

BILL C-30: SENATE ETHICS ACT

Michel Bédard
Legal and Legislative Affairs Division

2 June 2009



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LEGISLATIVE HISTORY OF BILL C-30

HOUSE OF COMMONS

Bill Stage	Date
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First Reading: 7 May 2009

Second Reading:

Committee Report:

Report Stage:

Third Reading:

SENATE

Bill Stage	Date
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First Reading:

Second Reading:

Committee Report:

Report Stage:

Third Reading:

Royal Assent:

Statutes of Canada

This bill did not become law before the 2nd Session of the 40th Parliament ended on 30 December 2009.

N.B. Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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PUBLIÉ EN FRANÇAIS

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BILL C-30: SENATE ETHICS ACT*

BACKGROUND

Bill C-30, An Act to amend the Parliament of Canada Act and to make consequential amendments to other Acts, whose short title is the Senate Ethics Act, was introduced in the House of Commons by the Honourable Steven Fletcher, Minister of State (Democratic Reform), and received first reading on 7 May 2009. The purpose of Bill C-30 is to eliminate the position of the Senate Ethics Officer, and transfer the duties and functions of that position to the Conflict of Interest and Ethics Commissioner. On the day Bill C-30 was introduced in the House of Commons, its sponsor stated:

[O]ur government remains committed to reforming the Senate to reflect the ideals of a 21st century democracy. The bill introduced today would bring the Senate ethics code under the jurisdiction of the Conflict of Interest and Ethics Commissioner, eliminating the separate ethics officer for the Senate and ensuring that ethical standards are constantly applied to all parliamentarians.⁽¹⁾

In the Speech from the Throne of 19 November 2008, the government had announced its intention to introduce Senate reform legislation, including a legislative proposal “for the Senate to be covered by the same ethics regime as the House of Commons.”⁽²⁾ When it was introduced in the House of Commons, Bill C-30 was referred to as “the first step in meeting

* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

(1) House of Commons, *Debates*, 2nd Session, 40th Parliament, 7 May 2009, p. 3232.

(2) Senate, *Journals*, 1st Session, 40th Parliament, 19 November 2008, p. 19.

that commitment”⁽³⁾ and as “a solid basis for further reform.”⁽⁴⁾ The current government introduced legislative proposals in the last Parliament with the aim of limiting senators’ tenures to eight years and providing for a consultation process before the appointment of senators. The November 2008 Speech from the Throne and statements made upon the introduction of Bill C-30 indicated that these proposals would be reintroduced in the current Parliament. Indeed, Bill S-7, An Act to amend the Constitution Act, 1867 (Senate term limits), was introduced in the Senate on 28 May 2009.

The Office of the Senate Ethics Officer was established, along with the Office of the Ethics Commissioner of Canada, in 2004, when amendments⁽⁵⁾ were made to the *Parliament of Canada Act*.⁽⁶⁾ These amendments originated from the “Proposals to amend the Parliament of Canada Act (Ethics Commissioner) and other Acts as a consequence” and the “Proposals to amend the Rules of the Senate and the Standing Orders of the House of Commons to implement the 1997 Milliken-Oliver Report,”⁽⁷⁾ both of which were tabled in the two houses of Parliament on 23 October 2002. The proposals were referred to the Standing Senate Committee on Rules, Procedures and the Rights of Parliament and the House of Commons Standing Committee on Procedure and House Affairs for their consideration. In its Eighth Report, presented on 10 April 2003, the Senate Committee stated its objection to a single ethics commissioner. Asserting its independence from the House of Commons and the government and its separate constitutional role and functions, the Senate requested its own ethics officer.

In the 2nd Session of the 37th Parliament, Bill C-34 was introduced in the House of Commons and, building on the Senate’s recommendations, proposed the establishment of the separate offices of Ethics Commissioner, responsible for issues arising in the House of Commons, and Senate Ethics Officer. Reintroduced in the 3rd Session as Bill C-4, the bill finally received Royal Assent on 31 March 2004. As a result of that Act, both the Senate and House of

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- (3) Office of the Minister of State for Democratic Reform, “Government of Canada Takes Important Step to Strengthen Ethical Standards in Parliament,” News release, Ottawa, 7 May 2009.
 - (4) Office of the Minister of State for Democratic Reform, “An Act to amend the *Parliament of Canada Act* (*Senate Ethics*),” Backgrounder, Ottawa, 7 May 2009.
 - (5) See *An Act to Amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer)*, S.C. 2004, c. 7.
 - (6) *Parliament of Canada Act*, R.S.C. 1985, c. P-1. Unspecified references above are references to that Act.
 - (7) The Special Joint Committee on a Code of Conduct, co-chaired by Senator Donald H. Oliver and Member of Parliament Peter Milliken, had recommended, in its report presented to both houses of Parliament in March 1997, the establishment of a single commissioner to administer a single Code of Official Conduct for Senators and Members of the House of Commons. The Milliken-Oliver Report also contemplated the creation of a Joint Committee on Official Conduct. However, these recommendations were not implemented at that time.

