



Department of Justice
Canada

Ministère de la Justice
Canada

IMPROPER USE OF PUBLIC OFFICE

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This document was written as part of the activities of the International Cooperation Group
in the field of public affairs integrity.

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INTRODUCTION

People chosen by the electorate to represent public interests and administer state affairs have certain obligations to their constituents. Society places its trust in those individuals, and they have a duty to use their office in a way that upholds that trust. Inappropriate use of public office for private advantage is an abuse of the authority entrusted to the individual by the public.

At the federal level, sanctions for those committing such acts are provided in the *Standing Orders of the House of Commons*, the *Criminal Code* and the *Parliament of Canada Act*. These instruments overlap to a certain extent. For example, the acceptance of bribes is covered under the *Criminal Code*, the *Parliament of Canada Act* and the *Standing Orders of the House of Commons*. This overlap means that the matter can be raised either before Parliament or before the courts. The courts are responsible for hearing all criminal matters, while Parliament has the right to determine the applicable administrative sanctions under the *Parliament of Canada Act* and the *Standing Orders*. In fact, there are no reported cases involving improper use of office decided under the *Parliament of Canada Act*. Possible explanations for the absence of such cases include the ability of the courts to impose harsher sanctions, or it may be that the public nature of a criminal trial is thought to better deter other officials from engaging in such conduct.

It is important to note that Parliamentarians, like all other Canadian citizens, are subject to the laws of general application. The *Criminal Code* prohibits a broad range of acts considered unacceptable. These include physical assault, sexual assault, theft, vandalism and the like. Parliamentarians must answer fully for any illegal acts they commit while outside Parliament¹. A Parliamentarian who performs any illegal act will therefore face sanctions under the *Criminal Code*. The following discussion focuses on those forms of behaviour dealt with in the *Criminal Code* that are directly related to the role of the Parliamentarian as public trustee. These forms of conduct include bribery, influence peddling, accepting benefits from persons dealing with govern-

ment, accepting secret commissions, fraud, self-dealing, selling or influencing appointments and breach of trust by a public official.

BRIBERY

Bribery is one of the clearest forms of unethical behaviour that can occur in the exercise of public functions. It can be defined as the dishonest inducement of a public official to act in someone's favour by a payment or other inducement². It can arise in many different contexts. For instance, when a Parliamentarian is offered money from a private corporation while matters relating to a grant for the corporation are before Parliament, the potential for bribery exists. As part of his or her official duty, the Parliamentarian must decide whether or not to award the grant, and yet he or she has been asked to do so in exchange for money. If the Parliamentarian chooses to accept the money in exchange for awarding the grant, he or she is guilty of bribery.

This infraction is covered primarily by the *Criminal Code*. The *Criminal Code* provides that when Parliamentarians obtain or attempt to obtain any valuable consideration for themselves, or another person, in respect of anything done or omitted by them in their official capacity, they are guilty of bribery³.

It should be noted that the *Criminal Code* also punishes the person who offers the bribe. It states that everyone who corruptly gives or offers any valuable consideration to a Parliamentarian is guilty of the same offence⁴. The Code provides a maximum sentence of fourteen years imprisonment for both the person giving the bribe and the one receiving it⁵.

One of the more notorious examples of bribery in Canadian history took place in the 1950s in the province of British Columbia⁶. Robert Sommers, then Minister of Lands and Forests of British Columbia, was charged with receiving bribes in connection with the issuance of forestry management licences. The licences were issued to forestry companies to regulate the amount of timber that could be harvested. These licences were extremely valuable, so much so that companies were accused of making huge profits based on the sale of shares issued after the licence was granted, but before a single tree had been cut. A number of representatives from forestry companies were charged with

giving bribes, and Sommers was charged with receiving bribes. Under the intensive public scrutiny of the media, the case was prosecuted over a lengthy period with prolonged political and legal wrangling in the Legislative Assembly and the courts. Eventually, Sommers was convicted on five of the seven accusations of receiving bribes, including \$607 worth of rugs, \$3,000 in bonds, \$1,000 in cash and \$2,500 sent by telegraph⁷. As a result, Robert Sommers became the first person in the Commonwealth found guilty of conspiring to accept bribes while serving as a Minister⁸.

The relevant section of the *Criminal Code* states that the bribe must be in relation to the individual's "official capacity". In other words, it must relate to his or her capacity as a Parliamentarian. In the early 1960s, a member of the House of Commons was charged with accepting a bribe when he agreed to assist one of his constituents in selling land to the government⁹. The government was seeking property to construct a post office in the electoral district of the member, and a number of properties were being offered, including one owned by an acquaintance of the member¹⁰. The normal procedure was for the government to consider all of the submissions and then consult the member of the House of Commons representing the area before making the final decision. The acquaintance offered the member \$10,000 to recommend his property to the government¹¹. In the end, the property of the acquaintance was selected and \$10,000 was paid to the member¹². The member argued that because he was not directly involved in the decision making, he did not accept the money in relation to his official capacity¹³. The court rejected this argument and found that a member's "official capacity" has a much broader interpretation, which included administrative functions of the government that are ultimately subject to the will of Parliament¹⁴.

