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Developments and actions in relation to the committee's fifth report from the 42nd Parliament regarding Senator Beyak

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

In April 2019, your committee considered the Inquiry Report of the Senate Ethics Officer concerning Senator Lynn Beyak. The Inquiry Report concluded that Senator Beyak breached sections 7.1 and 7.2 of the *Ethics and Conflict of Interest Code for Senators* (the “Code”) by posting on her Senate website five letters that contained racist content against Indigenous peoples.

On April 30, 2019, during the 1st Session, 42nd Parliament, your committee presented to the Senate its report which dealt with the Inquiry Report from the Senate Ethics Officer on Senator Lynn Beyak (referred hereinafter as the “Fifth Report”). In that report, your committee indicated that it was troubled by Senator Beyak’s failure to recognize that the content of the letters in question was racist, her unwillingness to recognize the harm caused by her actions, and her lack of respect for the enforcement process under the Code. Your committee recommended several remedial measures and the suspension of Senator Beyak from the Senate.

The Senate adopted your committee’s Fifth Report on May 9, 2019, on which day Senator Beyak was suspended from the Senate. Senator Beyak’s suspension ended with the dissolution of the 42nd Parliament.

Your committee underscored in its Fifth Report that Senator Beyak’s failure to comply with the remedial measures identified in its recommendations and any failure to comply with the intent of the Senate’s decision would constitute a continuing breach of the Code. On December 10, 2019, the Senate adopted a motion directing your committee to conduct a study on developments and actions in relation to the committee’s Fifth Report. That motion allowed the committee to present multiple reports, with its final report due June 30, 2020. On January 31, 2020, your committee deposited with the Clerk of the Senate its first report (interim report) pursuant to the order of December 10, 2019. In this interim report, your committee examined Senator Beyak’s actions in relation to the conditions of her suspension established in the Fifth Report as agreed to by the Senate.

Your committee found that Senator Beyak had not complied with the intent and spirit of certain recommendations and thus remained in breach of the Code. Specifically, your committee determined that Senator Beyak failed to successfully complete the educational programs approved by the Senate Ethics Officer and adequately apologize for her conduct, as required by Recommendations 3 and 5 of the Fifth Report, respectively. In light of these findings, your committee determined that further actions were required to address the situation and uphold the dignity of the institution of the Senate. To that end, your committee made three recommendations.

The first recommendation proposed that Senator Beyak be suspended again to afford her with the opportunity to gain further perspective on the privilege of serving in the Senate and her obligations as a senator.

The second recommendation proposed that Senator Beyak complete an educational program that would guide her conduct and understanding in relation to Indigenous matters, and that her successful completion of such a program would be necessary for her continued presence in the Senate.

The third recommendation required that Senator Beyak, after completing the educational program described in Recommendation 2, write a new letter of apology that would be published in the *Journals of the Senate*.

The interim report was adopted by the Senate on February 27, 2020. That same day, the Standing Committee on Internal Economy, Budgets and Administration (CIBA) met and issued a news release announcing that it was moving forward without delay in implementing the actions recommended by your committee in its interim report concerning the suspension of Senator Beyak.¹

The Committee Study

During the Senate's extended adjournments due to the COVID-19 pandemic, your committee received updates from the Senate Ethics Officer regarding the implementation of his mandate under the interim report. After receiving authorization from the Senate to meet virtually, your committee held a meeting via videoconference on June 1, 2020, to discuss further developments in this regard, including correspondence from the Senate Ethics Officer and Senator Beyak's counsel.

On June 9, 2020, the Senate Ethics Officer provided the committee with his report dealing with the assessment of the educational training provided to Senator Beyak, entitled *Report of the Senate Ethics Officer Concerning Senator Beyak's Training on Racism in Relation to Indigenous Peoples*, in accordance with Recommendation 2 of the committee's interim report. Your committee subsequently met on June 12, 2020, to consider the Senate Ethics Officer's report.

Recent Developments and Actions

a. Education Program

In its interim report, your committee underscored that further education and training were warranted, in the hope and expectation that Senator Beyak would develop an awareness, recognition, and understanding of the reality of racism toward Indigenous peoples. Your committee also hoped and expected that this training would afford Senator Beyak a better understanding of the negative impacts of her actions on Indigenous peoples, her colleagues, and the reputation of the Senate.

As such, Recommendation 2 of the interim report provided further direction on what would constitute successful completion of the educational program. It required that the Senate Ethics Officer identify and approve an educational program provider and that the provider's program be approved by the Senate Ethics Officer and be designed specifically for Senator Beyak.

Recommendation 2 of the interim report further imposed specific performance evaluation requirements based on Senator Beyak's learning outcomes and willingness to learn. Accordingly, the Senate Ethics Officer was to receive, from the educational program provider, an assessment of whether she has successfully completed the course, whether she has learned and was willing to learn, and whether she understands her responsibility as a senator in relation to racism and the need to refrain from acting in a way that could reflect adversely on the position of senator or on the institution of the Senate.

