineteen investigation reports issued by Bernard Shapiro and Mary Dawson up to November 2010 to show that some of the allegations of breach of the ethics rules might have been prevented had face-to-face meetings taken place.⁶ I will also review the activities of the Senate ethics officer, Jean Fournier, to show that the face-to-face meetings that he has held with senators since his appointment have been effective in preventing both breaches of the Senate ethics code and allegations of breaches of the code.

In a conversation with Dr. Shapiro in 2005, he mentioned to me that he had had personal meetings with MPs and cabinet ministers when they requested this, and altogether there had been between fifteen and twenty of these meetings over a year. As well, personal meetings sometimes do take place between one of the commissioner's office staff and an MP or cabinet minister. The vast majority of the time, however, there are no personal meetings, especially involving the commissioner. From what I have been able to learn, the same situation has continued since the transition from Shapiro to Dawson. In the cases discussed below, I have therefore assumed that no personal meeting with the commissioner took place prior to the investigation.

In my analysis of some of the cases investigated by the two ethics commissioners, I

speculate about how annual personal meetings with the ethics commissioner (after 2007, the conflict of interest and ethics commissioner) might have prevented the need for an investigation, or at least reduced the scope of the investigation. Commissioner Shapiro was appointed in May 2004 and within months was asked to investigate allegations of a breach of the rules concerning situations with histories beginning prior to his appointment. In these cases, my counterfactual analysis considers possible outcomes had Dr. Shapiro's appointment taken place a year or two earlier and had the 2004 ethics rules also been in place a year or two earlier.

It should be noted that all members of the House of Commons must file with the commissioner a confidential statement of disclosure of assets, liabilities and sources of income within sixty days of their election, and then annually after that. The disclosure covers the member, the member's spouse, and children under eighteen. Some of this information is publicly disclosed after another sixty days (see sections 20 to 24 of the Conflict of Interest Code for Members of the House of Commons; and sections 22 to 26 of the Conflict of Interest Act). In jurisdictions where the ethics commissioner has face-to-face meetings with all members, these meetings generally occur in the period between the commissioner's receipt of the confidential disclosure and the public disclosure. In the cases discussed below, I consider what preventive advice the commissioner might have given a particular member had a face-to-face meeting taken place between sixty and 120 days after the member's election, or annually after that, or on an *ad hoc* basis as requested by the member.

The Reports by Bernard Shapiro

Dr. Bernard Shapiro conducted one investigation (the Sgro Inquiry) under the prime minister's Conflict of Interest and Post-Employment Code for Public Office Holders and seven under the Conflict of Interest Code for Members of the House of Commons. The two most publicized are summarized below.

The Sgro Inquiry

In November 2004, five months after the May 2004 election, Judy Sgro, the Liberal minister of citizenship and immigration, was accused by Conservative MP Diane Ablonczy of doing special public office favours for her campaign workers during the election campaign. There were three separate allegations. First, Ablonczy accused Sgro of issuing a temporary residence permit to a campaign volunteer. Second, Ms. Sgro's campaign office was alleged to have assisted a pizza delivery man who was scheduled to be deported. And, third, Ablonczy claimed that a North Korean defector who had volunteered in Sgro's campaign office was being improperly assisted in his attempt to gain landed immigrant status. Ms. Sgro resigned her ministerial post to await the results of Shapiro's investigation.

Shapiro's office arranged for forty persons to be interviewed under oath. Shapiro's report was released in June 2005. He found that there had been no breach of either code with regard to the second and third allegations. However, with regard to the first allegation, Ms. Sgro had granted a temporary residence permit to the volunteer. This had been done properly according to the law but was problematic because, according to the rules, Sgro should have recused herself and arranged for another official or minister to deal with the application for the temporary residence permit (Canada, Office of the Ethics Commissioner 2005: 22). Shapiro found that Sgro