At trial, the member was convicted but was given a two-year suspended sentence, meaning that he did not have to go to jail. On appeal, however, it was determined that the seriousness of the offence, combined with the need to deter other Parliamentarians from considering such activities, warranted a stiffer sentence. The Court of Appeal considered the fact that the member was young, married, with children and that he would no longer be able to pursue his career as a lawyer ; and yet, to mark the severity of the offence, a five-year jail term was imposed¹⁵. The Court stated :

The responsibility of a [member of the House of Commons] to his constituency and to the nation requires a rigorous standard of honesty and behaviour, departure from which should not be tolerated. If, in violation of their responsibilities, the services of [members of the House of Commons] can be bought then justice and freedom cannot survive, nor can this nation long survive as a place where free men can live¹⁶.

In addition to the provisions under the *Criminal Code*, bribery is dealt with in both the *Parliament of Canada Act*¹⁷ and in the *Standing Orders of the House of Commons*¹⁸. The *Parliament of Canada Act* disqualifies a member found guilty of bribery from being a member of the House of Commons and from holding any office in the public service of Canada for five years after conviction¹⁹. There are no reported cases of elected officials being charged with bribery under the *Parliament of Canada Act* or under the *Standing Orders of the House of Commons*.

Another form of bribery occurs when someone contributes to the electoral fund of a member in return for a contract or other benefit. Since all members of the House of Commons are elected, the funding of political parties and candidates is an important aspect of every election. Where contributions are made with the expectation of future advantage, the behaviour is dealt with in the *Criminal Code*. The Code prohibits anyone from giving any valuable consideration for the purpose of promoting the election of a candidate, or a party, to Parliament or to the legislature of a province in order to obtain or retain a contract with government²⁰. This provision is aimed specifically at government contractors who contribute to election funds for the purpose of obtaining government contracts. The key element of this offence is the intent of the contributor. Interestingly, it appears that this provision has never been applied, which may suggest that its mere presence is enough to discourage such conduct.

INFLUENCE PEDDLING

Influence peddling is another example of improper use of office. Unlike bribery, which is aimed at buying a decision directly from the decision maker, the concept of influence peddling involves paying a third party to exert influence on the decision maker. In this situation, the buyer hopes that the influence of the person being paid will be

sufficient to convince the decision maker to decide a matter in his or her favour.

The *Criminal Code* prohibits officials from demanding, accepting or offering or agreeing to accept a loan, reward, advantage or benefit of any kind for cooperation, assistance or exercise of influence in connection with any matter of business relating to the government²¹. Although Parliamentarians may not necessarily be in a position to make a particular decision, they might very well be able to influence the decision-making process. In fact, members of the House of Commons are expected to represent the interests of their constituents and to participate in the development of public policies. Thus, representing the interests of their constituents in influencing public policy is not in itself a crime. However, this activity becomes a crime when done in exchange for a benefit. The member would be taking advantage of his public office for private gain.

It is noteworthy that when a public official accepts a benefit in exchange for the exercise of his or her influence, it is not necessary that the official possess a corrupt state of mind. The test applied by the courts is : whether or not the individual is aware that he or she is an official ; whether or not the official intentionally demands or accepts the benefit in question, for himself or herself, or for another person ; and whether or not the official knows that the reward is in consideration for his or her influence in connection with the transaction of business with the government.

The Supreme Court of Canada clearly outlined these grounds for influence peddling in a case involving a member of the Senate of Canada, a lawyer who continued to represent his clients after he was appointed to the Senate²². As a lawyer, Michel Cogger represented clients before various government committees in relation to grants and other government business. After his appointment, he continued to lobby on behalf of his clients and received compensation for his activities, even though his clients did not receive a single grant²³. As part of his defence, Cogger indicated that he had represented his clients openly and invoiced them for his services – nothing was done in secret. The lack of corrupt intent led the courts to acquit Cogger. The Supreme Court of Canada, however, overruled the lower courts and stated that government officials must not accept compensation for ex-

exercising their influence within government, whether or not they do so with corrupt intentions²⁴. The Supreme Court annulled the acquittal and ordered a new trial based on a correct interpretation of the law. At the new trial, Cogger was convicted of influence peddling and received a \$3,000 fine, 12 months probation and 120 hours of community service²⁵. He appealed the sentence and was given an absolute discharge (a sentence by which the accused is discharged although the accusation is proven or a plea of guilty entered) by the Quebec Court of Appeal²⁶. The decision means that Cogger has no criminal record. Cogger's client was convicted of buying influence and received a suspended sentence. He was also ordered to perform 240 hours of community work²⁷.

The *Criminal Code* prohibits influence peddling not only by government officials but also by anyone who has or pretends to have influence with the government or with a Minister²⁸. The application of this provision is limited to those who have, or pretend to have, a significant enough connection to government so that they can affect a government decision, such as the awarding of a contract²⁹. The key factor is that the individual offering his or her influence does so in exchange for a benefit, either for himself or for some other person, as consideration for the exercise of influence. Anyone convicted of influence peddling is liable to imprisonment for up to five years³⁰.

In one instance, an individual indicated to his nephews that he had a personal relationship with the Housing Minister in the province of Nova Scotia³¹. His nephews wanted to sell a piece of property to the government, and the accused indicated that he might be able to help. He suggested that money was required to get the deal through and told his nephews that he had given the Minister \$2,000. The accused only pretended to have influence and in fact did not give the Minister any money. The nephews subsequently gave a series of money orders to their uncle, totalling \$2,000. The accused was convicted of influence peddling, along with three offences for similar but unrelated conduct, and, despite his frail physical and mental health at the time of sentencing, was sentenced to one year in jail³².

