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Consideration of an Inquiry Report from the Senate Ethics Officer

Report of the Standing Committee on Ethics and
Conflict of Interest for Senators

The Honourable Murray Sinclair, *Chair*
The Honourable Dennis Patterson, *Deputy Chair*

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Introduction

On February 18, 2020, the Senate Ethics Officer provided to your committee his Inquiry Report under the [Ethics and Conflict of Interest Code for Senators](#) (“Code”) concerning Senator Victor Oh, pursuant to subsection 48(17) of the Code. The same day, a true copy of the Senate Ethics Officer’s Inquiry Report was tabled in the Senate, in accordance with subsection 48(18) of the Code. Under subsection 48(19) of the Code, the report became a public document as soon as it was tabled and became available online on the Senate Ethics Officer’s website.

The Senate Ethics Officer’s Inquiry Report

a. Background

In April 2017, Senator Oh took a trip to Beijing and Fujian Province, China. While on the trip, Senator Oh led a delegation that included two other senators. The senators were accompanied by their respective spouses, as well as other participants from the Chinese community in Canada.

In December 2017, two *Globe and Mail* articles reported information regarding the senators’ trip. The first article (December 1, 2017) reported that the senators had not filed a Statement of Sponsored Travel in relation to the trip and raised questions as to who paid for it. The follow-up article (December 7, 2017) suggested that the trip had been paid for by Pantheon Asset Ltd. (Pantheon), a Chinese investment advisory firm with Canadian operations.

On January 11, 2018, the Senate Ethics Officer initiated a preliminary review of the trip led by Senator Oh based on the information contained in the two *Globe and Mail* articles. While senators are not prohibited from accepting travel sponsored by third parties under certain circumstances, the three senators’ failure to file Statements of Sponsored Travel and the fact that they made conflicting statements about who paid for the trip was a cause for concern for the Senate Ethics Officer.¹

The purpose of a preliminary review is to decide if an inquiry is warranted to look into the matter more fully in order to determine whether a senator has complied with their obligations under the Code. The Code allows the Senate Ethics Officer, on his own initiative, to conduct a preliminary review if he “has reasonable grounds to believe a Senator has not complied with his or her obligations under the Code.”²

Under subsection 47(7) of the Code, the Senate Ethics Officer provided Senator Oh with an opportunity to respond to his decision to initiate a preliminary review. In a letter dated February 12, 2018 addressed to the Senate Ethics Officer, Senator Oh advanced that the media reports were inaccurate, and claimed that the trip had been “purely personal” in nature, that he “did not conduct any business or perform any official duties” on the trip, and he was not “aware of any business conducted on this trip.”³

¹ Office of the Senate Ethics Officer, [Inquiry Report under the Ethics and Conflict of Interest Code for Senators concerning Senator Victor Oh](#), February 18, 2020, p. 1.

² [Ethics and Conflict of Interest Code for Senators](#), June 16, 2014, subsection 47(2).

³ [Office of the Senate Ethics Officer](#), p. 2.

On March 22, 2018, the Senate Ethics Officer instituted an inquiry into the matter and wrote to Senator Oh, in accordance with subsection 47(10) of the Code, to inform him that there were reasonable grounds for concern that Senator Oh may have breached his obligations under the Code. On February 18, 2020, the Senate Ethics Officer's Inquiry Report on the matter was provided to the committee and tabled in the Senate, as outlined above.

In the course of his inquiry, the Senate Ethics Officer interviewed witnesses, including Senator Oh (with whom he conducted two interviews and subsequently held five meetings regarding the partial draft of the Inquiry Report), the other two senators who participated in the trip, Canadian diplomatic officials, a member of Senator Oh's parliamentary staff, and some of the other trip participants. The Senate Ethics Officer also considered documentary evidence submitted to him by a number of those witnesses, including internal emails discussing Senator Oh's trip and emails with his office relating to the organization of the trip. The Senate Ethics Officer further obtained access to the Senate email accounts for Senator Oh and one of his staff members involved in the organization of the trip. The access to the Senate email accounts was for the time period surrounding the trip and was obtained in order to examine email exchanges regarding the trip.

