



Office of the Conflict
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Commissioner

Commissariat aux
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l'éthique

THE RAITT REPORT

made under the
CONFLICT OF INTEREST ACT



May 12, 2010

Mary Dawson
Conflict of Interest and
Ethics Commissioner

The Raitt Report

made under the
CONFLICT OF INTEREST ACT

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INTRODUCTION

This is one of two reports that present the findings of my investigation into the activities of the Honourable Lisa Raitt, Member of Parliament for Halton, when she was Minister of Natural Resources, in connection with a political fundraising event organized by the Halton Conservative Association and held in Toronto on September 24, 2009.

The investigation was conducted under both the *Conflict of Interest Act* (Act), which applies to Ministers and other public office holders, and the *Conflict of Interest Code for Members of the House of Commons* (Code). Because the investigations under these two regimes involve the same facts, the reports are virtually identical with the exception of the analysis sections, but, because the procedure for releasing the reports differs under the Act and the Code, it is necessary to issue two separate reports.

The analyses under the Act and the Code are of necessity different because the relevant provisions differ. To provide a complete picture of the situation, however, the analysis under the Code is included as Schedule A.

There was considerable media coverage following the fundraising event. Media reports focussed on the involvement of Mr. Michael McSweeney and Ms. Janet MacDonald in organizing the fundraiser. Mr. McSweeney is a lobbyist who lobbied Ms. Raitt as Minister of Natural Resources and Ms. MacDonald is an employee of the Toronto Port Authority where Ms. Raitt had formerly been employed as President and Chief Operating Officer. The media reports also led to a number of statements and questions in the House of Commons about whether Ms. Raitt had breached rules of conduct. The Minister of Transport, the Honourable John Baird, stated in the House of Commons that it was inappropriate to use Toronto Port Authority resources for political fundraising.

Two Members of Parliament requested that I investigate Ms. Raitt's conduct, in one case under the Act and in the other under both the Act and the Code.

With respect to the Act, it was alleged that Ms. Raitt had breached section 11 of the Act by accepting the assistance provided by the lobbyist. That section prohibits public office holders from accepting gifts or other advantages that might reasonably be seen to have been given to influence them in the exercise of an official power, duty or function. It was further alleged that Ms. Raitt had contravened section 16 of the Act, which prohibits public office holders from personally soliciting funds from any person or organization if doing so would place them in a conflict of interest, and section 18, which prohibits public office holders from acting in such a way as to circumvent their obligations under the Act. Ministers, Ministers of State and Parliamentary Secretaries are all public office holders under the Act.

With respect to the Code, it was alleged that the assistance provided by the lobbyist constituted a "gift or other benefit" under section 14 of the Code, which prohibits Members from accepting gifts or other benefits that might reasonably be seen to have been given to influence them in the exercise of a duty or function of his or her office. A second allegation relating to the Code was that Ms. Raitt had contravened section 25, which prohibits Members from acting in such a way as to circumvent their obligations under the Code.



My conclusions relating to the specific allegations raised under the Act and the Code are found in the analysis sections of the respective reports. More general observations arising out of the matters raised are set out in the section that follows the analysis in both reports. In that section I address concerns arising from the participation of lobbyists or other stakeholders in fundraising activities of the riding associations of Ministers, Ministers of State or Parliamentary Secretaries and other Members.



THE REQUESTS

From Ms. Olivia Chow, Member of Parliament for Trinity-Spadina

On October 1, 2009, Ms. Olivia Chow, Member of Parliament for Trinity-Spadina, sent me an email copy of a letter requesting that I investigate allegations of a potential conflict of interest involving the Honourable Lisa Raitt, Minister of Natural Resources and Member of Parliament for Halton, in connection with a political fundraising event held in Toronto on September 24, 2009. I received Ms. Chow's original letter on October 5, 2009.

Ms. Chow's request made reference to a *Toronto Star* press report of October 1, 2009 which stated that "the fundraiser was coordinated out of the office of the President of the Toronto Port Authority, a federal agency that Ms. Raitt once headed." The article went on to say that the invitations to the fundraiser were sent out by the executive assistant to the acting President and Chief Executive Officer of the Toronto Port Authority. The assistant had previously worked for Ms. Raitt when she held that position. Ms. Raitt was President and CEO of the Toronto Port Authority until she ran successfully in the 2008 federal election.

On October 6, 2009, after reviewing Ms. Chow's letter and related press reports, I wrote to tell her that the material before me was insufficient to commence an investigation. I advised her that further details about the alleged non-compliance and the reasonable grounds for her belief that a contravention had taken place would be needed to meet the requirements of the *Conflict of Interest Act* (Act) for me to proceed with her request.

I received another letter from Ms. Chow on October 13, 2009. She alleged that Mr. Michael McSweeney, a registered lobbyist with the Cement Association of Canada, had spent considerable time organizing the fundraising event from his office and that this constituted a "gift or other advantage" accepted by Ms. Raitt, in contravention of section 11 of the Act. That section prohibits public office holders from accepting gifts or other advantages that might reasonably be seen to have been given to influence them in the exercise of their official duties. Ms. Chow alleged that Ms. Raitt had also contravened section 16 of the Act, which prohibits public office holders from personally soliciting funds if it would place them in a conflict of interest. Ms. Chow made no request for an inquiry under the *Conflict of Interest Code for Members of the House of Commons* (Code).

