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POLITICAL CORRUPTION:  
A CROSS-NATIONAL EXAMINATION  
OF PUBLIC, JUDICIAL AND  
LEGISLATIVE RESPONSES

by

David Black

A Thesis  
submitted to the  
Faculty of Graduate Studies and Research  
through the Department of  
Political Science in Partial Fulfillment  
of the requirements for the Degree  
of Master of Arts at the  
University of Windsor

Windsor, Ontario, Canada

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ABSTRACT  
POLITICAL CORRUPTION:  
A CROSS-NATIONAL EXAMINATION  
OF PUBLIC, JUDICIAL AND  
LEGISLATIVE RESPONSES

by  
David Black

This thesis is a cross-national comparison of corrupt acts by members of the executive in Canada and West Germany. The paper is divided into three distinct sections. The introduction contains a discussion of the method of study that is utilized. An analysis of the definitions of corruption that are available follows, and the definition that is used in this paper is also specified. A brief profile of the two cases selected for the thesis is also presented.

The second section of this thesis presents the details of the Sinclair Stevens case in Canada and the Flick affair in West Germany. From the evidence that is available it will be explained how both cases constitute corruption as it is defined in the first section. How the cases came to be exposed by the media, the reports which initiated the legislative investigations into allegations of corruption, are also examined, followed by an investigation of public, judicial and legislative responses to the acts of corruption. In the third section the observed responses at all three levels (judicial, legislative and public) to the cases will be compared and contrasted.

## Introduction

### A Corrupt Research Proposal

Eventually, every political system faces acts of impropriety, scandal or corruption committed by members of its political elite. When such abuse is discovered, the institution(s) involved have to respond to demands for reform. Although cases in two countries may share many common elements, there is no guarantee that the responses elicited will be similar, as each nation's values and cultural norms will have developed individually.

In some instances, legislatures may respond by trying to legalize acts that may have been previously deemed corrupt, because it is perceived that these actions serve a valuable purpose in the system. More commonly though, a legislature will take measures to ensure that such actions do not become the accepted norm. Responses typically take the form of inquiries which can lead to penalties, sanctions, fines, new legislation or criminal indictments.

This thesis will compare the case of Sinclair Stevens in Canada and the Flick affair in West Germany. While the two cases are not identical in terms of the abuse that occurred (Stevens used his Cabinet position to seek financial aid for his company, while Flick bribed members of the executive to grant him tax concessions), they illustrate



how two political systems reacted to activities that breached an established standard of conduct. Such responses take three forms: legislative, judicial and public. By examining each of these, it will be possible to show discrepancies, inadequacies and the variations in response taken in these two distinct political cultures, and to account for these differences.

Chapter One will introduce the research methods used as well as define what is meant by corruption. Definitions can vary from person to person and case to case. Definitions may be culturally bound, and therefore cannot be easily transferred in a cross-national examination. This chapter will also contain a review of the various approaches used in the examination of corruption, which will provide the context for this research.

The second and third chapters examine in detail the Stevens case and the Flick affair. Included in these examinations are the charges brought against the ministers in each country and how the evidence in the cases was uncovered. Emphasis will be placed on the press and how it made evidence public, and the role that it may have played in uncovering evidence. Attention must also be paid to the legislatures' efforts to assist in the resolution of the cases. Finally, the cases will be assessed with respect to definitional criteria so as to ascertain whether or not the cases constituted corruption.

Chapter Four consists of examinations of legislative, judicial and public responses to the activities. The legislative response will be most interesting to examine because both the House of Commons and the Bundestag have had to address obvious areas of weakness in the legislation that governs executive behaviour. Legislative self-examination has been spurred on by allegations of, as well as actual incidents of executive misconduct. Neither of these two legislative bodies is under any legal obligation to reform their guidelines, and if they do proceed with new legislation, there is no guarantee that it will incorporate any suggestions from the public or the judiciary.

The judicial response can only determine guilt or innocence - relatively black and white when compared to the emotional response of the public. In this comparison, it is also important to see what the two judicial bodies have suggested in terms of reforming non-comprehensive legislation. Public response will be studied by dividing the population into two separate and distinct segments. First there is the general public, and how opinions toward government changed as facts became known. Second is the elite public response, which includes both media reports and academic judgments. Finally, the two cases will be put in the context of the other nation's political culture. By doing this, it may be possible to estimate how the Bundestag would respond to a conflict of interest case such as

Stevens, and how the Canadian House of Commons might react to the bribery of the Flick affair.