In addition to possible imprisonment, anyone convicted of influence peddling under the *Criminal Code*, whether claiming to have influence or buying influence, also faces administrative sanctions. These indi-

viduals are subsequently prohibited from contracting with the government or receiving any benefit under a contract between the government and any other person³³. Furthermore, they are permanently banned from holding office in government³⁴. These sanctions can be lifted only if the individual obtains a pardon or if the restoration of his or her contractual rights is found to be in the best interests of the public³⁵.

ACCEPTING BENEFITS FROM PERSONS DEALING WITH GOVERNMENT

If bribery and influence peddling represent clear forms of unethical behaviour, the receipt by public officials of gifts, benefits or other extensions of hospitality is much more difficult to classify. Section 121(1)(c) of the *Criminal Code* prohibits public officials from demanding, accepting or offering or agreeing to accept a commission, reward, advantage or benefit of any kind from a person having dealings with the government, unless the public official obtains the consent of the senior official in his or her department³⁶.

Public officials are often given gifts or other expressions of hospitality. A friend or acquaintance working in the private sector may buy the official a cup of coffee or take him or her out to lunch. Frequently, at speaking engagements, public officials are given a ball cap, a sweat-shirt or some other gift as a token of appreciation. If the individuals or organisations giving these gifts have dealings with the government, a plain reading of the *Criminal Code* would render these acts criminal.

In a particular decision, the Supreme Court of Canada acknowledged the broad wording of this provision³⁷. Although the case dealt with a public servant, the same provision applies to elected officials. The accused was employed as an engineer in the provincial government. He was responsible for awarding contracts and generally overseeing road construction projects in his area. One of the contractors placed the employee's wife on his payroll, as a traffic controller. She never once reported for work and only remained on the payroll long enough to qualify for government assistance, which is paid to people who lose their jobs after a certain period of time. She remained on unemployment assistance for the rest of the year. In response to a subsequent police investigation, the government employee told the police that his

wife had been working for the contractor on his fox farm. He instructed his wife and the contractor to give the same false story. In the end, he was convicted of accepting a benefit from a person having dealings with the government, without the consent of his supervisor. However, due to certain legal technicalities, the conviction was set aside by the Supreme Court and a new trial was ordered.

Although this case involved a relatively clear-cut example of inappropriate conduct, the Supreme Court took the opportunity to clarify the issue of conferring benefits upon government employees. Section 121(1)(c) of the *Criminal Code* reads as follows :

121. (1) Every one commits an offence who (...)
(c) being an official or employee of the government, demands, accepts or offers or agrees to accept from a person who has dealings with the government a commission, reward, advantage or benefit of any kind directly or indirectly, by himself or through a member of his family or through any one for his benefit, unless he has the consent in writing of the head of the branch of government that employs him or of which he is an official, the proof of which lies on him ;

The Court began by stating "the purpose of section 121(1)(c) is to protect and preserve the appearance of the government's integrity."³⁸ As a result of the virtually unlimited range of conduct that would be caught by this section, the Court next examined each element of the section and provided conclusions with regard to the proper interpretation. First, the expression "dealings with the government" is to be interpreted narrowly, as referring only to business dealings with government³⁹. Otherwise, potentially every Canadian citizen could be said to have dealings with the government. Secondly, the Court found that the words "advantage or benefit of any kind" were intended to capture the diverse *forms* of benefit or advantage, rather than benefits of *any* value⁴⁰. This interpretation would protect the recipient of a cup of coffee from coming under the section. In addition, the Court stated that a benefit or advantage must be a material economic advantage.

When it comes to determining whether a gift represents a significant economic advantage, courts consider the nature of the gift and the nature of the relationship between the giver and the receiver⁴¹. For example, a long friendship that existed prior to the professional relationship and was premised on a mutual exchange of gifts and hospitality would be less likely to give rise to a material economic advantage⁴². By

way of explanation, the Court presented the hypothetical example of two lifelong friends, one a public official and the other a construction contractor⁴³. As an expression of genuine friendship, the contractor decides to build his friend a house worth \$200,000 at no cost. The Court noted that it is not enough that both parties believe the gift to be purely an expression of friendship : it is the public's perception that is relevant. In fact, the Court stated that this is precisely the type of situation the section was designed to capture⁴⁴.

To make out the offence, it must also be proven that : the public official consciously decided to accept an "advantage or benefit", the public official had knowledge (or wilful blindness⁴⁵) that the giver was having dealings with the government at the time, and the public official's superior did not consent⁴⁶. The Court clarified that any corrupt intention on the public official's behalf in receiving the benefit is a factor only to consider when determining the appropriate punishment⁴⁷.

SECRET COMMISSIONS

Along the same lines as accepting benefits from individuals having dealings with government, the *Criminal Code* provides a general prohibition against accepting or demanding a secret commission⁴⁸. However, this section specifically requires a corrupt intention on the part of the person demanding or accepting the benefit. The Code here relies on the notion of agency, where one party, the agent, has authority to act on behalf of another party, the principal. The Code bans agents from corruptly demanding or accepting rewards, advantages or benefits of any kind as consideration for acting or forbearing to act on behalf of the principal, in relation to the principal's affairs or business. In other words, public officials, who are acting as agents for the government when awarding contracts and the like, must not accept a benefit of any kind in return for awarding the contract.