From Mr. Paul Szabo, Member of Parliament for Mississauga South

Mr. Paul Szabo, Member of Parliament for Mississauga South, sent me a letter dated October 5, 2009 saying that he shared Ms. Chow's concerns and asking that I investigate Ms. Raitt's actions under the Act and the Code. On October 6, 2009, I sent Mr. Szabo a letter similar to the one I had sent to Ms. Chow to advise him that further details would be needed to meet the requirements of the Act and the Code before I could proceed with an examination under the Act or an inquiry under the Code.

I received another letter on October 19, 2009 from Mr. Szabo, stating that he had been told that Ms. Raitt had asked the executive assistant at the Toronto Port Authority to assist with the fundraiser. Mr. Szabo also stated that Mr. Michael McSweeney, a lobbyist with the Cement



Association of Canada, appeared to be the principal organizer of the fundraiser and that the Association had lobbied the federal government eight times between March and August 2009, including the Department of Natural Resources twice. While Mr. Szabo cited only section 18 of the Act and section 25 of the Code, which prohibit public office holders and Members from acting in such a way as to circumvent their obligations under the Act or the Code respectively, I determined that the information he provided was sufficient to allow me to identify the relevant provisions of the Act and the Code.

Mr. Szabo informed me as well, in his letter of October 19, 2009, that he had also written to the Privacy Commissioner, the Commissioner of Canada Elections and the Commissioner of Lobbying to ask them to consider investigations, as this matter touched on their mandates as well as mine.

From Democracy Watch

On October 22, 2009, I received a letter from Mr. Duff Conacher of Democracy Watch, an advocacy organization, asking me to consider launching, on my own initiative, an examination under the Act and an inquiry under the Code into the same matter. My Office advised Mr. Conacher that I was already looking into this matter pursuant to requests from Members of Parliament.



section 11 of the Act. It was argued that, because Mr. McSweeney was lobbying Ms. Raitt as Minister of Natural Resources, his volunteer services might reasonably be seen to have been given to influence her in the exercise of her official duties. A number of other lobbyists also provided volunteer services in connection with the fundraising event. The analysis that follows applies equally to those instances.

Subsections 11(1) and (2) of the Act set out a prohibition against public office holders receiving gifts and other advantages, as well as some exceptions. These provisions read as follows:

- 11. (1) No public office holder or member of his or her family shall accept any gift or other advantage, including from a trust, that might reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function.*
- (2) Despite subsection (1), a public office holder or member of his or her family may accept a gift or other advantage*
- (a) that is permitted under the Canada Elections Act;*
 - (b) that is given by a relative or friend; or*
 - (c) that is received as a normal expression of courtesy or protocol, or is within the customary standards that normally accompany the public office holder's position.*

Subsection 2(1) of the Act includes the following definition of “gift or other advantage”:

“gift or other advantage” means

- (a) an amount of money if there is no obligation to repay it; and*
- (b) a service or property, or the use of property or money that is provided without charge or at less than its commercial value.*

The evidence showed that a number of individuals donated their time and energy and that some used their office resources in assisting in the organization of the fundraising event. The volunteer time offered by Ms. Janet MacDonald, Mr. Michael McSweeney, Mr. Gary Clement and Mr. Will Stewart was a service without charge, and therefore falls within paragraph (b) of the definition of “gift or other advantage” under the Act. The funds raised would fall within paragraph (2)(a) of that definition. I have some doubt that political contributions and volunteer fundraising services were intended to be included in this definition in light of the fact that these are regulated by the *Canada Elections Act*, but, for the purposes of my analysis, I will assume that they are included in the definition.

With respect to Janet MacDonald, she provided volunteer services because of her close friendship with Ms. Raitt, and, if these services were accepted by Ms. Raitt, this would fall under the exception in paragraph 11(2)(b) for gifts given by relatives or friends. There is another exception in paragraph 11(2)(a) for gifts that are permitted under the *Canada Elections Act*, but that exception only applies during election periods, which is not the case here.



With respect to the volunteer services and monetary contributions provided by the lobbyists, it would seem reasonable to question whether they were given with a view to influencing Ms. Raitt with respect to a future official decision that might benefit the lobbyists, their associations or clients. The potential to influence or attempt to influence will be enhanced by a personal connection between a lobbyist and a Minister, an advisor of the Minister or a senior departmental official who makes recommendations to the Minister. This personal connection can develop each time they have an opportunity for personal access to that Minister, for example through a fundraising event.

Mr. Michael McSweeney and his colleagues from the Cement Association of Canada had lobbied Ms. Raitt with respect to a Cement Association project in March 2009 and later volunteered for the first time to assist with the fundraiser. He attended the event and spoke with Ms. Raitt again about the project that had just been submitted to her department, registering this communication under the *Lobbying Act* as well. It would seem reasonable to question whether Mr. McSweeney was trying to build a personal connection with Ms. Raitt with a view to influencing her to consider or approve the project.

The evidence, however, showed that Ms. Raitt was unaware of the details relating to the organization of the event and did not get involved in the recruitment of volunteers or in the solicitation of funds. In order for her to have accepted these services or funds as contemplated by section 11, she would have had to be aware of them being offered to her, and have had an opportunity to decline them. This was not the case. While she was aware of Mr. Stewart's involvement in his capacity as a Member of the Board of the Halton Conservative Association, he had been designated by the Board as the lead of this fundraiser. I will comment further on the issue of lobbyists sitting as a member of a board of a riding association in my General Observations.