did not know that the applicant was also a campaign volunteer, but he learned that members of Sgro's staff did know and failed to inform her. Further, Shapiro found that similar conflicts of interest existed in the campaign office "not to donors or individuals listed as volunteers directly but to the relatives and associates of those who were assisting the re-election campaign. This was in clear violation of Principle 7 of the Conflict of Interest Code and Post-Employment Code for Public Office Holders (23)," which reads "Public office holders shall not use their position of office to assist private entities or persons where this would result in preferential treatment to any person" (see the code at Canada, Parliament, House of Commons 2006). Shapiro observed that "The Minister has already resigned, and without comment on that decision, I have no further recommendation to make" with regard to sanctions (Canada. Office of the Ethics Commissioner 2005: 24).

Events regarding Ms. Ablonczy's allegations took place before the newly appointed ethics commissioner could have had any personal meeting with MPs. However, had the ethics rules been in place in 2003 and had Dr. Shapiro been appointed in 2003 and met with Ms. Sgro and possibly with her aides at that time, he would undoubtedly have pointed out to Sgro and her aides the risk of conflict of interest if she assisted any of her constituency volunteers in her official capacity as minister of immigration. Because Sgro could not have known the identity of all of her volunteers, subsequent to meeting with the commissioner she would likely have asked her staff to inform her if any of those requesting her assistance were also volunteers. In such cases, she likely would have recused herself and would have arranged for one of her senior officials in the public service to handle such cases. Even so, Ms. Ablonczy may still have raised concerns, but, assuming that Ms. Sgro had followed the advice of the commissioner, she would have been cleared quite rapidly, without the need for a complex investigation.

The Harper-Emerson Inquiry

David Emerson, who had been a cabinet minister in the Martin government, won his Vancouver seat as a Liberal in the January 2006 election. Then new Conservative Prime Minister Stephen Harper invited Emerson to "cross the floor" to join the Conservative cabinet in February, prior to the opening of Parliament in April, and Emerson accepted this invitation. Several opposition members alleged that this action constituted a breach of the code because Emerson may have been induced to cross the floor by the offer of a cabinet appointment.

This unprecedented situation created a furor across Canada, and especially in Emerson's Vancouver riding. In early March, Dr. Shapiro announced that he would conduct a preliminary inquiry into the allegations. In response, Sandra Buckler, the prime minister's spokesperson, announced that Mr. Harper was "loath to cooperate" with the inquiry because Shapiro was a "Liberal appointee." However, MP Ed Broadbent countered that if Harper refused to cooperate, he could be in contempt of Parliament (O'Neill 2005).

The Harper-Emerson report, released on 20 March 2006, concluded that Mr. Emerson accepted Harper's offer to join the cabinet as "a way to better serve his city, his province and his country" (Canada. Office of the Ethics Commissioner 2006: 1, 8).⁷ Shapiro found that there was no evidence of breach of the code as it was written. However, he recommended that Parliament consider the issue of elected members switching parties after an election and prior to the

convening of Parliament. He wrote that if MPs were to find crossing the floor prior to the Throne Speech unacceptable, then through Parliament they should institute an appropriate remedy.

Had there been personal meetings in 2004 and 2005 between Bernard Shapiro and Stephen Harper, such meetings may have dispelled Harper's assumption that Shapiro was partisan.⁸ Had Harper known that the "crossing of the floor" by an opposition member prior to the opening of Parliament was unprecedented in the Westminster system, it is possible that he might have consulted Shapiro prior to Emerson's appointment. Similarly, had Emerson met with Shapiro in 2004 and 2005, he too may well have consulted Shapiro prior to accepting the Harper cabinet position. Shapiro's advice both to Harper and Emerson would have mirrored that which eventually appeared in Shapiro's report: joining the cabinet would not be against the current rules but would seem to violate basic principles of democracy, and so, if the plan were to go ahead, Harper and Emerson should be prepared to defend the appointment on the basis of ethical and democratic principles. In highly charged political situations, MPs may choose not to take the advice of an ethics commissioner; however, face-to-face meetings between the commissioner and MPs will at least ensure that MPs are aware of the ethics dimensions of their choices and this awareness may give them pause.