In addition to the *Criminal Code*, the *Parliament of Canada Act* also prohibits Parliamentarians from receiving any compensation for services rendered in relation to any business before Parliament⁴⁹. This Act provides for a fine between five hundred and two thousand dollars for the members of the House of Commons⁵⁰. For Senators, the fine is between one thousand and four thousand dollars⁵¹. Importantly, if a

member of the House of Commons is found guilty under the *Parliament of Canada Act*, he or she would be disqualified from being a member of the House of Commons and from holding office in the public service of Canada for a period of five years⁵².

FRAUD

The provision of the *Criminal Code* that addresses fraud is also broadly worded. It generally prohibits anyone from defrauding the public or any person by deceit, falsehood or other fraudulent means⁵³. Although this section applies to all persons in Canada, its relevance to an improper use of public office is clear, given the role of public officials as trustees of the public interest. The public interest must be protected from public officials who might use their position to obtain goods or services through deceit or falsehoods. Upon conviction, the accused could face up to ten years in prison if the subject matter of the fraud is over five thousand dollars, and up to two years in prison if it is under five thousand dollars.

In Saskatchewan, during the 1990s, an elaborate scheme was uncovered, including fictitious companies and falsified invoices, which resulted in 21 members of the provincial Progressive Conservative party being charged with fraud⁵⁴. At the time the events unfolded, the Progressive Conservative party formed the government. Various members of the party devised a plan whereby money was channelled out of the public coffers, through fictitious companies, and into the accounts of the Conservative party. They then used these monies to further the partisan objectives of the party or in other unapproved ways, thereby circumventing the rules requiring public funds to be used to promote the objectives of the government as a whole. In some cases, the monies found their way into the personal bank accounts of party members. Those convicted include the former Deputy Prime Minister, the former Minister of Justice, the former government house leader and a number of other Ministers. The sentences included 12 months imprisonment, a \$250 surcharge and restitution of \$41,735.50⁵⁵, a conditional discharge and restitution of \$3,645⁵⁶, 18 months in jail and restitution of \$56,000⁵⁷, and three and one half years in jail and no restitution⁵⁸.

In a less intricate example, a public official employed as the chief of the Quebec Liquor Police, the government body responsible for enforcing Quebec's liquor laws, was convicted of fraud in 1962⁵⁹. After more than ten years as chief, the public official requested an increase in salary from his supervisor. The matter was referred to the Attorney General, who was also sitting as Prime Minister of Quebec at the time. The public official was informed that the salaries of the Quebec Liquor Police were under review and that an increase would be forthcoming. In the meantime, he was instructed to claim \$50 per month as "expenses", thereby increasing his annual salary by \$600 per year. He began submitting expense claims immediately and in 1954 was informed that the amount could be increased to \$100. He proceeded to claim \$100 each month by submitting detailed accounts of railway tickets, meals and hotel expenses for trips that he had not taken. The claims were entirely false. In May 1960 his annual salary was increased and he ceased to submit expense claims.

In answer to the charges of fraud, the public official argued that his conduct had been authorised by his superiors and, therefore, could not be the subject of criminal liability. Following a number of appeals, the Supreme Court of Canada rejected this argument completely and convicted him on all counts. The Supreme Court reasoned that in order to prove fraud, it was sufficient that the accused had knowingly submitted falsified expense claims for costs he had never incurred and obtained payments for those amounts out of the public funds of the province of Quebec. It was the public official himself who had certified the authenticity of and submitted each false expense claim. As a result, he was the one who must answer the charges of fraud. The Supreme Court referred the matter back to the lower court to determine an appropriate sentence. The court considered the fact that the public official did not have a pre-existing criminal record and that he was 77 years of age, and yet sentenced him to three months in jail to avoid the appearance of special treatment for different cases⁶⁰.

SELF-DEALING

Self-dealing arises where a public office holder, acting in his or her official capacity, awards a contract or other form of government business to himself or herself, or to a company in which he or she has an interest. This type of conduct is prohibited under the *Parliament of*

*Canada Act*⁶¹. A contract is premised on the notion of two parties, opposed in interest, arriving at a negotiated agreement, to their mutual advantage. If the public official is acting on behalf of the government *and* has an interest in the other contracting party, the validity of the contract is undermined.

To avoid this situation, the *Parliament of Canada Act* expressly prohibits anyone who contracts with the state from being a member of the House of Commons. Further, any member of the House of Commons who has an interest in a contract with the government, or who knowingly sells goods or performs services for which public monies are paid, will be expelled from Parliament⁶². In fact, the election whereby the individual became a member is declared void⁶³ and the individual is fined \$200 for each subsequent day that he or she continues to attend sessions of Parliament⁶⁴. Despite the existence of these sanctions, there do not appear to be any instances where this law has been applied.