The Board of the Halton Conservative Association is responsible for the political fundraising events in its own electoral district and is charged with the organization of these events as well as the administration of all funds that are collected. I have found, in fact, that the Halton Conservative Association did organize the fundraising event of September 24, 2009 and was the direct recipient and beneficiary of all volunteer services and of all monetary contributions related to it.

While Ms. Raitt, as the sitting Member of Parliament, is an *ex officio* member of the Board of the Halton Conservative Association, the evidence has clearly established that she does not participate in administrative decisions, including decisions on how Association funds are expended. She has no control over those funds.

The Board of the Halton Conservative Association has set aside an annual amount of \$2,000 for expenses incurred by Ms. Raitt in attending constituency events while she is the sitting Member of Parliament to cover ticket purchases that are related to her work as a Member of Parliament. Thus, Ms. Raitt will receive some financial support as a result of fundraisers organized by the Halton Conservative Association while she is the sitting Member of Parliament and if she is re-nominated as the Conservative candidate for Halton in the next federal election. I



consider these expenditures to be for work-related expenses that are covered for her, and not gifts or advantages under the Act. It is up to the Halton Conservative Association to decide how the funds are to be used, not Ms. Raitt.

I have, accordingly, concluded that Ms. Raitt did not accept any gift or other advantage in connection with the September 24, 2009 fundraising event and therefore did not contravene section 11.

I find support for the determination that there has been no contravention of the Act in this case in the fact that there is a comprehensive regime of the *Canada Elections Act* that deals with political contributions. It sets out rules for contributions, both monetary and non-monetary, as well as public reporting requirements, which apply at all times. I note that there is no special restriction against lobbyists contributing to a registered electoral district association. The only restriction is the \$1,100 limit that applies to everyone.

Political fundraising activities are important and legitimate activities. In light of the fact that they are regulated by a comprehensive regime under the *Canada Elections Act*, that the volunteer services and monetary contributions provided by the lobbyists were given to the Halton Conservative Association and that Ms. Raitt was not involved in recruiting the volunteers or organizing the fundraiser, I conclude that section 11 has no application in the present circumstances.

Many may argue that Ms. Raitt should have made herself aware of the details to ensure that there would be no potential for conflicts of interest. I will have more to say about that in my General Observations.

Prohibition against fundraising: Section 16

Ms. Chow alleged that Ms. Raitt had contravened section 16 of the Act by personally soliciting funds. Mr. Szabo, without making reference to section 16, alleged that Ms. Raitt had asked Ms. Janet McDonald to get involved in the organization of the event.

Section 16 reads as follows:

16. No public office holder shall personally solicit funds from any person or organization if it would place the public office holder in a conflict of interest.

Section 16 requires that two elements be established: that the public office holder personally solicited funds from a person or organization, and that this solicitation placed the public office holder in a conflict of interest. In order for Ms. Raitt to have personally solicited funds in connection with the September 24, 2009 fundraising event, she would have had to actively seek monetary contributions to support the event.

There was no evidence that Ms. Raitt asked anyone to buy tickets for the event, either directly or by asking someone else to do so at any time. Every witness questioned on this issue confirmed this. Ms. Raitt was aware that an event was being organized and she planned to attend the event, but that was the extent of her involvement.



I find that Ms. Raitt did not personally solicit funds and therefore that section 16 does not apply.

Anti-avoidance: Section 18

In his request, Mr. Szabo alleged that Ms. Raitt had contravened section 18 of the Act which prohibits public office holders from taking “any action that has as its purpose the circumvention of the public office holder’s obligations under this Act.” Mr. Szabo did not identify any specific provisions under the Act that Ms. Raitt might have tried to circumvent.

I have found that Ms. Raitt did not breach sections 11 or 16 of the Act. Further, there was no evidence that Ms. Raitt took any actions to circumvent her obligations under these sections or any other obligations under the Act. I find that section 18 has no application in respect of this matter.

Conclusions

For the reasons stated above, I have determined that Ms. Raitt has not contravened section 11 of the Act in respect of the political fundraising event of September 24, 2009 because Ms. Raitt was not involved in the recruitment of these volunteers or the organization of the fundraiser and therefore did not accept these services or contributions. The political contributions, volunteer time and resources provided by the lobbyists in connection with this fundraiser were given to the organizer of the event, the Halton Conservative Association.

Much attention was given to the role that Ms. Janet MacDonald played in relation to this fundraising event. Ms. MacDonald had no official dealings with Ms. Raitt in her capacity as Minister of Natural Resources or Member for Halton, and her involvement was based solely on their friendship. Had her volunteer services been given to Ms. Raitt and not the Halton Conservative Association, they would have fallen under the exception to section 11 for gifts or advantages from friends or family.

I have also concluded that section 16 did not apply since there was no evidence that Ms. Raitt solicited funds, either directly or indirectly, in relation to that fundraising event.

Finally, I have determined that Ms. Raitt did not contravene section 18 as she did not take any actions for the purpose of circumventing any of her obligations under the Act.

I will comment further on the potential for conflicts of interests for Ministers, Ministers of State, Parliamentary Secretaries and other Members in the next section, which includes my observations on the involvement of lobbyists and other stakeholders in political fundraising activities. In particular I will address the reasonable perception that volunteer services and monetary contributions given by stakeholders are given with a view to influencing elected officials in respect of future official decisions. I believe elected officials need some guidance with respect to political fundraising activities. There was no such guidance available at the time of the September 24, 2009 fundraising event under review in this report.