Although research has been conducted in the field of political corruption, it has been episodic. Interest in the field is usually generated by the exposure of specific cases of corruption: one of the best examples was Watergate. After Watergate political scientists looked at corruption's causes and effects, and how it might influence politicians' behaviour in the future. Much of the investigation into allegations of corruption has been carried out by the press.

The existing academic literature shows that much of the work done on corruption has focused on single cases, or seeing how reactions to similar cases of corruption differ within a nation over time. Comparative studies are now being more widely conducted, but this is still a relatively new field. This thesis does not claim to formulate solutions that would bring corruption to an end. However, an intensive comparative study of two distinct cases of corruption and responses to it, should provide a solid foundation upon which further work can build.

## Chapter One: The Study of Political Corruption

### Methods

This thesis will examine two contemporary acts of corruption in Canada and West Germany. The legislative, judicial and public responses evoked will be compared and contrasted. This study can be considered a similar systems comparison. Canada and West Germany are both parliamentary democracies; both have bi-cameral legislatures, and both are federal states. Due to governmental structures, the executive of each nation derives its authority directly from the legislature. This is a most important factor because the focus of the thesis will be on actions taken by members of the executive, and the response of the legislature, if any, to curb similar acts in the future.

An examination of Canada and West Germany has one other advantage. In both nations, members of the executive are usually selected exclusively from the lower legislative body (the House of Commons in Canada, and the Bundestag in West Germany), and continue to serve as members of their respective legislatures. In the event a member of the executive is chosen from the private sector, that person must get elected to the legislature.

Regardless of from where a minister is appointed to Cabinet, he/she is still responsible to the legislature

while serving on the executive, so ministers must continue to abide by the legislature's rules, written and/or unwritten. This enables the legislature to take action against members of the executive for misconduct. In a political system where the executive is separate from the legislature, as is mandated in the United States by the separation of power doctrine, there may be little or no response by the legislative body to executive misconduct. The similar systems approach has been selected because political cultures of individual nations may respond differently to similar acts of corruption

To ensure that a fair comparison can be made between Canadian and West German responses to corruption, the cases themselves must be comparable. They must be similar in magnitude and scope, and ultimately be perceived as unequivocal cases of financial impropriety - intrusions of private pecuniary interests on legislative/executive independence. Also, they must have been resolved in the same time frame. Specifying these qualifications ensures an opportunity to see how legislative, judicial and public responses vary only over space, time will not be a concern.

### Defining Corruption

Definitions of corruption abound as many different approaches are taken in defining the term. There are valid

reasons for such variances. This may result from the transitory nature of standards that measure behaviour, which are ever changing. Personal subjectivity can also influence an individual's perception of what is corrupt. The existence of different definitions can seem overwhelming when trying to select a working definition for a study. But this task is made somewhat easier when the definitions are organized within a framework. The classification schema established by John Peters and Susan Welch in their article: "Political Corruption in America" will be utilized. Peters and Welch divided definitions into those based on three criteria, legalistic, public interest or public opinion.

Of these three categories, the easiest to distinguish is legalistic. Legalistic definitions require an act to violate the laws or rules of behaviour established by the political system. Colin Leys utilizes a legalistic definition stating that: "What is at issue is... the existence of a standard of behavior according to which the action in question breaks some rule, written or unwritten, about the proper purposes to which a public office or a public institution may be put" (1).

Legalistic definitions have advantages over both public interest and public opinion definitions. Unlike public opinion definitions, those in the legalistic category are not conditional upon society having knowledge of an act and, on the basis of this information, to pass judgement on the

act for the act to be considered corrupt. Since rules can be applied to an action which can define the act as corrupt, there is no need to rely on a politician's private decision as to whether or not an act is in the public's interest.

Criteria for legalistic definitions can be found in two forms, either formal rules of ethics that have been established through a criminal code, or by informal codes of conduct which are not enforced through the power of law. Peters and Welch suggested a number of legalistic definitions in studies they conducted on how legislators view questionable (corrupt) behaviour in the United States. In one definition which they present, it is clearly stated that corruption occurs when the activity in question violates a formal rule or law:

The definition of political corruption based on a legalistic criteria assumes that political behaviour is corrupt when it violates some formal standard or rule of behaviour set down by a political system for its public officials (2).

This is obviously a simplistic way of identifying a case of corruption; actions either conform to, or violate existing laws.