SELLING OR INFLUENCING APPOINTMENTS

As a further control on the inappropriate exercise of public authority, the *Criminal Code* prohibits trading in offices⁶⁵. There are two broadly worded provisions under the Code : one addresses the selling or purchasing of offices⁶⁶, the other deals with influencing or negotiating appointments⁶⁷. These sections prohibit anyone, including elected officials, from engaging in such activities. They are applicable to all levels of public employment⁶⁸. The object of the prohibition is to prevent the sale of public offices to the highest bidder. Competition for public positions is to be open to all citizens, and appointments to public positions are to be made strictly on the basis of merit. People should not be forced to pay to obtain a public office, nor should those in positions of power or influence be permitted to sell the positions under their control.

BREACH OF TRUST

Of all the sections addressing frauds on the government, perhaps the most general is the one aimed at preventing breaches of trust by public officers. Section 122 of the *Criminal Code* targets every official who, in connection with the duties of his or her office, commits fraud or a breach of trust. Section 122 does not require intent to commit

fraud or a breach of trust. As a result, public officials have broader liability than private citizens who are charged under the general fraud provision, section 336 of the *Criminal Code*, which requires a specific intent to defraud⁶⁹. Correspondingly, public office holders can be sentenced only to a maximum of five years in prison, whereas private citizens who engage in similar activities can face up to 14 years in jail⁷⁰.

For a public office holder to be convicted of breach of trust, it is sufficient that the accused be an official, that the act in question was committed in the general context of the execution of his or her duties, and that the act constitute fraud or breach of trust⁷¹. For a breach of trust to have occurred, the public official must have committed the act contrary to a duty imposed on him or her by law, and the act must have produced a personal benefit⁷². It is not necessary that the public official have dishonest or corrupt intentions.

The rationale behind punishing officials who abuse the public trust was succinctly stated in a nineteenth-century decision of the Ontario courts. The court observed that :

the gravity of the matter is not so much in its merely profitable aspect as in the misuse of power entrusted to the defendant for the public benefit, for the furtherance of personal ends. Public example requires the infliction of punishment when public confidence has thus been abused (...).⁷³

This concept of an abuse of public confidence was elaborated in a 1967 decision of the Ontario Court of Appeal⁷⁴. In that case, the director of the Ontario Securities Commission, which regulates the main public stock exchange in Canada, was found to have made a concerted effort to prevent a company from being removed from the stock exchange. It was later discovered that he had a substantial financial interest in the company. In its decision, the Court of Appeal determined that the *Criminal Code* provision addressing breach of trust by a public officer is "wide enough to cover any breach of the appropriate standard of responsibility and conduct demanded of the accused by the nature of his office (...)"⁷⁵. As a result, the question to be determined in each case is whether or not the public official in question breached the public trust and confidence placed in him or her by the electorate.

Another example of breach of trust arose in the case of a government employee who was in charge of public works in a city in Quebec⁷⁶. Al-

though not elected, the employee was still considered a public office holder under the *Criminal Code*. As part of his duties, he was responsible for awarding government contracts for road construction and maintenance, and for overseeing the work of the successful contractors. One contractor, who had obtained a contract to resurface the roads in the city, paved the entrance to the government employee's home as a gift. There was no evidence that the city had paid for the job, nor was there proof that the accused had demanded the work in exchange for the contract. Although it would appear that the employee could have been charged under section 121(1)(c), prohibiting gifts from people having dealings with government, the state elected to invoke the more general offence of breach of trust by a public officer. At trial, the employee was acquitted. However, on appeal, the Court of Appeal concluded that the first court misapplied the relevant test. The paved entrance was directly related to the resurfacing of the roads, which the employee was supposed to supervise. The acceptance of the gift was a breach of the appropriate standard of conduct expected of a public official. As a result, the Court of Appeal imposed a conviction and referred the matter back to the lower court to determine the appropriate punishment.

This same individual was also charged with breach of trust under the *Criminal Code* in relation to a separate incident⁷⁷. In the second case, he and a friend used the municipal garage to replace the motor in his car. The work was done after hours and no fees were paid. Nonetheless, charges were laid. The court found that although this type of activity was at the extreme limit of public tolerance, the employee still deserved the benefit of the doubt. Government employees should not use public equipment for their own personal ends. However, the court stated that the facts of this case were not sufficient to constitute a breach of trust, and the employee was acquitted.

In a final example, a high-ranking official in the government of the Northwest Territories pleaded guilty to breach of trust by a public officer for using his influence to encourage people to purchase property in which he had an interest⁷⁸. The court recognised that, in so doing, he became the first person in the Northwest Territories to be prosecuted for this type of offence. The individual was born and raised in the northern part of Canada and worked his way into territorial government from relatively humble beginnings⁷⁹. As Deputy Speaker

of the Legislative Assembly of the Northwest Territories, he was in a position of influence and power. He then used his position to attempt to convince people to purchase the property in question. In sentencing the accused, the court was sympathetic to the situation of the accused and took into consideration his role in government and his contributions to northern society. The court also considered the pervasiveness of government in the north and concluded that public confidence in the integrity of the system must be strongly protected. It stated that normally this type of offence should attract a jail term. With reference to breach of trust by public officials, the court stated in its reasons :

(...) the courts, in my view, must step hard on this when they find it. It is like a rabid animal or a disease in our midst ; and I think if we let it spread it will destroy our land and our democracy. So, when this kind of insidious crime is found out, I think it must be destroyed.