GENERAL OBSERVATIONS

Issues relating to preferential treatment

Although I have determined that Ms. Raitt did not contravene the *Conflict of Interest Act* (Act) or the *Conflict of Interest Code for Members of the House of Commons* (Code), I believe that this matter raises important issues about the relationship between Members, particularly those Members who are Ministers, Ministers of State or Parliamentary Secretaries, on the one hand, and lobbyists or other stakeholders who become involved in political fundraising activities organized by their electoral district associations on the other hand.

In light of the extensive media and public attention surrounding the fundraising event of September 24, 2009 and the alleged involvement of Mr. Michael McSweeney, an in-house lobbyist at the Cement Association of Canada who was actively lobbying Ms. Raitt as Minister of Natural Resources, I had some concern that subsection 6(1) and section 7 of the Act might potentially be engaged. These provisions read as follows:

6. (1) No public office holder shall make a decision or participate in making a decision related to the exercise of an official power, duty or function if the public office holder knows or reasonably should know that, in the making of the decision, he or she would be in a conflict of interest.

[...]

7. No public office holder shall, in the exercise of an official power, duty or function, give preferential treatment to any person or organization based on the identity of the person or organization that represents the first-mentioned person or organization.

There were no allegations raised with my Office that Ms. Raitt had given preferential treatment to Mr. Michael McSweeney, the Cement Association of Canada or any other person or organization. However, I was concerned that, should a situation arise where Ms. Raitt had to make an official decision involving the Cement Association of Canada, she could be subject to allegations of preferential treatment because of the help that Mr. McSweeney had provided for the fundraiser.

In order to avoid this possibility, on October 9, 2009, Ms. Raitt signed an agreed compliance measure establishing an interim conflict of interest screen to prevent any potential conflicts of interest, more particularly any potential for preferential treatment. The agreed compliance measure was made public on our website the same day and a copy is attached as Schedule B to this report. It was to be kept in place at least until the completion of my investigation.

Ms. Raitt was assigned a new portfolio in January, 2010 and I wrote to her on February 4, 2010 to advise her that, in light of her new responsibilities as Minister of Labour, this interim conflict of interest screen was no longer necessary.



With respect to the Code, there could also be similar concerns. While the Code does not contain a provision like section 7 of the Act that expressly refers to the possibility of future “preferential treatment”, section 8 of the Code is similar to subsection 6(1) of the Act in that it prohibits a Member from improperly furthering another person’s or entity’s private interests.

That section reads as follows:

8. When performing parliamentary duties and functions, a Member shall not act in any way to further his or her private interests or those of a member of the Member’s family, or to improperly further another person’s or entity’s private interests.

In general, where a Member, particularly a Minister, Minister of State or Parliamentary Secretary, is placed in a situation where lobbyists or other stakeholders are involved in fundraisers in the Member’s electoral district, there is the possibility that future events could create situations where issues of preferential treatment or other conflicts of interest could arise.

The need for fundraising guidelines

At the time of the September 24, 2009 fundraiser, there were no rules or guidelines that applied generally to Members or in particular to Ministers, Ministers of State or Parliamentary Secretaries in relation to political fundraising events that could assist them in ensuring that they are not placed or seen to be placed in situations of actual or potential conflict of interest. Early in this investigation it became evident to me that there was a need in these situations for some guidance for Members, particularly for Ministers, Ministers of State and Parliamentary Secretaries.

Mr. Challinor and Ms. Byrne confirmed that the Conservative Party of Canada did not, at the time of the September 24, 2009 fundraiser, have guidelines with respect to political fundraising activities.

After the fundraiser, the Halton Conservative Association developed for its own use the set of guidelines that were mentioned earlier. They were addressed to volunteers who assist with fundraising events and were intended to clarify their role and that of the sitting Member and his or her staff. Those guidelines provided that lobbyists or other stakeholders should not be approached to purchase tickets. They did not, however, address the issue of who should or should not be permitted to volunteer to organize fundraising events or sell tickets. It is not clear whether the Halton Conservative Association would have developed these guidelines had the sitting Member not been a Minister as well.

The Commissioner of Lobbying is responsible for the administration of rules for lobbyists. A guideline relating to political activities such as fundraising was issued on November 6, 2009 by the Commissioner of Lobbying entitled the *Commissioner’s Guidance on Conflict of Interest - Rule 8 (Lobbyists’ Code of Conduct)*.



The lobbyists interviewed for the purposes of this report confirmed that their employers understood that it would be normal and appropriate for them to volunteer for political campaigns and fundraising as long as it was in their personal capacity and as long as they respected their employers' general policies related to the use of office equipment for personal use.

A document issued by the Privy Council Office in 2008 entitled *Accountable Government – A Guide for Ministers and Ministers of State* includes a strict prohibition on the use of government offices for political purposes. It does not, however, address situations such as the one under consideration, the involvement of lobbyists or other stakeholders in political fundraising activities.

I note that in 2002, the Right Honourable Jean Chrétien, the Prime Minister at that time, had issued guidelines entitled *The Ministry and Activities for Personal Political Purposes*. These guidelines provided the following with respect to lobbyists:

Ministers also need to be mindful of situations where individuals involved in the Minister's campaign, whether as fundraisers, organizers or strategists, may be registered under the Lobbyists Registration Act to lobby the Minister's department. This again is a situation which can give rise to the appearance of a conflict of interest and needs to be resolved by the Minister in the public interest by declining the active support of the individual on the campaign. Alternatively, the individual might choose not to lobby the department so long as he or she was involved in the campaign. Either step would resolve the matter.