The investigation revealed that Senator Oh's sister had paid for travel and other expenses of the trip. The Senate Ethics Officer contacted Senator Oh's sister to inquire about her involvement. In his Inquiry Report, the Senate Ethics Officer noted the length of time that passed before Senator Oh's sister responded to his email. He also raised concerns with respect to her failure to answer most of his questions and the fact that she did not respond in a sworn affidavit as requested.

b. Observations Regarding Senator Oh's Credibility and Integrity

In his Inquiry Report, the Senate Ethics Officer made certain observations in relation to Senator Oh's credibility and integrity during the inquiry process. He identified a number of areas where Senator Oh attempted to mislead the inquiry, withheld information and gave incomplete testimony.

For example, the Senate Ethics Officer noted that Senator Oh advanced versions of events that were more favourable to him than was supported by the evidence, particularly in relation to the involvement of his Senate staff and his characterization of the purpose of the trip.

The Senate Ethics Officer further indicated that Senator Oh attempted to mislead the inquiry and deliberately blurred the line between his status as a senator and his private affairs, namely by "selectively producing only the documents he believed to be the most favourable to his interpretation of events," and by misleading the Senate Ethics Officer about the existence of relevant email communications.

The Senate Ethics Officer also noted "that a great amount of confusion and delay has been caused in this case by the failure of Senator Oh to maintain records that would provide some evidence as to who paid for the trip, how much they paid, when the payments were made, and any agreements concerning

reimbursements.”⁴ For those reasons, the Senate Ethics Officer found Senator Oh’s conduct to be “distinct and significant aggravating factors for the purpose of assessing sanctions and penalties.”⁵

Under the Code, the Senate Ethics Officer is to recommend remedial measures to a senator found in breach of the Code and report to the committee on whether the senator accepted them. The Senate Ethics Officer may also report to the committee on whether remedial measures were either not necessary or not available. Your committee is granted broader powers under the Code and can recommend to the Senate either remedial measures, intended to correct a situation, or sanctions, as a form of discipline. In the course of its study on an inquiry report, your Committee takes into account any remedial measures recommended by the Senate Ethics Officer as well as the senator’s acceptance of them.

In this case, the Senate Ethics Officer determined that Senator Oh breached his obligations under the Code but reported that no remedial measures were available. The Code provides that your committee must consider the Senate Ethics Officer’s report and make recommendations to the Senate on the appropriate remedial measures or sanctions to address the breach of the Code. It should be recalled that neither the committee nor the Senate Ethics Officer can impose any remedial measure or sanction directly – this is the responsibility of the Senate.

Your committee appreciates the Senate Ethics Officer’s statement that Senator Oh’s conduct during the inquiry be taken into account when considering sanctions. Your committee takes seriously the observations of the Senate Ethics Officer in this respect, particularly as the Senate Ethics Officer is not empowered to impose sanctions for the conduct of a senator during an inquiry.

c. Findings

In his Inquiry Report, the Senate Ethics Officer provided analysis and conclusions regarding various sections of the Code, namely in relation to subsections 18(1) (sponsored travel) and 17(1) (gifts and other benefits), paragraph 2(2)(c) (foreseeable real or apparent conflicts of interest), sections 7.1 and 7.2 (senators’ conduct, duties and functions), and section 8 (furthering private interests).

i. Subsection 18(1)

While the matter was initiated as a possible breach of subsection 18(1), the Senate Ethics Officer determined that the trip did not qualify as “sponsored travel.” Subsection 18(1) reads as follows:

18. (1) Notwithstanding subsection 17(1), a Senator may accept, for the Senator and guests of the Senator, sponsored travel that arises from or relates to the Senator’s position. If the travel costs of a Senator or any guest exceed \$500 and are not paid personally by the Senator or the guest, and the travel is not paid through the programs for international and interparliamentary affairs of the Parliament of Canada, by the Senate, the Government of Canada or the Senator’s political party,

⁴ [Ibid.](#), p. 39.