The Reports by Mary Dawson

Up to 31 December 2010, Ms. Dawson had issued four "inquiry" reports under the Conflict of Interest Act, and six "examination" reports under the Conflict of Interest Code for Members of the House, as well as one report issued both under the act and the code, and one report about a staff member in the Prime Minister's Office. Reports concerning three incidents are summarized below.

The Thibault Inquiry and The Response to Motion for Further Consideration of the Thibault Inquiry Report

In the fall of 2007, Liberal MP Robert Thibault was a member of the standing committee on access to information, privacy and ethics. The committee was examining the Mulroneys Airbus settlement and received new information from Karlheinz Schreiber that indicated that Mulroneys may have accepted payments from Schreiber in connection with the Airbus deal. Thibault was interviewed on a television program about the evidence before the committee. Subsequently, Brian Mulroneys filed a lawsuit against Mr. Thibault, seeking \$2 million in damages for libelous comments about Mulroneys on the television program (the suit was later settled out of court). Later, in November, Conservative MP David Tilson, another member of the standing committee, requested Thibault to recuse himself from the committee. Tilson suggested that the lawsuit had created a potential liability for Thibault and that participation in the committee hearings would be a conflict of interest. When Thibault refused to recuse himself, Tilson asked the commissioner to investigate.

In May 2008, Ms. Dawson reported that because of the potential liability, Mr. Thibault should have recused himself from the committee. Given ambiguities in the Conflict of Interest Code, however, she did not recommend any sanctions. Alternatively, she suggested that MPs may wish to consider whether the wording of the code is appropriate for situations like this (Canada, Office of the Conflict of Interest and Ethics Commissioner 2008c).

The House of Commons did amend the code in June: “Being a party to a legal action relating to actions of the Member as a Member of Parliament” was exempted from being considered a private interest that could cause a conflict of interest. The House also asked the commissioner to reconsider the Thibault report in the light of the amendment. The commissioner reported back that, had the amendment been in place earlier, there would have been no need for Mr. Thibault to recuse himself (Canada, Office of the Conflict of Interest and Ethics Commissioner 2008b).

One of the lessons learned from jurisdictions that require annual meetings between an ethics commissioner and members of a legislature is that these meetings encourage members to contact the commissioner whenever they have questions about the proper interpretation of the rules. Had annual meetings taken place between the commissioner and Tilson, and between the commissioner and Thibault, one or both of the MPs may have chosen subsequently to contact the commissioner to request an informal interpretation of the rules regarding whether Mulrone’s lawsuit required Thibault to recuse himself from the committee. It is likely that following such a consultation, Thibault would have recused himself temporarily, while at the same time raising the issue in the House and requesting the House to amend the conflict-of-interest rules.

The Flaherty Report⁹

Beginning in 2006, Hugh MacPhie’s company was awarded contracts by the office of Jim Flaherty, minister of finance. MacPhie had worked in the Premier’s Office in Ontario during the time of the Harris government. Mr. Flaherty, who had been a minister in the Harris government, met MacPhie while serving in the Harris cabinet, and later MacPhie volunteered for Flaherty’s campaign for the leadership of the Ontario Progressive Conservative Party.

In 2008, Thomas Mulcair, NDP MP for Outremont, asked the commissioner to investigate whether the awarding of the contracts to MacPhie’s company had violated the conflict-of-interest rules in the act. Section 4 of the act reads as follows: “For the purposes of this Act, a public office holder is in a conflict of interest when he or she exercises an official power, duty or function that provides an opportunity to further his private interests or those of his or her relatives or friends or to improperly further another person’s private interests.”