These guidelines appear to have been discontinued around 2003 and no others were put in place until very recently.

The Prime Minister's recent guidance document

On April 20, 2010, the Right Honourable Stephen Harper, Prime Minister, forwarded to me a guidance document entitled *Fundraising and Dealing with Lobbyists: Best Practices for Ministers and Parliamentary Secretaries* which he advised had been issued to all Ministers and Parliamentary Secretaries.

The Prime Minister's new guidance document sets out best practices that are expected to be followed by Ministers and Parliamentary Secretaries in respect of fundraising activities. These new guidelines address many of the conflict of interest concerns that became apparent as I conducted my examination and inquiry, in particular those relating to the potential for preferential treatment. I note below, however, some aspects that might be addressed further.

The document applies to Ministers and Parliamentary Secretaries. They do not apply to Members who are not public office holders. Although it is not clear in the document whether Ministers of State are included in the term "Ministers", they should be as well. The *Conflict of Interest Act* distinguishes between Ministers and Ministers of State and I have referred to both in this report.



The guidance document sets out the following general principles:

- *Ministers and Parliamentary Secretaries must ensure that fundraising does not affect, or appear to affect, access to government.*
- *People who make financial contributions to politicians or political parties must not receive, or be seen to receive, preferential access.*
- *People who have dealings with Ministers and Parliamentary Secretaries, or with the staffs or departments of Ministers and Parliamentary Secretaries, must not be singled out, or be perceived to be singled out, as the targets of partisan fundraising.*

Specific best practices relate to the involvement in fundraising activities of departmental stakeholders. “Departmental stakeholders” include lobbyists registered to lobby the Minister, Parliamentary Secretary, their staff or departments, and individuals employed by or connected with associations and companies that have or are likely to have significant dealings with the Minister, Parliamentary Secretary, their staffs or their departments.

Best practices include not having departmental stakeholders on fundraising or campaign teams. It would be important to review the situation in the case of a cabinet shuffle or when staff changes occur in the offices of a Minister or a Parliamentary Secretary because the relevant stakeholders would change. Recusals or conflict of interest screens may be required should a problem arise at that time. This could also apply should a Member become a Minister or Parliamentary Secretary.

The Prime Minister’s guidance document provides that appropriate safeguards be put in place to ensure that departmental stakeholder lists are not shared with the fundraising team and that fundraisers are to be instructed not to target departmental stakeholders or knowingly solicit contributions from them. It notes, however, that broad general fundraising appeals can be made that may involve lobbyists and other stakeholders only incidentally.

The guidance document also states that fundraising events are to be no-lobbying zones. Ministers and Parliamentary Secretaries and their staffs are to avoid discussing departmental business and refer anyone who wishes to do so to their office for an appointment. Another best practice is for Ministers and Parliamentary Secretaries and their Chiefs of Staff to review all communications relating to fundraising to ensure that they do not improperly suggest a connection between the fundraising and their portfolios.

The document also indicates that Ministers and Parliamentary Secretaries are to ensure that their staff members are well acquainted with the guidelines and are to put appropriate processes in place in their offices and departments to ensure compliance.

It is important that all staff who support Ministers, Ministers of State and Parliamentary Secretaries, in both Parliament Hill and constituency offices, as well as board members and officers of their respective electoral district associations, be aware of the Act and the obligations



it places on these elected public office holders so that they are not inadvertently placed in a potential conflict of interest situation. Chiefs of Staff should ensure that staff members, whether or not they themselves are subject to the Act, are fully briefed on the requirements of the Act.

One issue that is not addressed directly is the presence of lobbyists or other departmental stakeholders as board members of an electoral district association of a Minister or Parliamentary Secretary. While the guidelines suggest that these board members could not be part of the fundraising activities of the association, board members have other responsibilities that may also raise conflict of interest issues. This situation has the potential to place the Minister or Parliamentary Secretary in a conflict of interest situation. Careful consideration should be given to managing this risk.

The Prime Minister could consider including the guidance he has developed in the documents issued by the Privy Council Office entitled *Accountable Government – A Guide for Ministers and Ministers of State* and, if it still exists, the *Guide for Parliamentary Secretaries* referred to in the guide for Ministers and Ministers of State.

It would be important, as well, that all lobbyists, other departmental stakeholders, political volunteers and the general public be aware of this new guidance document. I would, therefore, recommend that it be made public.

Final comments

Beyond the guidance document, however, the attendance of lobbyists and other stakeholders at fundraising events will continue to be of concern. These events afford special access to Ministers, Ministers of State, Parliamentary Secretaries and other Members and provide an opportunity for a personal connection that can stand a lobbyist, or other stakeholder, in good stead for future official meetings where private interests are being advanced.

All Members, even those in parties that are not in power, sit on committees of Parliament that may review matters of interest to lobbyists or other stakeholders. However, they are not involved in government decisions in the same way as Members who are also Ministers, Ministers of State or Parliamentary Secretaries.

With respect to Members, the *Conflict of Interest Code for Members of the House of Commons* does not include any provision dealing with political fundraising. Consideration could be given to amending the Code in this regard, perhaps to include prohibitions against solicitation of funds and preferential treatment, broader recusal obligations and provision for the establishment of conflict of interest screens.