For a case of corruption to be tried in a court of law, an action must violate some legal criteria. When standards other than legal codes have been breached (such as the code of ethics in Canada), the responsibility of investigation and prosecution of the case is left to the legislative body itself. Although legalistic definitions of corruption carry

the authority of a strict code, a limitation does exist: not all illegal acts are corrupt, and not all corrupt acts are illegal (3). Because this immediately reduces the effectiveness of legal definitions in terms of determining if an act is corrupt, there is a need to expand on the criteria.

A second category of definitions focuses on public (common) interest. In this type of definition, harm to the public interest is seen as the fundamental quality of corrupt acts - an act is deemed corrupt to the extent that this interest is harmed. Problems do exist in that it can be difficult to prove the public interest has been harmed. The difficulty is that it is easy for a politician to claim that any and all actions are taken on behalf of the public's best interest (4).

The best example of a public interest definition is very basic, for example: "the term 'political corruption' encompasses those acts whereby private gain is made at public expense" (5). It is difficult to determine if an act is carried out at the public's expense unless it is measured against acts that the public could within reason consider to be part of the realm of public office. And because an act of political corruption may not interfere with officials' duties in representing their constituency, it may never be considered corrupt by the public.

In a more restrictive vein is Jacob van Klaveren's



definition of corruption. Van Klaveren views corruption as occurring when a public official takes advantage of his/her position to derive as many private benefits as possible from the public and in return will carry out official duties: "he [the public official] can abuse his monopoly position for exploitation of the public by extorting for each official act the maximum reward that the subject with whom he is dealing is willing to pay" (6). This definition leaves little room for negotiation. Defining an act as corrupt is not conditional upon whether politicians or the public interpret the act as being in the public interest in this definition. Although this appears to be a legalistic definition, it also encompasses public interest elements because paying for the carrying out of official duties would not be in the public interest.

Van Klaveren's definition appears lacking in only one respect. He does not look at acts beyond official duties, which is necessary in a study of corruption. Although many elected political officials have wide and sweeping powers, there is also the question of influence. The more authority a position is granted, the more influence the individual holding it will have over others. For instance, a Cabinet member can influence decisions of civil servants, while a legislator may not have this authority. Therefore, persons could influence decisions that are not necessarily theirs to make.

Carl Friedrich picks up on public interest definitions where Van Klaveren leaves off. The definition of corruption provided by Friedrich states: "there is typically a gain for the corrupter and the corrupted, and loss for others, involved in such a situation" (7). As with Van Klaveren, Friedrich notes there is a gain for those directly involved in the corruption, but the definition goes further. It addresses the fact that some will suffer a loss. Even if members of the general public never come to know of any transactions that took place between public figures and private citizens, the consequences of such actions may hamper the ability of many citizens to request and obtain political action on their behalf.

The final category of definitions is public opinion based. These definitions dictate that the mass public must know of, and disapprove of a public official's behaviour in order for it to be deemed corrupt. But studies have shown public response to acts is ambiguous, or there may be sharp divisions in public opinion. Second, differences may exist between the public's and political elite's assessments of conduct because the two groups will apply different sets of standards to the same act (8).

Colin Leys has also offered a good example of a public opinion definition. In this category, Leys defined corruption as a perception of society and an individual: "an act is presumably only corrupt if society condemns it as

such, and if the doer is afflicted with a sense of guilt when he does it" (9). According to this definition, there are two separate requirements that must be satisfied in order to define an act as corrupt. The first requirement is society knowing of, and condemning the act. This assumes that society will know all the relevant details of a questionable act, and from this will decide if the act is or is not acceptable within that society's norms. As stated in the work of Peters and Welch, this type of definition suffers from the two inherent weaknesses - different standards and ambiguity.

Rarely does the public have an opportunity to learn the facts of an act of corruption, and even if the public does, there is no guarantee that it will find such acts objectionable: "Corruption may occur without ever coming to light, or may elicit little mass response if it does become known" (10). As well, Leys' definition assumes that the public official involved in corruption will have a guilty conscience for actions taken. One problem exists with this qualification, simply that many people who become involved in corruption do so of their own free will, which may translate into no sense of remorse over having become involved in these activities.

Because conscience will not be a concern for the officials that choose to take part in corruption, it should be recognized that these people, by their actions, are

undermining the system, and the principles that the system has been built on: "The principle of responsibility states that legislators have an obligation to contribute to the effective institutional functioning of the democratic legislative process" (11). By becoming involved in corruption, a representative would be diluting the principle of effective institutional functioning through the requirement of incentives.

'Equal representation for all' is another principle that is distorted by corrupt practices. By accepting gifts for carrying out legislative actions, legislators are setting a dangerous precedent. Such actions illustrate that only those with financial clout will be able to command action. Exhibiting such favouritism gives the distinct impression that those with lesser financial resources will not receive the same attention.