⁵ [Ibid.](#), p. 38

the Senator shall, within 30 days after the end of the trip, file a statement with the Senate Ethics Officer.

In his analysis, the Senate Ethics Officer outlined that subsection 18(1) applies if:

- The travel arises from or relates to the Senator’s office and the Senator’s duties and functions; and
- The travel is not paid for through an official international or interparliamentary affairs programs of the Parliament, the Senate, the Government of Canada or the Senator’s political party.

With respect to the first requirement under subsection 18(1), the Senate Ethics Officer stated that “the official component of a trip must rise beyond being merely incidental and must constitute a substantial component of the trip.”⁶ In this case, the Senate Ethics Officer found that the trip combined both personal and official aspects and that the official aspect of the trip was sufficiently present for subsection 18(1) to apply.

However, the Senate Ethics Officer found that the second requirement of subsection 18(1) was not met. The Senate Ethics Officer interpreted the reference to “official programs” as demonstrating that there must be a legitimate public interest being pursued by the sponsor in sponsoring the travel. He determined that since the expenses paid by Senator Oh’s sister were made for purely private/personal reasons rather than to advance a public interest purpose, Senator Oh’s trip did not fall within the scope of “sponsored travel” under subsection 18(1). Thus, Senator Oh was not required to file a Statement of Sponsored Travel.

ii. Subsection 17(1)

While the Senate Ethics Officer determined that Senator Oh’s trip did not fall within the scope of subsection 18(1), he nonetheless concluded that the trip should be treated as a “benefit” under subsection 17(1). Subsection 17(1) stipulates that senators and their family members shall not “accept, directly or indirectly, any gift or other benefit, except compensation authorized by law that could reasonably be considered to relate to the Senator’s position.” Subsection 17(2) provides certain exceptions to this rule: a gift or benefit may be accepted if received as a “normal expression of courtesy or protocol, or within the customary standards of hospitality that normally accompany a Senator’s position.”

The Senate Ethics Officer found that Senator Oh breached subsection 17(1) of the Code:

- by accepting payment from his sister on account of a trip that had a substantial official component;
- when he accepted a dinner hosted by Xiamen Airlines during the trip, which is a prohibited gift/benefit under the Code; and
- when he accepted two dinners hosted by Pantheon during the trip, which is a prohibited gift/benefit under the Code.⁷

⁶ [Ibid.](#), p. 29.

⁷ [Office of the Senate Ethics Officer](#), “Executive Summary,” pp. 3-4.

Based on the evidence he received throughout his inquiry in relation to Senator Oh's office in the organization and the conduct of the trip, the Senate Ethics Officer concluded that the trip was tied to his position as a senator regardless of what Senator Oh's sister intended by the benefits, and that the exceptions under subsection 17(2) did not apply in this case. As such, the Senate Ethics Officer found that by accepting payment from his sister for the trip, Senator Oh violated subsection 17(1).

The Senate Ethics Officer also found that Senator Oh had breached subsection 17(1) with respect to three dinners/banquets hosted in China in honor of Senator Oh. The Senate Ethics Officer determined that the first dinner, hosted by Xiamen Airlines, related to Senator Oh's position as a senator because the dinner was solicited by Senator Oh's staff and explicitly tied to discussions about the possibility of a direct flight from Xiamen to Toronto.