As for public office holders, the *Conflict of Interest Act* already provides a number of rules and provisions to deal with public office holders who find themselves in situations that could lead to a conflict of interest. The only provision of the Act that relates directly to fundraising is section 16, which prohibits public office holders from personally soliciting funds where that would place them in a conflict of interest. The Act could provide additional rules of conduct to deal with political fundraising.



Members, especially those Members who are also Ministers, Ministers of State and Parliamentary Secretaries, must remain vigilant to avoid circumstances where they might be placed in a conflict of interest, in particular in their dealings with lobbyists registered to lobby them or their organizations or with other stakeholders. Otherwise, as happened in this case, they open themselves up to criticism and accusations of conflict of interest, particularly relating to preferential treatment.



**SCHEDULE A:
ANALYSIS UNDER THE CODE**
(from page 1)

In this section, I make my determination as to whether sections 14 and 25 of the *Conflict of Interest Code for Members of the House of Commons* (Code) were contravened. Before doing so, I will deal with the question of whether the request was not made in good faith and hence constituted an abuse of process.

It is important to note that Ms. Raitt was lobbied in her capacity as Minister of Natural Resources and not in her capacity as a Member of Parliament. However, the fundraising event took place because Ms. Raitt is the sitting Member of Parliament for the Halton constituency. For this reason, it was appropriate to review the allegations with respect to the obligations under the Code as well as those under the *Conflict of Interest Act*.

In the next section, entitled General Observations, I look more generally at the concerns that underlie these requests and discuss the need for rules or guidelines for Members, in particular those who are also Ministers, Ministers of State and Parliamentary Secretaries, in relation to fundraising events where lobbyists or other stakeholders are involved.

Allegation of bad faith

Counsel for Ms. Raitt claimed that the request made by Mr. Szabo was without foundation and made in bad faith. Subsection 27(6) of the Code provides that, if I determine that a request is frivolous or vexatious or not made in good faith, I may dismiss the request and may recommend appropriate sanctions against the Member who made the request. Counsel, however, did not argue that I should dismiss the request but did ask that I make a finding of bad faith against Mr. Szabo and that I recommend a sanction against him.

Counsel argued that Mr. Szabo's request for an inquiry was motivated by partisan political purposes aimed at destroying Ms. Raitt's reputation, was not made in good faith and hence, constituted an abuse of process. He argued that Mr. Szabo has repeatedly attempted to leverage his request to this Office to generate adverse publicity for Ms. Raitt by making inflammatory statements in the House of Commons that went well beyond the evidence, revealing in statements in the House information he provided to me, and knowingly misleading the House by stating that I had found "that there was clear evidence to launch a full inquiry". In short, Mr. Osborne claimed that the comments made in the House were misleading, gratuitous and deliberately false. Mr. Osborne submitted a number of excerpts from *Hansard* in support of his submission.

The threshold for finding a request to be frivolous, vexatious or not made in good faith is very high. In general, a frivolous request is one that lacks any basis or merit or that was not seriously made or was made for an unreasonable purpose and a vexatious request is one that is instituted maliciously and without good cause. Similarly, requests that are "not made in good faith" would include requests made dishonestly for unreasonable or unfounded purposes.



The allegations in this case raised serious issues that on their face warranted further investigation, given the allegation of significant involvement by a lobbyist in this fundraising initiative and the suggestion of Ms. Raitt's involvement in the event, even if only through her Hill office manager, his brother and her former assistant at the Toronto Port Authority. I, therefore, was not prepared to find that the request made to my Office was frivolous, vexatious or not made in good faith.

Although I am not prepared to make a finding of bad faith against Mr. Szabo, Mr. Osborne raises an important issue, namely the extent to which requests for examinations under the Act or inquiries under the Code should be commented on publicly by Members making the requests. While partisan jockeying is an inevitable fact of political life, it can become problematic in some cases. If it misrepresents what my Office is doing in relation to a request, this can be very prejudicial to an individual who is the subject of a request. I am restricted in what comments I can make with respect to examinations or inquiries as I must keep information confidential until a report is made public. There is little I can do to clarify, counter or balance statements that are made by Members that are not accurate or fair.

As a result of the public statements made about this matter, I did write to Ms. Raitt on October 6, 2009, before the requests were sufficiently precise to trigger either an examination under the Act or an inquiry under the Code, and issued a statement on my Office's website indicating that I was not proceeding with an examination or an inquiry at that time. I had not received sufficient information to proceed and I was concerned that it was being widely reported that I was in fact conducting an investigation.

I would invite Members who request investigations to be mindful of my confidentiality obligations under the Act and the Code and ask that they not place individuals subject to a request for an examination or inquiry in the position of having to respond publicly to allegations before I have had an opportunity to determine whether these requests meet the requirements of the Act or the Code and before they have been informed by my Office that I have received a request about them.

Alleged contraventions

The examination of these allegations required that I look closely at the organization of the fundraising event held on September 24, 2009 and the relationship between Ms. Raitt and organizers to determine whether she accepted a gift or other benefit that might reasonably be seen to have been given to influence her as a Member in the exercise of a duty or function of her office contrary to section 14 of the Code. I will also consider section 25 of the Code to determine whether Ms. Raitt took any action to circumvent her obligations under the Code.

Prohibition against accepting a gift or other benefit: Section 14

It was alleged that the volunteer services provided by Mr. Michael McSweeney in relation to the fundraising event constituted a gift or benefit that Ms. Raitt should have declined because of his lobbying activities and that, by accepting these services, Ms. Raitt contravened section 14 of the Code. It was argued that, because Mr. McSweeney was lobbying Ms. Raitt as Minister of Natural Resources, his volunteer services might reasonably be seen to have been given to influence her in the exercise of her duties or functions as a Member.