Both public interest and public opinion definitions neglect to recognize the practicality and convenience of applying a code of conduct that might determine if an action is corrupt. Instead of determining an action's credibility against established norms, it is only seen whether it fits into a vague notion of what the public and/or legislators consider to be corrupt activities, and assumes all other activities to be acceptable. Codes can also prescribe measures an official can take to avoid actual or apparent corrupt situations. Instead, the two final categories of

definitions assume conduct to be corrupt if the official expects direct or future benefits for carrying out tasks expected of them, or performing special favours beyond their jurisdiction. Members of the public should not, and must not accept such abuses of official responsibilities:

Taking or offering bribes...cannot be morally condoned, and those civil servants and officials of government who are involved in bribery are taking advantage of their offices and their public trust for a personal gain that cannot be justified (12).

If these actions do become the accepted norm, the political culture has been distorted, giving a bias to those with wealth.

For this thesis, a definition that encompasses the three categories identified by Peters and Welch will be used to test if the cases are examples of corruption. In this thesis, corruption will have occurred if a public official, or officials, either elected or appointed, has benefitted privately in return for granting a private citizen special favours. Special favours are defined here as acts by an official that are not normally performed on behalf of members of the public, nor are they routine acts of a legislator (a breach of official duties).

This definition is legalistic in that it requires the legislator to violate his/her duties to grant a citizen a favour. Public interest is also present in that the official will benefit by carrying out any special acts on a private citizen's behalf. As mentioned, this means people

with limited financial resources cannot ask for, or will probably not receive, similar preferential treatment, which would not be in the public interest. Implicit in this definition is the notion that public opinion would not support nor accept such behaviour because it creates inequity in access to the political system, and it grants officials the opportunity to extract more benefits from the system than they are entitled to.

### The Study of Corruption

Most studies of corruption tend to focus on a single nation and are conducted in one of two fashions. First, some studies are analyses of a single case of corruption. Second, comparative studies examine two or more corrupt acts that have occurred in one nation over a given period of time. This allows a comparison of judicial and legislative responses over time to be carried out.

These two forms of study attempt to grade the severity of corruption. Any conclusion as to the severity of an action will be dependent upon the academic or legalistic definition that is used by the investigator. Such studies also attempt to define whether or not corruption is functional within the society that it takes place in. In the circumstance that corruption does serve a purpose, it is important to then decide whether the citizens accept

corruption as part of normal political life. Another approach to studying corruption is to focus on how a form of payment prompts an official to take action. Seldom are the questions of representative inequalities that corruption promotes of primary concern.

There are a couple of problems inherent in the study of political corruption. First, there are no universally applicable standards of behaviour that could govern the actions of public officials. Instead, each legislature establishes codes individually, so no one set of guidelines may share anything with the rules another nation's legislature has adopted. Second, it is difficult to determine what type of controls, if any, are in place in each nation in an attempt to regulate the actions of those in positions of authority. This results from obscure, and often secretive codes that are released only to legislators.

It cannot be expected that rules will be exactly the same, or even somewhat similar, in any two nations, specifically the two in this thesis. Discrepancies found between Canadian and German guidelines may stem from the fact that the Flick affair was bribery and Stevens violated conflict of interest codes, and rules governing two different types of behaviour should vary. Aside from this, regulations could well differ in magnitude. As previously mentioned, this may be a result of legislatures trusting their members' judgement, or it could be a case of not

foreseeing a specific abuse. But it will also be seen in the West German case that in some instances, legislatures avoid addressing certain areas of abuse, or may in fact attempt to legitimize questionable activities.

Another difficulty in standards or ethical codes is their inability to identify an acceptable definition of corruption. To further complicate matters, there is no guarantee that each legislator's private definition of corruption has been incorporated into these codes. This difficulty is illustrated in detail in the work of Steven Chibnall and Peter Saunders: "Worlds Apart: Notes on the Social Reality of Corruption". Definitions of corruption vary, and this problem can be observed in a friendship, where a habit that may have been acceptable between friends, may not necessarily be accepted by the rest of society. The behaviour of public officials is measured in accordance with public guidelines, whether these are broadly accepted social mores, or ethics legislated by the government. An official's private definition will be substituted by public standards:

The implication of the existence of alternative moralities and classificatory procedures for deviant behaviour is that, while members of a social group may routinely operate with their own set of largely unexplicated rules and interpretative criteria, they are forced to address themselves to the categorical code of law when formally called upon to account for problematic behaviour (13).