With respect to the second dinner, the Senate Ethics Officer determined that it was hosted by Pantheon and arose out of previous meetings a partner of Pantheon (Ms. Ma) had with Senator Oh when she was in Canada to explore the prospect of opening a Pantheon office in Vancouver. The Senate Ethics Officer found that the third dinner, hosted by Ms. Ma – described as a dinner owing to the personal connection between Senator Oh and Ms. Ma's father – immediately followed the dinner hosted by Pantheon and could not be viewed in isolation. The Senate Ethics Officer further concluded that the exceptions under subsection 17(2) did not apply to those three dinners.

iii. Paragraph 2(2)(c)

In addition to his finding that Senator Oh breached subsection 17(1), the Senate Ethics Officer made a general finding that Senator Oh failed to uphold the principle in paragraph 2(2)(c) of the Code, which requires senators "to arrange their private affairs so that 'foreseeable real or apparent conflicts of interest may be prevented from arising.'" The Senate Ethics Officer stated that underlying this paragraph of the Code is the notion that senators "should maintain a clear separation between their public and their private/personal affairs,"⁸ and that Senator Oh failed to do so deliberately as he represented his trip differently to different audiences.

iv. Sections 7.1 and 7.2

The Senate Ethics Officer further raised concerns with how the trip was organized, namely Senator Oh's use of Senate resources (including his staff) in planning what the senator described as a purely personal sightseeing trip and whether Senator Oh took advantage of his position as a senator to obtain personal benefits. As a result, the focus of the inquiry was expanded to include consideration of sections 7.1 and 7.2 of the Code. Sections 7.1 and 7.2 read as follows:

7.1 (1) A Senator's conduct shall uphold the highest standards of dignity inherent to the position of Senator.

(2) A Senator shall refrain from acting in a way that could reflect adversely on the position of Senator or the institution of the Senate.

⁸ [Ibid.](#), p. 27.

7.2 A Senator shall perform his or her parliamentary duties and functions with dignity, honor and integrity.

The Senate Ethics Officer concluded that sections 7.1 and 7.2 were not engaged in the circumstances because the trip was not purely personal and had a significant official component to it.

The Senate Ethics Officer further noted, in his observations regarding Senator Oh's credibility and integrity, that cooperation during an inquiry "is directly related to a Senator's obligations to uphold the highest standards of dignity" and to "act with integrity, honor and dignity when acting in the course of their parliamentary duties and functions," as required by sections 7.1 and 7.2 of the Code. He explained, however, that the allegations of misleading the inquiry were not brought to Senator Oh's attention at the time the inquiry was expanded to include sections 7.1 and 7.2 and, as such, the Senate Ethics Officer was constrained from finding that Senator breached sections 7.1 and 7.2 of the Code on the ground that he attempted to mislead the inquiry.

v. Section 8

Lastly, the Senate Ethics Officer considered whether Senator Oh furthered private interests when performing his duties and functions as a senator, contrary to section 8 of the Code which provides the following:

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

The Senate Ethics Officer found no evidence that Senator Oh's actions in relation to the trip were done in an attempt to "further private interests," and therefore determined that section 8 was not engaged.⁹

d. Conclusions and Other Observations

The Senate Ethics Officer concluded that Senator Oh failed to uphold the principle in paragraph 2(2)(c) of the Code by failing to arrange his private affairs as to avoid real or apparent conflicts of interest, and that he breached subsection 17(1) of the Code by accepting payment from his sister for the trip and by attending the dinners hosted by Pantheon and by Xiamen Airlines.

While he found breaches of paragraph 2(2)(c) and subsection 17(1) of the Code, the Senate Ethics Officer did not identify any remedial measures, stating that "[i]t would have been pointless to enter into a discussion with Senator Oh concerning remedial measures since I am of the view that none are available in this matter."¹⁰ As mentioned above, the Senate Ethics Officer nonetheless deemed that Senator Oh's attempt to mislead the inquiry and his deliberate blurring the line between his status as a senator and his private affairs constitute aggravating factors that should be taken into account when assessing sanctions and penalties.

⁹ [Office of the Senate Ethics Officer](#), p. 35.