A number of other lobbyists also provided volunteer services in connection with the fundraising event. The analysis that follows applies equally to those instances.

Section 14 of the Code sets out a prohibition against Members receiving gifts and other benefits. The relevant portions of section 14 read as follows:

14. (1) Neither a Member nor any member of a Member's family shall accept, directly or indirectly, any gift or other benefit, except compensation authorized by law, that might reasonably be seen to have been given to influence the Member in the exercise of a duty or function of his or her office.

(1.1) For greater certainty, subsection (1) applies to gifts or other benefits:

(a) related to attendance at a charitable or political event; and

(b) received from an all-party caucus established in relation to a particular subject or interest.

[...]

The evidence showed that a number of individuals donated their time and energy and that some used their office resources in assisting in the organization of the fundraising event.

With respect to Janet MacDonald, she provided volunteer services because of her close friendship with Ms. Raitt and, if these services were accepted by Ms. Raitt, I do not believe they might reasonably be seen to have been given to influence Ms. Raitt in the exercise of a duty or function of her office. Ms. MacDonald had no official dealings with Ms. Raitt in her capacity as Minister of Natural Resources or Member for Halton.

With respect to the volunteer services and monetary contributions provided by the lobbyists, it would seem reasonable to question whether they were given with a view to influencing Ms. Raitt in her capacity as Minister of Natural Resources with respect to a future official decision that might benefit the lobbyists, their associations or clients. It is less clear in relation to her capacity as Member for Halton. While Lobbyists, including the Cement Association of Canada, may also be registered to lobby Members, lobbying activities are often directed towards Ministers or other public office holders whose official duties are linked to government decisions. However, these lobbying activities could be directed towards Members with respect to their duties that take place in the House of Commons or in Committees of the House of Commons.

In any event, the evidence showed that Ms. Raitt was unaware of the details relating to the organization of the event and did not get involved in the recruitment of volunteers or in the solicitation of funds. In order for her to have accepted these services or funds as contemplated by section 14, she would have had to be aware of them being offered to her, and have had an opportunity to decline them. This was not the case. While she was aware of Mr. Stewart's involvement in his capacity as a Member of the Board of the Halton Conservative Association, he had been designated by the Board as the lead of this fundraiser. I will comment further on the issue of lobbyists sitting as a member of a board of a riding association in my General Observations.



The Board of the Halton Conservative Association is responsible for the political fundraising events in its own electoral district and is charged with the organization of these events as well as the administration of all funds that are collected. I have found, in fact, that the Halton Conservative Association did organize the fundraising event of September 24, 2009 and was the direct recipient and beneficiary of all volunteer services and of all monetary contributions related to it.

While Ms. Raitt, as the sitting Member of Parliament, is an *ex officio* member of the Board of the Halton Conservative Association, the evidence has clearly established that she does not participate in administrative decisions, including decisions on how the Association funds are expended. She has no control over those funds.

The Board of the Halton Conservative Association has set aside an annual amount of \$2,000 for expenses incurred by Ms. Raitt in attending constituency events while she is the sitting Member of Parliament to cover ticket purchases that are related to her work as a Member of Parliament. Thus, Ms. Raitt will receive some financial support as a result of fundraisers organized by the Halton Conservative Association while she is the sitting Member of Parliament and if she is re-nominated as the Conservative candidate for Halton in the next federal election. I consider these expenditures to be for work-related expenses that are covered for her, and not gifts or other benefits under the Code. It is up to the Halton Conservative Association to decide how the funds are to be used, not Ms. Raitt.

In fact, a benefit received by a Member from a riding association is expressly excluded from the definition of “benefit” in the Code.

It is not necessary to go any further, but it is interesting to examine the definition of “benefit”, set out in subsection 3(1) of the Code. The definition reads as follows:

“benefit” means

- (a) an amount of money if there is no obligation to repay it; and*
- (b) a service or property, or the use of property or money that is provided without charge or at less than its commercial value, other than a service provided by a volunteer working on behalf of a Member;*

but does not include a benefit received from a riding association or a political party.

The funds raised would fall within paragraph (a) of that definition. I have some doubt that political contributions were intended to be included in this definition in light of the fact that these are regulated by the *Canada Elections Act*, but for the purposes of my analysis I have assumed that they are included in the definition.

I note that, just last year, the definition of “benefit” in the Code was amended by the House of Commons to exclude volunteer services provided on behalf of a Member. In its eighteenth report of the 2nd session of the 40th Parliament, the Standing Committee on Procedure and House Affairs stated that:



“Genuine volunteer services are part of any democratic system of government. While services provided by volunteers would not be prohibited under the proposed conflict of interest test, the Committee believes that it is important to state that principle clearly and exclude them, altogether, from the ambit of the Code.”

This would indicate that this exception is probably intended to exclude volunteer services provided by family, friends or individuals who share the same political or policy views, who would not reasonably be seen to have given their services to influence the Member receiving the volunteer services. The possibility of a lobbyist being involved may not have been considered. It is, in any event, of no concern in the matter at issue because of my findings above that the funds and volunteer services were provided to the Halton Conservative Association and not to Ms. Raitt.

I have, accordingly, concluded that Ms. Raitt did not accept any gift or other benefit in connection with the September 24, 2009 fundraising event and therefore did not contravene section 14.