¹ Standing Committee on Internal Economy, Budgets and Administration, [*Internal Economy Committee takes action regarding Senator Beyak*](#), news release, February 27, 2020.

i. Difficulties Encountered by the Senate Ethics Officer

Following the adoption of the interim report, the Senate Ethics Officer kept your committee informed of developments in relation to the implementation of Recommendation 2 of the interim report. In his correspondence with the committee, the Senate Ethics Officer indicated having encountered certain difficulties in carrying out his obligations under the recommendation.

Initially, the Senate Ethics Officer drew to the committee's attention difficulties in identifying an educational program provider in light of the COVID-19 pandemic. The Senate Ethics Officer nonetheless successfully engaged the services of a team of experienced and qualified experts from the University of Manitoba, which has a long-established Department of Indigenous Studies, and informed the committee accordingly. The team of experts was led by Dr. Jonathan Black-Branch, Dean of Law and Professor of Law at the University of Manitoba.

Your committee notes that it was impressed by the calibre of the educational program approved by the Senate Ethics Officer. Each educator's curriculum vitae — included in the appendices to the Senate Ethics Officer's report attached to this report — reflect a wealth of expertise and experience in Indigenous matters that uniquely qualifies them to provide this training. Your committee was pleased that a team of such high regard was assembled for this purpose despite the ongoing pandemic and its attendant challenges.

Once the program was established, questions arose about the possibility of having the sessions monitored or recorded. This prospect was raised by Senator Beyak's legal counsel and two other senators. Both the Senate Ethics Officer and your committee were opposed to any monitoring or recording primarily because it risked compromising the learning environment and unnecessarily politicizing the process, which was to be assessed by an independent impartial actor. Your committee was of the view that the qualifications of the experts would allow for a professional, impartial, and informed evaluation to be provided to the committee upon the completion of the training.

ii. The Senate Ethics Officer's Report Concerning Senator Beyak's Training

As previously stated, on June 9, 2020, the Senate Ethics Officer provided a report to your committee regarding the evaluation of Senator Beyak's performance that included the evaluation prepared by the educational program provider in accordance with Recommendation 2. Further, the Senate Ethics Officer's report included comments from Senator Beyak in response to the educational program provider's assessment.

In his report, the Senate Ethics Officer outlined the process he undertook to identify and engage an educational program provider, as well as difficulties that arose during that process. On May 12, 2020, Dr. Black-Branch provided the Senate Ethics Officer with a proposed program of instruction. That same day, the Senate Ethics Officer approved the program and communicated with Senator Beyak's counsel to make further arrangements. In his report, the Senate Ethics Officer characterized the program as sophisticated and elaborate, and he expressed the view that it addressed all the requirements set out in Recommendation 2 of the interim report.

Senator Beyak attended a four-day educational program from May 19-22, 2020, delivered *via* videoconference since COVID-19 and physical distancing requirements did not allow for in-person training.

As outlined in his report, the Senate Ethics Officer received the performance assessment report from Dr. Black-Branch on May 31, 2020, and provided it to Senator Beyak's legal counsel the next day. Senator Beyak provided her response via email on June 3, 2020. In her response, Senator Beyak did not comment on the assessment report in detail but conveyed her gratitude for the training and commended Dr. Black-Branch and the team of experts "for a thoughtful, fair, comprehensive, and accurate report."

In his report, the Senate Ethics Officer determined that the performance assessment provided by Dr. Black-Branch was "thorough, comprehensive and indisputable." He was therefore of the view that the performance assessment met all the requirements of Recommendation 2.

iii. The Educational Program Provider's Assessment Report

In his performance assessment report, Dr. Black-Branch confirmed that Senator Beyak attended all 10 sessions, for a total of 24 hours of education (which included a three-hour review and assessment component), and that she had successfully participated in and completed all aspects of the educational program as required. He stated that while it is impossible to confirm whether Senator Beyak has fully internalized the information delivered through the training, she has learned, was willing to learn, and seemed to work towards developing and furthering her understanding of her responsibilities as a senator and the impact of her past conduct.

In his assessment report, Dr. Black-Branch provided examples of Senator Beyak's cooperation and willingness to learn in support of his conclusions. He added that Senator Beyak's response to questions during the sessions and her final assessment indicated that she seems to accept "the need to refrain from acting in a way that could reflect adversely on the position of senator or on the institution of the Senate in respect of racism" and understand her obligations in relation to racism as a senator.

In his conclusion, Dr. Black-Branch expressed the view that Senator Beyak seemed to have met the criteria set out in Recommendation 2 of your committee's interim report. Despite this conclusion, Dr. Black-Branch observed that attitudinal change on cultural and social issues often takes time and efforts "that are unlikely to be ascertained within one stand-alone educational unit." He nonetheless indicated that such education programs can be effective in fostering behavioural change, developing different perspectives, and promoting professional reflection, and that Senator Beyak is now better equipped "for approaching her professional work and her personal beliefs."

iv. The Committee's Conclusions

Your committee accepts the report of the Senate Ethics Officer and appreciates his extensive efforts to arrange for the delivery of this course despite the challenges of the COVID-19 pandemic. Based on the evaluation provided by the educational program provider and the comments of both the Senate Ethics Officer and Senator Beyak, your committee is satisfied that Senator Beyak has complied with Recommendation 2 of its interim report.