In order to stamp out this type of crime, in my view a fine will not suffice. To take a monetary fine from a criminal who breaches the public trust for money would, in my view, reduce the whole exercise to something akin to a lottery where you might make some money one day, and you might lose some money another day. These crimes are not crimes or offences against one person. They are not like an assault. They are like offences (...) against all of us and against our country. Indeed, they would destroy the kind of conditions we would want to pass on to our children.⁸⁰

Nonetheless, given the unusual circumstances of this case, including the fact that this was the first person charged with such an offence in the Northwest Territories, the former Deputy Speaker was only fined. However, the fine was in the amount of \$10,000, substantially more than he had gained from the attempted transactions⁸¹.

December 2004

NOTES

- ¹ Parliamentarians have complete immunity from civil or criminal prosecution when speaking or engaged in a proceeding in Parliament : Joseph Maingot. – *Parliamentary Privilege in Canada*. – Second edition. – Ottawa, McGill-Queen's University Press, 1997. – ISBN 0-7735-1718-9. – At page 6.
- ² *The Concise Oxford English Dictionary*. – 10th edition. – New York, Oxford University Press, 1999. – ISBN 0-19-860259-6. – At page 173.
- ³ *Criminal Code*, Revised Statutes of Canada, 1985, chapter C-46, as amended, section 119.
- ⁴ *Criminal Code*, Revised Statutes of Canada, 1985, chapter C-46, as amended, paragraph 119(1)(b).
- ⁵ *Criminal Code*, Revised Statutes of Canada, 1985, chapter C-46, as amended, subsection 119(1).
- ⁶ *Sommers and Gray v. The Queen*. – Decision of the Supreme Court of Canada, 25 June 1959 – [1959] Supreme Court Reports, pages 678-690. For an exhaustive description of the events surrounding this trial, see Paddy Sherman, *Bennett*, Toronto, McClelland and Stewart, 1966, pages 147-178.
- ⁷ Paddy Sherman, *Bennett*, Toronto, McClelland and Stewart, 1966, page 169.
- ⁸ Paddy Sherman, *Bennett*, Toronto, McClelland and Stewart, 1966, page 168.
- ⁹ *Regina v. Bruneau*. – Decision of the Ontario Court of Appeal, 21 October 1963. – [1964] Canadian Criminal Cases, Volume 1. – Pages 97-104.
- ¹⁰ *Regina v. Bruneau*. – Decision of the Ontario Court of Appeal, 21 October 1963. – [1964] Canadian Criminal Cases, Volume 1. – Pages 97-104, at pages 98-99.
- ¹¹ *Regina v. Bruneau*. – Decision of the Ontario Court of Appeal, 21 October 1963. – [1964] Canadian Criminal Cases, Volume 1. – Pages 97-104, at page 98.
- ¹² *Regina v. Bruneau*. – Decision of the Ontario Court of Appeal, 21 October 1963. – [1964] Canadian Criminal Cases, Volume 1. – Pages 97-104, at page 99.
- ¹³ *Regina v. Bruneau*. – Decision of the Ontario Court of Appeal, 21 October 1963. – [1964] Canadian Criminal Cases, Volume 1. – Pages 97-104, at page 99.
- ¹⁴ *Regina v. Bruneau*. – Decision of the Ontario Court of Appeal, 21 October 1963. – [1964] Canadian Criminal Cases, Volume 1. – Pages 97-104, at pages 101-102.
- ¹⁵ *Regina v. Bruneau*. – Decision of the Ontario Court of Appeal, 21 October 1963. – [1964] Canadian Criminal Cases, Volume 1. – Pages 97-104, at page 104.
- ¹⁶ *Regina v. Bruneau*. – Decision of the Ontario Court of Appeal, 21 October 1963. – [1964] Canadian Criminal Cases, Volume 1. – Pages 97-104, at pages 103-104.
- ¹⁷ *Parliament of Canada Act*, Revised Statutes of Canada, 1985, chapter P-1, section 41.
- ¹⁸ Canada, House of Commons, *Standing Orders of the House of Commons*, section 23. Available at www.parl.gc.ca/information/about/process/house/standingorders/chap2-e.htm