As will be seen in the case of Sinclair Stevens,



definitions of corruption varied between the prosecution (public) and the defence (Stevens). Stevens felt his actions were acceptable, while the public perceived them as inappropriate. Discrepancies in these two definitions led to two divergent ethical perceptions of the act by the public and Stevens. In this case, "Previously justifiable behaviour is threatened with re-definition as different interpretative criteria become salient" (14). Because there are definitional discrepancies for the term corruption, and the different interpretations given the word by different societal sectors, excuses will be made about such activities. Two excuses are typically given.

The first is, 'everyone else does it, so why is it wrong for me to do it?' This excuse implies that the behaviour one member is involved in is also being carried out by a majority of legislators, and therefore legitimacy is given to these actions: "The essential argument here is that common behaviour within a group cannot reasonably be considered deviant" (15). Of course this type of reasoning has its own weaknesses. A participant's assumption of mass involvement does not justify his/her participation in the same form of illicit behaviour. Even if such conditions were shown to be met in a case, innocence cannot be the final edict when scrutinizing these actions by external guidelines.

A second popular excuse is, 'how can this activity be

wrong if these actions do not harm anyone?' The basis of this "argument is that public service is by no means incompatible with private gain" (16). This seems to be a more sincere form of excuse for taking part in corrupt activities, because there is no denial of unacceptable actions, only some broad acceptance based on a weak premise. Regardless of the perception of the public official that the behaviour does not harm others, damage occurs to the political system. Showing favouritism to those who are willing to pay for representation means that those who cannot afford to pay will receive less attention from their representatives.

The second problem with the study of corruption is in trying to define the guidelines that govern the actions of those that hold public office. As it will be seen in the case studies, both the West German and Canadian legislatures had existing guidelines that may be called "minimalist ethics" in accordance with the definition offered by Dennis Thompson. Under this definition, minimalist ethics are described as: "The most familiar form of legislative ethics [that consist] of rules that prohibit conflicts of financial interest" (17). Most commonly, these rules try to prohibit legislators from receiving monetary rewards, other than legislative pay, for performing duties that are expected of them. It is evident from recent events reported by the media, the Patricia Starr scandal in Ontario and the sale of

Premier Vander Zalm's Fantasy Gardens in British Columbia, that minimalist ethics are not capable of restricting financial conflicts. As a result of this, there is a need for more comprehensive guidelines.

Thompson realized that there is a need to go beyond the singular restriction of financial misconduct. Guidelines must be more encompassing, thus assuring that legislative judgement will not be tainted by outside influences. Even if it were possible for codes to regulate all possible situations, there will always be those public officials who want to use their position for self-benefit. To some, "morality becomes irrelevant to the pursuit of power" (18), and in most cases, people pursue financial power.

Although some will always use power for self-promotion, there is still the need for a code of ethics upon which legislators can base their actions. Such codes also grant the public and the media the opportunity to measure legislators' actions against regulations implemented by those same legislators:

Political ethics provides support for democratic politics in many ways. It supplies criteria with which citizens can better judge the actions of officials and ascribe responsibility to officials. It suggests the need for devices of democratic accountability, and helps overcome principled impediments to them (19).

But this must not be misinterpreted to mean private citizens have no need, or desire, to understand how legislators make decisions. Knowledge of legislative procedure and ethical

codes may instill in the public the ability to scrutinize their representatives' activities, allowing them to act as secondary enforcers of the ethics that govern their elected officials.

If the public displays signs of diligently observing the activity of legislators, politicians will have no choice but to adhere to the principles they are required to abide by when making decisions. This means that "in office, [legislators] act on both of these kinds of principles: they are expected to promote the general values we share as well as the distinctive values that inhere in the duties of their particular offices" (20). The need for a code is evident, but there is the recurring theme of how to devise a code that can adequately perform the function of regulating and monitoring legislators, without unduly restricting them.

Questions focus on how strict codes should be, and to whom certain regulations should apply: "The organizational nature of public office creates a different set of ethical problems. Here the difficulty is not which principles to apply, but which agents to apply them to" (21). Thompson has shown that this is the case in the United States, where high ranking bureaucrats are regulated by more comprehensive codes than elected officials. It has been contended by politicians that they do not need comprehensive codes to govern their behaviour. Many politicians believe that they and their colleagues can be trusted to regulate their own

actions. This argument is presented in the modernization school, which holds that "public officials...are better able to distinguish their public from their private responsibility" (22). Effectively, this line of argument would suggest officials' sense of right and wrong would dictate he/she do what is correct, and that a code of conduct would be redundant under these circumstances.