¹⁰ [Ibid.](#)

The Senate Ethics Officer also noted that the Inquiry Report was not about Senator Housakos and Senator Plett – the other senators on the trip – and that the circumstances surrounding the organization of the trip (including their misunderstanding of the nature of the trip) did not warrant an examination of their involvement in the matter. In that regard, the Senate Ethics Officer provided the following rationale:

Senator Oh was the one who organized the trip and invited the other Senators to join him. Senators Housakos and Plett did not organize the trip. Given how the trip was organized, their explanation regarding their understanding of its nature, and the fact that Senator Oh told them he would take care of things, I do not believe it would be useful or productive to prolong this matter to examine their involvement any further. In the particular circumstances of this case, I find that their misunderstanding was not unreasonable.¹¹

While he determined that the Inquiry Report was not about Senator Housakos and Senator Plett, the Senate Ethics Officer nonetheless stated that the question about their compliance with the Code was left unanswered. He underscored that it is important “to remind all Senators that their obligations under the Code require them to exercise due diligence at all times, including in satisfying that they understand who is paying for their travel.”¹²

The Committee Study

a. Planning

Section 49 of the Code requires your committee to take into consideration an inquiry report from the Senate Ethics Officer as promptly as circumstances permit and to report to the Senate on its recommendation for any appropriate remedial measure or sanction because the Senate Ethics Officer found Senator Oh in breach of his obligations.

Following receipt of the Inquiry Report, your committee met on February 26, 2020 to plan its study on the matter. Pursuant to its obligation to afford the senator who is the subject of the Inquiry Report an opportunity to be heard under subsection 49(2) of the Code, your committee wrote to Senator Oh to invite him to appear before the committee. In an email correspondence dated March 10, 2020 and addressed to the committee members, Senator Oh declined the invitation. In that correspondence, he made the following statement:

Over the course of this review, I have gained a better understanding of the *Ethics and Conflict of Interest Code for Senators* and I accept the [Senate Ethics Officer’s] findings. I now recognize the importance of additional clarity and separation between travel program components that may fall in a grey area between personal and official. Moving forward, I will do my utmost to ensure there is additional care taken to maintain a clear distinction and separation between the two.

¹¹ [Ibid., p. 38.](#)

¹² [Ibid., p. 39.](#)

A meeting of the committee was tentatively scheduled for mid-March 2020 to confirm the committee's response to the Senate Ethics Officer's Inquiry Report. Scheduling conflicts and the rapid evolution of the COVID-19 crisis in Canada led to the cancellation of the tentatively scheduled meeting.

Given the exceptional circumstances of the COVID-19 pandemic, on May 1, 2020, your committee was temporarily granted permission by the Senate to meet *via* videoconference or teleconference, under certain conditions.¹³ Accordingly, your committee met on June 1st and June 12, 2020 *via* videoconference to further plan its study and consider the Senate Ethics Officer's Inquiry Report.

b. Appropriate Remedial Measures and Sanctions

Under subsection 49(4) of the Code, your committee shall recommend to the Senate appropriate remedial measures or sanctions to be imposed on Senator Oh based on the findings of the Senate Ethics Officer that he breached his obligations under the Code. Subsection 49(4) also provides a non-exhaustive list of possible remedial measures and sanctions your committee may recommend to the Senate.

In identifying an appropriate remedial measure or sanction, your committee considered the Inquiry Report and took into account:

- the seriousness of the breach and its impact on Senator Oh's performance of his parliamentary duties and functions;
- the effect of the breach on other senators and on the respect, dignity and integrity of the Senate as an institution; and
- public confidence and trust in the Senate.

Your committee is concerned by Senator Oh's apparent lack of candour and his attempt to mislead the Senate Ethics Officer during his inquiry. In addition, your committee notes that the delays that occurred during the inquiry were beyond the Senate Ethics Officer's control: Senator Oh's failure to maintain proper records relating to the payment and organization of his trip impeded and delayed the Senate Ethics Officer's inquiry process.