- ¹⁹ *Parliament of Canada Act*, Revised Statutes of Canada, 1985, chapter P-1, subsection 41(2).
- ²⁰ *Criminal Code*, Revised Statutes of Canada, 1985, chapter C-46, as amended, subsection 121(2).
- ²¹ *Criminal Code*, Revised Statutes of Canada, 1985, chapter C-46, as amended, paragraph 121(1)(a).
- ²² *R. v. Cogger*. – Decision of the Supreme Court of Canada, 10 July 1997. – [1997] Supreme Court Reports, Volume 2. – Pages 845-861.
- ²³ *R. v. Cogger*. – Decision of the Supreme Court of Canada, 10 July 1997. – [1997] Supreme Court Reports, Volume 2. – Pages 845-861, at page 848.
- ²⁴ *R. v. Cogger*. – Decision of the Supreme Court of Canada, 10 July 1997. – [1997] Supreme Court Reports, Volume 2. – Pages 845-861, at page 858.
- ²⁵ *R. v. Cogger*. – Decision of the Court of Quebec, Criminal and Penal Division, 2 June 1998. – [1998] Jurisprudence Express 98-1453. – Pages 1-21.
- ²⁶ *Cogger v. R.* – Decision of the Quebec Court of Appeal, 17 May 2001. – [2001] Jurisprudence Express 2001-1097. – Pages 1-4.
- ²⁷ *R. v. Montpetit*. – Decision of the Court of Quebec, Criminal and Penal Division, 7 August 1998. – unreported.
- ²⁸ *Criminal Code*, Revised Statutes of Canada, 1985, chapter C-46, as amended, paragraphs 121(1)(d) and (e).
- ²⁹ *R. v. Giguère et al.* – Decision of the Supreme Court of Canada, 24 November 1983. – [1983] Supreme Court Reports, Volume 2. – Pages 448-470, at page 462.
- ³⁰ *Criminal Code*, Revised Statutes of Canada, 1985, chapter C-46, as amended, subsection 121(3).
- ³¹ *Regina v. Boudreau*. – Decision of the Nova Scotia Court of Appeal, 14 February 1978. – [1978] Canadian Criminal Cases, Volume 39 (2nd Series). – Pages 75-85.
- ³² In the words of the court :
"Those who would corrupt or pretend to have the ability to corrupt those in Government or public service must be given sentences strong enough to alert others who might have similar inclinations that the Courts stand ready to punish severely such type of conduct."
Regina v. Boudreau. – Decision of the Nova Scotia Court of Appeal, 14 February 1978. – [1978] Canadian Criminal Cases, Volume 39 (2nd Series). – Pages 75-85, at pages 83-84.
- ³³ *Criminal Code*, Revised Statutes of Canada, 1985, chapter C-46, as amended, subsection 750(3).
- ³⁴ *Criminal Code*, Revised Statutes of Canada, 1985, chapter C-46, as amended, subsection 750(3).
- ³⁵ *Criminal Code*, Revised Statutes of Canada, 1985, chapter C-46, as amended, subsections 750(4) and (5).
- ³⁶ *Criminal Code*, Revised Statutes of Canada, 1985, chapter C-46, as amended, paragraph 121(1)(c).
- ³⁷ *R. v. Hinchey*. – Decision of the Supreme Court of Canada, 12 December 1996. – [1996] Supreme Court Reports, Volume 3. – Pages 1128-1196.

- ³⁸ *R. v. Hinchey*. – Decision of the Supreme Court of Canada, 12 December 1996. – [1996] Supreme Court Reports, Volume 3. – Pages 1128-1196, at pages 1143-1144.
- ³⁹ *R. v. Hinchey*. – Decision of the Supreme Court of Canada, 12 December 1996. – [1996] Supreme Court Reports, Volume 3. – Pages 1128-1196, at pages 1157-1158.
- ⁴⁰ *R. v. Hinchey*. – Decision of the Supreme Court of Canada, 12 December 1996. – [1996] Supreme Court Reports, Volume 3. – Pages 1128-1196, at pages 1158-1159.
- ⁴¹ *R. v. Hinchey*. – Decision of the Supreme Court of Canada, 12 December 1996. – [1996] Supreme Court Reports, Volume 3. – Pages 1128-1196, at page 1164.
- ⁴² *R. v. Hinchey*. – Decision of the Supreme Court of Canada, 12 December 1996. – [1996] Supreme Court Reports, Volume 3. – Pages 1128-1196, at page 1164.
- ⁴³ *R. v. Hinchey*. – Decision of the Supreme Court of Canada, 12 December 1996. – [1996] Supreme Court Reports, Volume 3. – Pages 1128-1196, at page 1162.
- ⁴⁴ *R. v. Hinchey*. – Decision of the Supreme Court of Canada, 12 December 1996. – [1996] Supreme Court Reports, Volume 3. – Pages 1128-1196, at page 1162.
- ⁴⁵ Wilful blindness is the deliberate avoidance of knowledge of a crime, especially by failing to make a reasonable inquiry about suspected wrongdoing despite being aware that it is highly probable. *Blacks Law Dictionary*. – Seventh Edition. – St. Paul (Minnesota), West Group, 1999. – ISBN 0-314-22864-0. – At page 1594.
- ⁴⁶ *R. v. Hinchey*. – Decision of the Supreme Court of Canada, 12 December 1996. – [1996] Supreme Court Reports, Volume 3. – Pages 1128-1196, at pages 1165-1166.
- ⁴⁷ *R. v. Hinchey*. – Decision of the Supreme Court of Canada, 12 December 1996. – [1996] Supreme Court Reports, Volume 3. – Pages 1128-1196, at page 1166.
- ⁴⁸ *Criminal Code*, Revised Statutes of Canada, 1985, chapter C-46, as amended, section 426.
- ⁴⁹ *Parliament of Canada Act*, Revised Statutes of Canada, 1985, chapter P-1, subsections 16(1) and 41(1).
- ⁵⁰ *Parliament of Canada Act*, Revised Statutes of Canada, 1985, chapter P-1, subsection 41(2).
- ⁵¹ *Parliament of Canada Act*, Revised Statutes of Canada, 1985, chapter P-1, subsection 16(2).
- ⁵² *Parliament of Canada Act*, Revised Statutes of Canada, 1985, chapter P-1, subsection 41(2).
- ⁵³ *Criminal Code*, Revised Statutes of Canada, 1985, chapter C-46, as amended, section 380.
- ⁵⁴ Brian Bergman, "Senator in court : Eric Berntson's fraud trial begins in Regina", in *Maclean's*, 25 January 1999. – Volume 112, Number 4. – Pages 32-33, at page 32.
- ⁵⁵ *R. v. Berntson*. – Decision of the Saskatchewan Court of Appeal, 28 April 2000. – [2001] Saskatchewan Reports, Volume 199. – Pages 281-323.
- ⁵⁶ Martin O'Hanlon, "The rise and fall of Eric Berntson", in *The Canadian Press*, 25 February 1999.