And there is the problem of assuring that all potentially corrupt acts are regulated, because "there are, after all, the difficulties of anticipating in a code of conduct every conceivable indiscretion" (23). One way to overcome this problem would be to include previously unregulated acts in a lengthy appendix as these abuses become known. There is one problem that can be created through implementation of a fully inclusive set of guidelines. Too strict a code may act to discourage people who may otherwise seek a career in the civil service or as elected officials.

A further problem with the study of corruption, which has been touched on briefly, is that those who hold elected office may feel that there is no need for ethical codes. This can be seen in a Canadian study of legislators' opinions toward comprehensive guidelines. Canadian Members of Parliament feel that they "already possess an unwritten but effective code of conduct that renders efforts to formalize standards of behaviour redundant and unnecessary"

(30). Of the two countries being studied, only West Germany had existing legislation that condemned certain activities, and could punish abuses with criminal sanctions. In Canada, the guidelines set forth were formal in nature, but were not released to the public. They consisted of an unwritten code and a letter from the Prime Minister, neither specifically outlining actions that would contravene them.

It must be remembered that corruption happens in all societies for numerous reasons, including the fact that guidelines cannot cover every conceivable action of a legislator, and not all will abide by the norms which others have accepted. Even in the event that a code was able to cover all areas of potential conflict, one problem would persist, some of the regulations would be left open to an individual's interpretation. Nor can existing rules guarantee full compliance by all legislators, greed is difficult to regulate.

#### Case Selection

A problem arises when investigating cases of corruption. In some situations, both the corruptor and the corrupted are aware that they are involved in a corrupt act, but there are occasions when both parties believe that their actions are legitimate. When such actions are exposed publicly, they are subjected to different definitions of

corruption, which can be based on either moral or legalistic criteria, or both. In these instances, interpretations of behaviour will vary between the actors and the legal system. Thus it becomes evident that the actors have to reevaluate their actions within codes that govern them:

They [the actors are] faced with a reclassification of their privately normalized behaviour according to the interpretative criteria of the legal code. This [amounts] to the authoritative imposition of the legal category of 'corruption' on behaviour which had previously been regarded as largely unproblematic within a particular situational morality (31).

Therefore, behaviour that was categorized as acceptable by the actors becomes illegal when measured against the legal codes of a legislature or nation.

This problem is rooted in the human nature of those involved in corruption. That is, participants will try to keep such acts out of public view. This is true whether or not a person believes their actions to be corrupt. People will conduct transactions in secret. Graeme Moodie, in his writings about corruption in the United States pointed out that, "in societies like [America], corruption tends to be obscure, a condition which its participants wish it to remain" (32), but it can easily be applied to the cases in Canada and West Germany. Secrecy has presented a major stumbling block in the study of corruption because it limits the number of cases available for study.

The final aspect to be covered is the selection of the cases to be examined. It is important not to choose the

cases solely on the basis of the ramifications the outcomes had on the actors involved. Any imposed penalties will be examined, but other areas for comparison must be made. For the Canadian portion of this study, the case of Sinclair Stevens has been chosen, while the Flick affair has been selected from West Germany. These two cases possess many similarities.

In both cases, members of the executive were implicated in wrongdoings. Sinclair Stevens was the Minister of Regional Industrial Expansion in Canada, and in West Germany, Hans Friderichs and Count Otto Lambsdorff, both former Federal Economics Ministers, were implicated. All three men gained private benefits while they held their positions, and these benefits were derived from large corporations. Eventually all three men were found guilty of improper use of their positions.

One difference exists, the time at which the offenses occurred; however, it can be shown that this difference in time has a limited effect on the comparison. The Stevens case took place from 1984 to 1986, climaxing with an inquiry in 1986 and a final decision in December, 1987. The involvement of the Flick family in political payments can be traced back to the beginning of this century, but investigations did not start until the early 1970s, and what became known as "the Flick affair" took place in the 1980s, concluding in 1986. Although a time discrepancy exists in



terms of the actual incidents, investigations overlapped, and judicial decisions came down within a year of one another. Also, actual and proposed legislation in response to the cases came within two years of one another in each country. This should allow an examination of the differences (or similarities) in legislative, judicial and public responses to the cases to be carried out with space being the only factor to take into consideration.