Senators must adhere to the highest standards of accountability and responsibility for their individual obligations under the Code as to not bring discredit to the institution and to ensure the continued integrity of the Senate. The Code requires that senators make themselves available to the Senate Ethics Officer for the purpose of an inquiry as needed, and senators must at all times cooperate with the Senate Ethics Officer.¹⁴

Furthermore, the Code requires all senators to exercise due diligence at all times, including in matters related to travel and who is paying for their travel. Your committee underscores the important obligation

¹³ [Journals](#), Senate, 1 May 2020.

¹⁴ Subsection 48(7) of the Code requires senators to "cooperate without delay with the Senate Ethics Officer in respect of any inquiry," and your committee has stressed, in the past, the importance for all senators to understand that making false or misleading statement during a preliminary review or an inquiry is a serious matter and should be prohibited (Standing Committee on Ethics and Conflict of Interest for Senators, [Seventh Report](#), August 12, 2019).

of every senator to keep proper records of travel expenses and disclose all information required to be disclosed under the Code within the specified time limits.

In addition to the duty to disclose information, no senator should knowingly make false or misleading statements in relation to any matter pertaining to the Code. Your committee stands by this principle and considers that any attempt to mislead the work of the Senate Ethics Officer or this committee should be regarded as an aggravating factor in the consideration of recommended sanctions. Full and forthright cooperation with the Senate Ethics Officer and your committee is essential and expected of all senators. Your committee is considering further amendments to the Code to underscore the importance of this principle.

In making its recommendation, the committee considered the Senate Ethics Officer's findings and observations regarding Senator Oh's breach of the Code, his conduct throughout the inquiry and the effect of his actions on the Senate as an institution and on the public's perception of the Senate. Your committee is of the view that Senator Oh's conduct during the inquiry, particularly in relation to his attempt to mislead the Senate Ethics Officer and withholding information, does not uphold the standards of responsibility and accountability inherent to the position of senator. Your committee is further concerned about the effect of this conduct on the public confidence and trust in the integrity of the Senate and the process established by the Senate to ensure compliance with the Code.

While your committee believes that no remedial measures are available in this matter, censure is a recognized formal expression of a legislative body's disapproval of the conduct in which one of its members has engaged.¹⁵ In this case, it is a sanction your committee recommends. Censure holds an important role as a visible mark on the parliamentary record denoting the shared values of senators, denouncing specific conduct, and aiming to deter others from engaging in similar conduct in the future. Adopting this sanction would mean that the Senate agrees with the committee's view that Senator Oh's conduct fell short of what was expected in this matter and serves as a reminder of the importance of abiding by the *Ethics and Conflict of Interest Code for Senators* that each senator pledged to uphold as well as cooperating fully with the Senate Ethics Officer.

¹⁵ See, for example: [Minutes of Proceedings](#), Senate, March 9, 1885, p. 255; [Journals](#), Senate, May 3, 1888, p. 176; [Journals](#), House of Commons, April 3, 1907, p. 381; [Journals](#), House of Commons, March 17, 1932, p. 158; Assemblée nationale du Québec, *procès-verbal*, December 14, 2000, no. 153. Other parliaments have also used motions of censure. The New Zealand House of Representatives has at various times agreed to motions to censure its members following recommendations of the Privilege Committee. See for example, [Journals of the House of Representatives](#), 2005–08, vol. 2, p. 1301 ("[The Table: The Journal of the Society of Clerks-at-the-Table in Commonwealth Parliaments](#)," vol. 80, 2012).

Recommendation

Your committee therefore recommends:

That the Senate censure the Honourable Senator Oh in relation to those matters outlined in the Senate Ethics Officer's inquiry report of February 18, 2020 entitled *Inquiry Report under the Ethics and Conflict of Interest Code for Senators concerning Senator Victor Oh*; and

That the above censure be printed in the *Journals of the Senate* of the day this report is adopted by the Senate.

Further Comment

Your committee is of the view that the censure of Senator Oh addresses this matter and completes the enforcement process as provided under the Code. Your committee nonetheless invites Senator Oh to express his apologies to the Senate for his actions, including his conduct during the Senate Ethics Officer's inquiry.