- ⁵⁷ Martin O'Hanlon, "The rise and fall of Eric Berntson", in *The Canadian Press*, 25 February 1999.
- ⁵⁸ *R. v. McLaren*. – Decision of the Saskatchewan Court of Queen's Bench, 12 September 1995 – [1996] Saskatchewan Reports, Volume 135. – Pages 137-145, at pages 144-145.
- ⁵⁹ The details concerning this case have been taken from *The Queen v. Lemire*. – Decision of the Supreme Court of Canada, 19 November 1964. – [1965] Supreme Court Reports. – Pages 174-195.
- ⁶⁰ This sentence was upheld on appeal : *The Queen v. Lemire*. – Decision of the Quebec Court of Queen's Bench, Appeal side, 8 March 1965. – [1965] Les Rapports judiciaires de Québec. – Pages 438-439, at pages 438-439.
- ⁶¹ *Parliament of Canada Act*, Revised Statutes of Canada, 1985, chapter P-1, section 34.
- ⁶² *Parliament of Canada Act*, Revised Statutes of Canada, 1985, chapter P-1, section 35.
- ⁶³ *Parliament of Canada Act*, Revised Statutes of Canada, 1985, chapter P-1, section 35.
- ⁶⁴ *Parliament of Canada Act*, Revised Statutes of Canada, 1985, chapter P-1, section 36.
- ⁶⁵ *Criminal Code*, Revised Statutes of Canada, 1985, chapter C-46, as amended, sections 124 and 125.
- ⁶⁶ *Criminal Code*, Revised Statutes of Canada, 1985, chapter C-46, as amended, section 124.
- ⁶⁷ *Criminal Code*, Revised Statutes of Canada, 1985, chapter C-46, as amended, section 125.
- ⁶⁸ *Rex v. Auger*. – Decision of the Quebec Court of Sessions of the Peace, 6 March 1942. – [1942] Canadian Criminal Cases, Volume 78. – Pages 136-145, at page 144.
- ⁶⁹ *Criminal Code*, Revised Statutes of Canada, 1985, chapter C-46, as amended, section 336 is the general provision prohibiting criminal breach of trust.
- ⁷⁰ *Criminal Code*, Revised Statutes of Canada, 1985, chapter C-46, as amended : section 122 provides for a maximum penalty of up to 5 years in jail for public office holders, whereas section 336 provides a maximum of up to 14 years in jail for private citizens.
- ⁷¹ *Perreault v. R.* – Decision of the Quebec Court of Appeal, 26 June 1992. – [1992] Canadian Criminal Cases, Volume 75 (3rd Series). – Pages 425-445, at page 442.
- ⁷² *Perreault v. R.* – Decision of the Quebec Court of Appeal, 26 June 1992. – [1992] Canadian Criminal Cases, Volume 75 (3rd Series). – Pages 425-445, at page 442.
- ⁷³ *The Queen v. Arnoldi*. – Decision of the Ontario High Court of Justice, Chancery Division, 15 December 1892. – [1893] Ontario Reports, Volume 23. – Pages 201-213, at page 212.
- ⁷⁴ *Regina v. Campbell*. – Decision of the Ontario Court of Appeal, 31 January 1967. – [1967] Canadian Criminal Cases, Volume 3. – Pages 250-258.
- ⁷⁵ *Regina v. Campbell*. – Decision of the Ontario Court of Appeal, 31 January 1967. – [1967] Canadian Criminal Cases, Volume 3. – Pages 250-258, at page 255.
- ⁷⁶ *R. v. Chrétien*. – Decision of the Quebec Court of Appeal, 18 April 1988. – [1988] Jurisprudence Express 88-684. – Pages 1-12.

- ⁷⁷ *R. v. Chrétien*. – Decision of the Quebec Court of Appeal, 18 April 1988. – [1988] Jurisprudence Express 88-683. – Pages 1-5.
- ⁷⁸ *R. v. Fraser*. – Decision of the Supreme Court of the Northwest Territories, 27 May 1983. – [1983] Northwest Territories Reports. – Pages 279-284.
- ⁷⁹ *R. v. Fraser*. – Decision of the Supreme Court of the Northwest Territories, 27 May 1983. – [1983] Northwest Territories Reports. – Pages 279-284, at page 282.
- ⁸⁰ *R. v. Fraser*. – Decision of the Supreme Court of the Northwest Territories, 27 May 1983. – [1983] Northwest Territories Reports. – Pages 279-284, at page 283.
- ⁸¹ *R. v. Fraser*. – Decision of the Supreme Court of the Northwest Territories, 27 May 1983. – [1983] Northwest Territories Reports. – Pages 279-284, at page 283.