A Public Inquiry was set up to look into the Stevens affair. At the end of the Commission's hearings, Stevens was found guilty of violating conflict of interest guidelines fourteen times when he was a minister. Prior to the establishment of the Royal Commission, Members of Parliament were calling for the resignation of Stevens. Friderichs and Count Lambsdorff had resigned from their posts before their cases went before the Constitutional Court in West Germany.

Another difference can be found between the judicial responses in the two cases. In the German case, the two ministers were tried in a court of law, which had the ability to impose legal sanctions on them. Being the highest German court, any decision it arrived at was final, there was no opportunity to appeal the outcome. In Canada, on the other hand, Stevens went before a public inquiry (which could not impose sanctions), this also left Stevens the chance to appeal a guilty decision. The public inquiry

had no authority to place any private citizens on trial, in contrast to the Flick affair. But this did not stop Parker from condemning the actions of the business people that Stevens was associated with.

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## Chapter Two: The Sinclair Stevens Case

### What Was The Sinclair Stevens Affair?

Sinclair McKnight Stevens was Minister of Regional Industrial Expansion in the Cabinet of Prime Minister Brian Mulroney. Stevens was appointed to this post in September 1984, and resigned from it in May 1986 under suspicion of conflict of interest and violation of blind trust provisions. Part of the responsibilities of Stevens' ministry was to oversee the operations of the Canadian Development Corporation (CDC), which awarded grants and low interest loans to Canadian businesses. A second responsibility of this ministry was to oversee the privatization of Crown Corporations, and consider bids from the private sector for purchasing public corporations. This function was carried out by the Canadian Development and Investment Corporation (CDIC), which was appointed by the government but drew on the private sector for members of its board of directors.

This was not the first time Stevens had held a Cabinet post. For a ten month period, during the short lived government of Joe Clark, from 1979 to 1980, Stevens was the head of the Treasury Board of Canada. As a member of the executive on two separate occasions, Stevens was responsible for ensuring that he would not be perceived by the public,

or other Members of Parliament, as being in a conflict of interest, and was required to place all of his private investments in a blind trust.

But Stevens did not abide by either of these rules while serving as a member of Mulroney's government. Conflict of interest violations were in breach of a code that had only been outlined in a letter from the Prime Minister. This was sent out to all Members of Parliament (MPs) on September 9, 1985. At the time, no formally adopted code existed to regulate conflicts of interest. One purpose of the letter was to start a forum within both the House of Commons and the Senate that would encourage the development of more formal rules of ethics. It was stated by the Prime Minister that:

I believe such action on their [Members of Parliament and Senators] part would provide even more assurance to the public that all their elected representatives and those who have been chosen to serve their country in the Senate, are determined to govern themselves according to the highest standards (1).

Mulroney had made a point of stressing that all ministers must avoid situations of either real or apparent conflicts. This is significant in that Stevens was found to be in apparent conflict of interest on a number of occasions. No real conflict has to occur; there simply has to be an appearance of conflict in a given action. Public opinion rarely differentiates between the two, and either may lower confidence in the government.

In the case of a blind trust, ministers are not to have access to their own assets, to be aware of the financial performance of investments, or to know of any transactions within their blind trust while they are serving on the executive. National Victoria and Grey Trust Company was hired by Stevens to be the trustee of his blind trust. Financial conditions of the contract were an annual fee of \$125. No transactions were conducted on behalf of Stevens while the trust company was responsible for the Minister's holdings. Over the two years Stevens was in Cabinet, total charges were \$250 (2). The process of securing a blind trust is more formal than the set of informal rules that try to inhibit conflict of interest. Stevens had to sign a formal Blind Trust Agreement with his trustees. A section of this agreement stated that the trustee was to have complete freedom over the investments held within the trust:

It is hereby acknowledged and agreed that the Trustee is empowered during the obligatory trust period to make all decisions concerning the management of the trust fund free of direct or indirect control or influence by the Settlor and free of any duty or obligation whatsoever to inform, consult with or seek the advice of the Settlor directly or indirectly (3).

Since Stevens signed this agreement, he could not plead ignorance to the fact that he was to have no knowledge of his private finances.

Under the conflict of interest guidelines, Stevens also had to sign a Disclosure of Activities. This disclosure was administered by the Assistant Deputy Registrar General and

listed all partnerships, directorships, corporate executive positions and professional activities Stevens was involved in, for the two years immediately preceding his appointment to Cabinet. At face value, it would seem that Stevens had all of his private holdings properly administered in accordance with the code's guidelines for a blind trust. But the government had no way of assuring that Stevens would not violate the codes. There is no administrative office that ensures that all holdings are placed in a blind trust, nor are there regulations regarding a spouse's activity in the Cabinet minister's private affairs. In addition, spouses do not have to place their own holdings in a trust, so husbands/wives conceivably could obtain unrestricted access to information that the ministers were denied.