Ms. Dawson reported that Mr. Flaherty had not violated the ethics rules. However, “Several witnesses, including Mr. Flaherty, expressed concern about the contracting process followed by his office. A lack of rigour in this regard left Mr. Flaherty vulnerable to concerns that preferential treatment had been improperly extended to Mr. MacPhie. Mr. Flaherty has assured me that steps have been taken to prevent this type of situation from recurring” (Canada, Office of the Conflict of Interest and Ethics Commissioner 2008a: 13).

Personal meetings between the commissioner and Mr. Flaherty, and between the commissioner and his ministerial staff, would have alerted all of them to the importance of Section 4 of the act and the similar provisions in the predecessor Code for Public Office Holders. It is likely that, as a result, the “lack of rigour” in awarding contracts admitted by Mr. Flaherty would have been dealt with much sooner and there would thus have been no need for an investigation.

The Cheques Inquiries

In 2009, Conservative MPs and cabinet ministers began presenting novelty cheques with Conservative Party identifiers on them to organizations that were recipients of the stimulus funds approved by Parliament to combat the impact of the recession, which began in the United States in December 2007. It should be remembered that, to begin with, the Conservative government had denied that the economic downturn would affect Canada, and it was only when faced with defeat in the House of Commons in 2008 that the government agreed to economic incentives intended to help mitigate the worst impacts of the recession.

When Conservative cabinet ministers and MPs tried to take the entire credit for the stimulus package by presenting large novelty cheques with Conservative Party identifiers on them, opposition members complained to the ethics commissioner. These complaints led to three reports.

The first report was in response to a complaint by Liberal MP Martha Hall Findlay, who alleged that Prime Minister Harper and other cabinet ministers had violated the Conflict of Interest Act. In a narrowly legalistic report, Ms. Dawson stated that “[a] threshold issue is whether the Conservative Party of Canada is a ‘person’ for the purposes of these provisions Our research has found that the Conservative Party of Canada is not a corporation but rather an unincorporated association.” As a result, she concluded that the conflict-of-interest provisions of the act do not apply to political parties thus constituted (Canada, Office of the Conflict of Interest and Ethics Commissioner 2010e: 5).

Nevertheless, more allegations about the novelty cheques were sent to the commissioner’s office. Dawson received sixty-three similar requests for investigations about sixty Conservative MPs, twenty-five of whom were cabinet ministers or parliamentary secretaries. She dealt with all of these complaints by issuing one “inquiry” report, under the MP’s Conflict of Interest Code for Members of the House of Commons (see Canada, Office of the Conflict of Interest and Ethics Commissioner 2010d) and one “examination” report, under the Conflict of Interest Act (see Canada, Office of the Conflict of Interest and Ethics Commissioner 2010c). The key difference between the Findlay report and the allegations dealt with in the second cheques-related report is that the new set of allegations alleged violations of both the MP’s Conflict of Interest Code and the Conflict of Interest Act (whenever cabinet ministers were involved).

With regard to the cabinet ministers subject to the allegations, for the same reasons that were provided in the Findlay report, Commissioner Dawson found no violation of the Conflict of Interest Act. However, this time, she recommended that both the government and the House of Commons consider tightening the rules so as to put appropriate limits on these practices (Canada, Office of the Conflict of Interest and Ethics Commissioner 2010c).

Regarding the most recent allegations of violation of the Conflict of Interest Code regarding the novelty cheques used by Conservative MPs, the commissioner noted that three sections of the code prohibit members from using their office to further the private interests of “entities,” and Dawson concluded that political parties constitute “entities.” However, she

decided that the private interests of “entities” should be interpreted narrowly as purely pecuniary interests (Canada, Office of the Conflict of Interest and Ethics Commissioner 2010d: 14).

Had Ms. Dawson, and her predecessor, met annually with all MPs, including cabinet ministers, there is no doubt that the commissioner would have discussed the meaning of “conflict of interest” and the ethical and democratic principles behind the prohibition of real conflict of interest. In this context, ordinary MPs and cabinet ministers may not use their position to further the interests of their “friends,” which surely includes some members of their party. For cabinet ministers, there is a thin line between instituting policies that will impress “friends,” as well as some in the broader political community, and carrying out actions that are obviously designed to benefit the political prospects of friends in their party and no one else. The former is obviously expected from all cabinet ministers; the latter is prohibited.