Your committee shares the view of Dr. Black-Branch that one educational course alone may not yield attitudinal changes on Indigenous matters or informed behavioural changes. However, your committee identified in its interim report that further and particular training for Senator Beyak was necessary to improve her understanding of racism against Indigenous peoples in Canada and the associated responsibilities of a senator. Your committee believes she has engaged in the required process, was willing to learn, and did indeed learn.

Your committee notes broadly that education plays an important role in reconciliation. Indeed, the Truth and Reconciliation Commission of Canada recognized education as “the key” to reconciliation with Indigenous peoples, stating, “Education must remedy the gaps in historical knowledge that perpetuate ignorance and racism.”² To this end, providing a learning environment for expert education on Indigenous history and contemporary realities is part and parcel of the larger process of reconciliation.

The report of the Senate Ethics Officer is attached, in part, as an appendix to this report. To protect the privacy of the individuals involved in the training, certain personal information has been removed, consistent with the committee’s previous practices. The report is otherwise reproduced in its entirety.

b. Letter of Apology

Recommendation 3 of the interim report required that Senator Beyak:

- (a) write a letter of apology that includes:
 - (i) an apology for the impact of her conduct on Indigenous Canadians as well as the institution and reputation of the Senate;
 - (ii) Senator Beyak’s reflections on the education received and indicating what she has learned from this experience; and
 - (iii) Senator Beyak’s understanding of the role and responsibility of a senator with respect to minority rights; and
- (b) provide the apology to the Clerk of the Senate, who will cause the letter to be published in the *Journals of the Senate* either:
 - (i) on the next sitting day after the apology is received, or
 - (ii) for the last sitting day if received between the adjournment of the Senate and the prorogation or dissolution of Parliament.

On June 5, 2020, Senator Beyak submitted a letter of apology to the Clerk of the Senate. In accordance with Recommendation 2, the Clerk of the Senate caused the letter to be published in the *Journals of the Senate* at its next sitting, held Tuesday, June 16, 2020.³

While it will be for all senators to judge its sufficiency, your committee is satisfied that, in her letter of apology, Senator Beyak adequately acknowledges and understands the impact of her conduct and offers thoughtful reflection on her educational experience and what she has learned as a result.

Your committee is also of the view that Senator Beyak’s letter demonstrates a clearer understanding of her role as a Senator in representing and promoting minority rights. Coupled with her speech in the Senate Chamber during debate of your committee’s interim report,⁴ your committee believes the spirit and intention of this recommendation have been met. Senator Beyak has acknowledged the wrongs of her past conduct and has committed herself to improvement. The apology’s inclusion in the *Journals of*

² The Truth and Reconciliation Commission of Canada, *The Final Report of the Truth and Reconciliation Commission of Canada*, [Volume 6](#), 2015, p. 117.

³ Senate, [Journals](#), 1st Session, 43rd Parliament, Issue 22, June 16, 2020, pp. 503-505.

⁴ Senate, [Debates](#), 1st Session, 43rd Parliament, Vol. 151, Issue 11, February 25, 2020, p. 284.

the Senate is a reminder to all senators of the need to accept responsibility for one's behaviour and an expression to the public of the Senate's belief in the accountability of senators for their actions.

Further Reflections

This report completes a process that began over a year ago, during the previous Parliament. While the initial complaint that gave rise to the Senate Ethics Officer's inquiry has long since been addressed, your committee takes this opportunity to remind all senators to reflect critically upon the Code and their obligations as senators, including representing minority groups and interests. Every senator has a role to play in combatting racism and discrimination in all its forms in Canadian society. The Senate, too, plays an important part in ensuring that under-represented voices have a place and can be heard in Canada's democratic institutions.

Education is a lifelong journey. Senators, like all Canadians, must engage in critical self-reflection to question assumptions and challenge potential biases. The Code requires senators to "uphold the highest standards of dignity inherent to the position of Senator", which includes recognizing the inherent worth and value of every individual. Although the Code was not specifically designed as a tool to combat racism or other discrimination, your committee believes that racism is incompatible with the values of the Senate as expressed in the Code, and it takes seriously its responsibility to address these matters when they arise before the committee.

Recommendations

In light of the above, your committee recommends:

That the Senate rescind the suspension of Senator Beyak, as ordered on February 27, 2020; and that, for greater certainty, her suspension end on the day on which this report is adopted by the Senate;

That the Standing Committee on Internal Economy, Budgets and Administration be empowered to take any action it considers appropriate to implement Senator Beyak's return to office; and

That, in accordance with section 2.9 of the *Members of Parliament Retiring Allowances Act*, the entitlement to accrue pensionable service for Senator Beyak be reinstated as of the day on which this report is adopted by the Senate.