Commons adopted their own codes of conduct, the *Conflict of Interest Code for Senators* and the *Conflict of Interest Code for Members of the House of Commons*. The Ethics Commissioner was also entrusted with administering ethical principles, rules and obligations established by the prime minister for public office holders, such as ministers and parliamentary secretaries.

The appointment of the first Senate Ethics Officer, Mr. Jean T. Fournier, was approved by the Senate on 25 February 2005 and formally made the following day by the Governor in Council. The duties and functions of the Senate Ethics Officer are set out in the *Conflict of Interest Code for Senators*. Providing advice and opinions to senators on conflict of interest issues, administering the disclosure process, maintaining a public registry, and conducting inquiries are among the main functions of the Senate Ethics Officer. These are carried out under the general direction of the Standing Senate Committee on Conflict of Interest for Senators. These duties are similar to the duties and functions of the Ethics Commissioner (the Conflict of Interest and Ethics Commissioner since 2006) with respect to members of the House of Commons, performed under the general direction of the House of Commons Standing Committee on Procedure and House Affairs.

On 11 April 2006, the government introduced Bill C-2 in the House of Commons. Among other things, this bill aimed to abolish the position of Senate Ethics Officer and transfer the duties of the position to the yet-to-be-created Conflict of Interest and Ethics Commissioner. In the Senate, the bill was amended to retain the Senate Ethics Officer. The House of Commons, however, disagreed with the Senate, and in its 21 November 2006 message to the Senate, stated that this amendment was “unacceptable because [it] would continue the separate existence of the Senate Ethics Officer contrary to the goal of a unified Conflict of Interest and Ethics Commissioner who could bring a broad perspective to bear on conflict of interest and ethical matters.”⁽⁸⁾ The Senate nonetheless insisted on the amendments pertaining to the Senate Ethics Officer and communicated to the House of Commons that “these amendments ... are of significant importance to the status and privileges of the Senate of Canada as a constitutionally separate and independent House of Parliament, and reflect the practice of other Westminster based parliamentary democracies.”⁽⁹⁾ The House of Commons finally concurred with the Senate amendments, and Bill C-2 received Royal Assent on 12 December 2006.⁽¹⁰⁾

(8) Senate, *Journals*, 1st Session, 39th Parliament, 21 November 2006, p. 771.

(9) House of Commons, *Journals*, 1st Session, 39th Parliament, 7 December 2006, p. 886.

(10) *Federal Accountability Act*, S.C. 2006, c. 9.

DESCRIPTION AND ANALYSIS

As stated above, the purpose of Bill C-30 is to eliminate the position of the Senate Ethics Officer, and to transfer his or her duties and functions to the Conflict of Interest and Ethics Commissioner. To achieve this goal, Bill C-30 makes numerous amendments to the *Parliament of Canada Act* and consequential amendments to other Acts of Parliament. The amendments included in Bill C-30 are grouped as follows, in order to present them in a coherent manner: Abolition of the Senate Ethics Officer Position (Clause 2); Amendments to the Conflict of Interest and Ethics Commissioner Position (Clauses 3 to 9), including Appointment and Dismissal, Mandate, and Estimates and Annual Reports; Transitional Provisions (Clauses 10 to 12); Consequential Amendments (Clauses 13 to 40); and Coming Into Force (Clause 41).

A. Abolition of the Senate Ethics Officer Position (Clause 2)

Clause 2 repeals sections 20.1 to 20.7 of the *Parliament of Canada Act*, which created the position of the Senate Ethics Officer, assigned his or her duties and provided for his or her powers and privileges.

B. Amendments to the Conflict of Interest and Ethics Commissioner Position (Clauses 3 to 9)

1. Appointment and Dismissal

The Conflict of Interest and Ethics Commissioner is appointed by the Governor in Council, after consultation with the leaders of each recognized party in the House of Commons and approval, by resolution, by the House of Commons.⁽¹¹⁾ Clause 3 amends this appointment procedure and requires the consultation with the leaders of the recognized parties in the Senate as well as formal approval by the Senate of the proposed appointment. Similarly, while the Conflict of Interest and Ethics Commissioner may be removed for cause during his or her tenure by the Governor General in Council, following a resolution to that effect by the House of Commons, section 82(1) of the *Parliament of Canada Act*, as amended by Clause 4, also requires a resolution of the Senate before the commissioner may be dismissed.