The Senate Ethics Officer

There has been only one inquiry into an allegation of a conflict of interest against a senator, and that occurred in 2009. The inquiry was initiated by the senator himself.

Leo Housakos was appointed to the Senate in January 2009. Shortly afterwards, on 4 February, Jean Fournier, the Senate ethics officer, had his first meeting with Senator Housakos: “At that time, the Senator explained that he was on the boards of directors of BPR and Terreau Inc. [a subsidiary]. He inquired as to whether he could continue to do so. I advised him that the Code authorizes Senators who are not Ministers of the Crown to participate in outside activities, including engaging in employment, and being a director or officer in a corporation, or a partner in a partnership. However, I cautioned him about Section 9 of the Code, which pertains to the use of influence” (Canada, Office of the Senate Ethics Officer 2009: 7).

In September 2009, the agencies responsible for the Champlain Bridge in Montreal announced that a consortium that included BPR had been awarded a \$1.4-million contract for a pre-feasibility study. Some media reports alleged that Senator Housakos had used his influence to help the consortium win the contract. In October, Senator Housakos asked Mr. Fournier to investigate and to provide him with a written opinion about whether he had violated the Conflict of Interest Code for Senators.

Fournier’s written “opinion” concluded that the tendering process was “fair, rigorous and transparent” and that “the Senator did not discuss the contract in question with [anyone involved in the tendering process] and that he did not in any way attempt to influence any of the parties involved in the awarding of the contract” (19). It is clear that Housakos took the advice Mr. Fournier gave him in February seriously.

This single report of the Senate ethics officer, who meets annually with Senators regarding their disclosure statements, illustrates the utility of annual face-to-face meetings between an ethics commissioner and members of legislatures.¹⁰

Conclusion

This article has argued that annual meetings between an ethics commissioner and individual members of a legislature are likely to have positive results for promoting ethical democracy and preventing conflict-of-interest scandals, which do so much harm to the level of trust voters have for parliamentarians. These meetings have the potential to increase the awareness of members of Parliament (including cabinet ministers and parliamentary secretaries) about the actual meaning of the ethics rules to which they are subjected – especially the Conflict of Interest Code of Conduct for Members of the House of Commons and the Conflict of Interest Act, which covers cabinet ministers and parliamentary secretaries. These meetings are required by law to occur annually in eight of the provinces and territories, and they occur as a matter of practice in the Senate. The provincial and territorial commissioners in these jurisdictions and the Senate ethics officer have noted in their annual reports that the meetings establish a basis of trust, so that if members are concerned between annual meetings about how the rules apply to them in particular situations, they are more likely to contact the commissioner for advice. If members heed the commissioner's advice, allegations of breach of the rules that require an investigation by the commissioner can often be avoided.¹¹

One reason why there is not a requirement for annual meetings between MPs and the commissioner is that there are 308 MPs and just one commissioner. There are three times as many elected members in Parliament as there are in the Ontario legislature, making it impossible for there to be personal meetings between MPs and the commissioner in as timely a fashion as it occurs in Ontario. Moreover, the commissioner is responsible for the application of the ethics rules to more than 2,000 governor-in-council appointees, as well as ministerial aides and advisers. As I have suggested elsewhere, one solution might be for Parliament to appoint two deputy commissioners, who could share the commissioner's responsibility for personal meetings with MPs. As well, an assistant commissioner could be appointed to oversee the application of the ethics rules to the governor-in-council appointees and ministerial staff (Greene 2010). The small, extra cost of these three additional positions would likely be offset by the savings from the reduced number of investigations conducted by the commissioner's office.

There are other possible reforms that could help to improve the proactive and preventive part of the House of Commons and cabinet ethics regime. Face-to-face meetings between the commissioner and all cabinet ministers, and possibly also the party whips, could be made a priority, and personal meetings between other MPs and the senior advisers in the commissioner's office could be made mandatory.