I find support for the determination that there has been no contravention of the Code in this case in the fact that there is a comprehensive regime of the *Canada Elections Act* that deals with political contributions. It sets out rules for contributions, both monetary and non-monetary, as well as public reporting requirements, which apply at all times. I note that there is no special restriction against lobbyists contributing to a registered electoral district association. The only restriction is the \$1,100 limit that applies to everyone.

Political fundraising activities are important and legitimate activities. In light of the fact that they are regulated by a comprehensive regime under the *Canada Elections Act*, that the volunteer services and monetary contributions provided by the lobbyists were given to the Halton Conservative Association and that Ms. Raitt was not involved in recruiting the volunteers or organizing the fundraiser, I conclude that section 14 has no application in the present circumstances.

Many may argue that Ms. Raitt should have made herself aware of the details to ensure that there would be no potential for conflicts of interest. I will have more to say about that in my General Observations.

Anti-avoidance: Section 25

In his request, Mr. Szabo alleged that Ms. Raitt had contravened section 25 of the Code which prohibits Members from taking “any action that has as its purpose the circumvention of the Member’s obligations under this Code.” Mr. Szabo did not identify any specific provisions under the Code that Ms. Raitt might have tried to circumvent.

I have found that Ms. Raitt did not breach section 14 of the Code. Further, there was no evidence that Ms. Raitt took any actions to circumvent her obligations under this section or any other obligations under the Code. I find that section 25 has no application in respect of this matter.



Conclusions

For the reasons stated above, I have determined that Ms. Raitt has not contravened section 14 of the Code in respect of the political fundraising event of September 24, 2009 because Ms. Raitt was not involved in the recruitment of these volunteers or the organization of the fundraiser and therefore did not accept these services or contributions. The political contributions, volunteer time and resources provided by the lobbyists in connection with this fundraiser were given to the organizer of the event, the Halton Conservative Association.

Much attention was given to the role that Ms. Janet MacDonald played in relation to this fundraising event. Ms. MacDonald had no official dealings with Ms. Raitt in her capacity as Minister of Natural Resources or Member for Halton, and her involvement was based solely on their friendship. Had her volunteer services been given to Ms. Raitt and not the Halton Conservative Association, they could not reasonably be seen to have been given to influence Ms. Raitt.

Finally, I have determined that Ms. Raitt did not contravene section 25 as she did not take any actions for the purpose of circumventing any of her obligations under the Code.

I will comment further on the potential for conflicts of interests for Members, particularly those who are Ministers, Ministers of State, Parliamentary Secretaries in the next section, which includes my observations on the involvement of lobbyists and other stakeholders in political fundraising activities. In particular I will address the reasonable perception that volunteer services and monetary contributions given by stakeholders are given with a view to influencing elected officials in respect of future official decisions. I believe elected officials need some guidance with respect to political fundraising activities. There was no such guidance available at the time of the September 24, 2009 fundraising event under review in this report.



SCHEDULE B:
AGREED COMPLIANCE MEASURE
(from pages 5 and 16)

I, Lisa Raitt, Minister of Natural Resources, have agreed not to participate in matters involving the Cement Association of Canada (CAC), or Mr. Michael McSweeney acting on behalf of the CAC, in order to prevent any conflict of interest, and in particular not to give preferential treatment to Mr. McSweeney or the CAC. Any dealings between CAC and the Department of Natural Resources will be addressed by the Deputy Minister or such other person as may be designated by the Deputy Minister.



**SCHEDULE C:
LIST OF WITNESSES: INTERVIEWS AND WRITTEN SUBMISSIONS**
(from page 6)

INTERVIEWS

1. Mr. Pierre Boucher
President, Cement Association of Canada
Federally registered lobbyist
2. Ms. Jenni Byrne
Director of Political Operations, Conservative Party of Canada
3. Mr. John Challinor
President, Halton Conservative Association
4. Mr. Gary Clement
Manager, Government and Community Relations, TD Bank Financial Group
Federally registered lobbyist
5. Ms. Cassie Doyle
Deputy Minister, Department of Natural Resources
6. Ms. Janet MacDonald
Executive Assistant to the President and Chief Executive Officer
Toronto Port Authority
7. Mr. Colin McSweeney
Former Manager of Ms. Raitt's Parliament Hill office
8. Mr. Michael McSweeney
Vice-President, Industry Relations, Cement Association of Canada
Federally registered lobbyist
9. Mr. Dennis Mills
Former Liberal Member of Parliament
10. Mr. Alan Paul
Vice-President & Chief Financial Officer
(Former Acting President and Chief Executive Officer)
Toronto Port Authority
11. Ms. Lisa Raitt
Minister of Labour (Former Minister of Natural Resources) and
Member of Parliament for Halton



12. Mr. Will Stewart
Principal, Navigator Ltd. and Ensign Canada Inc.
Federally registered lobbyist
Director, Halton Conservative Association

13. Mr. Paul Szabo
Member of Parliament for Mississauga South

WRITTEN SUBMISSIONS

Toronto Port Authority – Board Members

1. Mr. Jeremy Adams

2. Mr. G. Mark Curry

3. Mr. David Gurin

4. Ms. Michele D. McCarthy

5. Mr. Mark R. McQueen

6. Mr. Sean L. Morley

7. Mr. Robert D. Poirier

8. Mr. Craig Rix

9. Mr. Colin D. Watson