(11) *Parliament of Canada Act*, s. 81(1).

2. Mandate

Bill C-30 adds the duties and functions of the Senate Ethics Officer to the mandate of the Conflict of Interest and Ethics Commissioner (clause 6).

The Senate Ethics Officer's mandate is substantially similar, if not identical, to the mandate of the Conflict of Interest and Ethics Commissioner.⁽¹²⁾ As stated above, the duties and functions of the Senate Ethics Officer and the Conflict of Interest and Ethics Commissioner derive from the *Conflict of Interest Code for Senators* and the *Conflict of Interest Code for Members of the House of Commons*. Bill C-30 transfers the Senate Ethics Officer's duties and functions to the Conflict of Interest and Ethics Commissioner (clause 8, adding new section 86.01(1)). As a result, new provisions are added to the *Parliament of Canada Act* to provide that the commissioner enjoys the privileges and immunities of the Senate when carrying out duties and functions assigned by the Senate (new section 86.01(2)). Bill C-30 also states expressly that the powers, privileges, rights and immunities of the Senate or its members are not limited as a result of the assignment of duties and functions to the commissioner (new section 86.01(5)).

With the transfer of duties, the Conflict of Interest and Ethics Commissioner, as did the Senate Ethics Officer, carries out his or her duties and functions under the general direction of a Senate committee assigned or established for that purpose (new section 86.01(3)). The jurisdiction of that committee extends only to senators as members of the Senate, and does not include administration of the *Conflict of Interest Act*,⁽¹³⁾ which applies to public office holders (new section 86.01(4)). Bill C-30 would permit the establishment of a joint committee of the Senate and the House of Commons under whose general direction the commissioner would perform his or her duties and functions (clause 7, and clause 8, adding new section 86.01(3)).

3. Estimates and Annual Reports

As a result of Bill C-30, the Estimates of the Conflict of Interest and Ethics Commissioner will have to be considered by both the Speaker of the Senate and the Speaker of the House of Commons before being sent to the President of the Treasury Board, who tables them before the House of Commons (clause 5).

The commissioner must submit a report of his or her activities in respect of senators to the Speaker of the Senate for each fiscal year (clause 9). This report is tabled in the Senate by the Speaker.

(12) Ibid., ss. 20.5(1) and 86(1).

(13) *Conflict of Interest Act*, S.C. 2006, c. 9, s. 2.

C. Transitional Provisions (Clauses 10 to 12)

The person holding the position of Senate Ethics Officer ceases to hold that office on the coming into force of the provisions abolishing this position (clause 10).

Despite the new nomination process for the Conflict of Interest and Ethics Commissioner position, which requires the approval of the Senate, the commissioner is entrusted with his or her new duties and functions in respect of senators as of the coming into force of the Act (clause 11(1)). Such a transitional measure will last for a maximum of six months, during which the Senate may approve the appointment of the then commissioner. In this case, the appointment continues for a period of seven years, beginning on the date of the original appointment (clauses 11(1)(a) and 11(2)). If circumstances make the appointment of a new commissioner necessary during the six months mentioned above, the new appointment procedure enacted by Bill C-30 will apply to this appointment (clause 11(1)(b)). Should neither of these two scenarios occur within the six-month time frame, the tenure of the Conflict of Interest and Ethics Commissioner will end (clause 11(1)(c)), and the renewal of the commissioner's appointment or the appointment of a new commissioner will be required, in which case the new procedure established by Bill C-30 will apply.

Clause 12 provides for the transfer of employees (clause 12(1)), appropriations (clause 12(2)), and files (clause 12(5)) of the Senate Ethics Officer to the Conflict of Interest and Ethics Commissioner upon the coming into force of the Act. Similarly, the Conflict of Interest and Ethics Commissioner is substituted for the Senate Ethics Officer in all contracts, deeds or any other document signed by the Senate Ethics Officer (clause 12(3)) and in all legal and administrative proceedings to which the Senate Ethics Officer is a party (clause 12(4)).

D. Consequential Amendments (Clauses 13 to 40)

Clauses 13 to 40 of Bill C-30 make consequential amendments to numerous statutes as a result of the abolition of the position the Senate Ethics Officer and the transfer of his or her duties and functions to the Conflict of Interest and Ethics Commissioner.

E. Coming Into Force (Clause 41)

Bill C-30 or any of its provisions come into force on a day or days to be fixed by order of the Governor General in Council.