The commissioner's office has already started to pursue other potentially helpful approaches. The 2009—10 *Annual Report* by the conflict of interest and ethics commissioner lists a number of innovations designed to enhance the educative role of the commissioner's office: "We offer individual meetings with newly elected Members, and encourage Members to meet with advisors during the initial compliance process We issue communiqués, advisory opinions and information notices to inform public office holders and Members about matters related to the Act and the Code" (Canada, Office of the Conflict of Interest and Ethics 2010b: 6, 19).

No doubt these reforms will help to improve the effectiveness of the House of Commons/cabinet ethics regime. However, in the opinion of the Senate ethics officer, it is hard to compete with the effectiveness of mandatory face-to-face meetings as a proactive and educative tool: “The advisory function [of the ethics commissioner] goes hand in hand with the focus on proactive prevention, as it is far better to recognize a problem before it becomes an emergency. This investment up front, sometimes referred to as ‘preventative political medicine,’ can prevent possible corruption and subsequent scandals, and is far preferable than having to clean up any mess afterwards. In my experience, the most important tool in the prevention kit is the face-to-face annual meeting” (Fournier 2009: 8—10).

What this article has argued is that mandatory annual face-to-face meetings between legislative members and an ethics commissioner rather than a simple reliance on optional meetings or on members informing themselves about the rules and how to comply with them will be more likely to result in ethical behaviour.

Notes

- 1 This article builds on papers presented at the annual meeting of the Canadian Political Science Association in Montreal in June 2010. The first part of the present article analyses the shortcomings of the House of Commons and cabinet ethics regime and criticizes the Harper government’s attempts to abolish the Office of the Senate Ethics Officer (see Greene 2010).
- 2 The term “Canadian model” of parliamentary ethics was developed by Jean T. Fournier, who has been Senate ethics officer since 2005 (see Fournier 2008).
- 3 An “opinion” is issued as a result of an investigation requested by a senator about his or her own situation.
- 4 The code was amended in 2003 and again in 2004. It also applies to more than 2,000 governor-in-council appointees.
- 5 Codes can be more quickly amended to strengthen them and can more easily accommodate statements of principle that can be applied by an ethics commissioner.
- 6 Analysis of the investigation reports cited in this article may be found at www.yorku.ca/greene.
- 7 Emerson, the Liberal candidate, won with 43.5% of the votes cast. Ian Waddell (NDP) was second, with 33.5% of the votes. The Conservative candidate received only 18.8% of the votes.
- 8 I interviewed Dr. Shapiro on two occasions, in 2004 and 2005, and these interviews convinced me that he accepted the invitation to become Canada’s first ethics commissioner not for partisan reasons but to contribute to the promotion of higher ethical standards and therefore a higher degree of respect by Canadians of members of Parliament of all parties. It would be difficult for anyone being interviewed by Dr. Shapiro not to become aware of this sincerity.
- 9 Two reports with the same title were released in 2008. The first Flaherty Report, dated 16 June 2008, did not involve significant issues.

- 10 Section 29 of the Conflict of Interest Code for Senators states that the Senate ethics officers “may request to meet” with a senator to discuss the senator’s disclosure statement or obligations under the code. It also obliges senators to meet with the officer if the officer “requires” a meeting. However, since his appointment in 2005, Mr. Fournier has adopted the practice of meeting annually with all senators (Canada, Office of the Senate Ethics Officer 2010).
- 11 The Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings between Karlheiz Schreiber and the Right Honourable Brian Mulroney (the Oliphant Commission) recommended in 2010 that cabinet ministers and their staff be required to participate in ethics training sessions and that party leaders require their members to participate in these sessions. Currently, only about half of MPs participate in these sessions, and “very few” cabinet ministers participate (Canada, Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings between Karlheiz Schreiber and the Right Honourable Brian Mulroney 2010: 547—49).

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