Shirley Walker, Stevens' ministerial assistant had acted as his personal secretary at York Centre before he was given his Cabinet posting. Because Walker held a directorship with a Stevens company before she assumed her position with the ministry, she also had to sign a disclosure form. But she was not held to the same stringent rules in terms of the blind trust, which allowed her to stay informed as to how business was going with the York Centre group of companies. As well, Noreen Stevens, Sinclair Stevens' wife, took full responsibility for the companies when her husband entered Cabinet, which meant that she would be fully aware of the financial conditions of the various

firms, without being restrained by any regulations.

Although Noreen Stevens left no evidence to show that she had kept her husband informed about the financial difficulties facing his companies, diaries kept by Shirley Walker showed that both Walker and Noreen Stevens had continued to keep Sinclair Stevens up to date. These diaries also listed details of all appointments that Stevens had. Entries in these diaries showed that he was informed about the business of York Centre by other sources like Mel Leiderman, the York Centre accountant. Walker had also signed two cheques from York Centre for Stevens totaling \$50,000, which were not put into the blind trust. Stevens denied any knowledge of cheques, claiming they were placed in bank accounts he could not access.

There were other entries by Walker that showed Sinclair Stevens was dealing with members of the private sector as a Cabinet minister, while his wife was dealing with these same people as a representative of York Centre. Trevor Eyton, Chief Executive Officer of the Reichmann Family's Brascan Ltd., had publicly testified that on one day, he had meetings with Noreen Stevens with regard to York Centre, and later met with Sinclair Stevens to discuss CDIC business (4). Eyton also represented business concerns that were inquiring into the proposed sale of some Crown Corporations, in particular de Havilland Aircraft, for the Reichmann brothers. This is just a single example of how complex the



allegations of conflict of interest against Stevens were.

The allegations against Stevens originated in stories printed in The Globe and Mail and The Toronto Star during March and April of 1986. Initially Cabinet members and others in the Progressive Conservative party responded with disbelief that Stevens would place himself in conflict by dealing with Hyundai Motors of Korea. Because of the three articles, Stevens was summoned to the office of Eric Nielsen, the Deputy Prime Minister. Nielsen asked Stevens directly if there was any truth to what was published in the newspapers. Stevens replied that there was not, and for Nielsen, this was all that he needed to hear - he was willing to defend the minister in the House of Commons.

Even on the last day that the House sat before Stevens resigned his Cabinet post (Friday, May 9, 1986) Nielsen answered all questions asked about the Stevens affair. And on all occasions he replied by saying that he felt Stevens did not violate any conflict of interest codes:

Mr. Speaker, I say to the honourable gentleman that my responsibility as Acting Prime Minister, and as Deputy Prime Minister charged with that responsibility by the Prime Minister, is to ensure compliance with the code [of conflict of interest]...which is applicable to public office holders. I have done that...There is that compliance and I have so stated for two weeks now (5).

This continued defence of Stevens turned out to be a great political embarrassment for Nielsen when a decision was handed down a year and a half later by the public inquiry

that was established. Some political analysts hold the opinion that Nielsen's defence of Stevens ruined his political career.

However, one anonymous minister did feel that the original newspaper stories might have validity, and that this could well be the beginning of a long period of scrutiny for Stevens (6). On a daily basis, Stevens had to face questions from opposition members regarding his activities, and they continually called for his resignation from both the Cabinet and the House of Commons. Eventually Stevens complied with the first half of this request, when he officially resigned from Cabinet. The resignation took place in the House of Commons on May 12, 1986:

As you know, Mr. Speaker, I have complied with the provisions of the conflict-of-interest code for public office holders. Nonetheless, there seems to remain sufficient confusion as to fact to warrant an impartial investigation. In the circumstances, I believe it is in keeping with our parliamentary traditions and practices that I tender my resignation as Minister of Regional Industrial Expansion effective immediately. I can inform honourable members that I have so tendered my resignation to the Prime Minister (7).

Stevens remained in the House as an ordinary member sitting in the front row of the government side of the chamber, but spoke infrequently after leaving Cabinet.

At this same time, Stevens requested that a public inquiry be called so that he would have the opportunity to exonerate himself:

Mr. Speaker, I rise to inform Members of the House that yesterday I wrote the Prime Minister to ask

that he call for an impartial person to conduct an investigation as to fact respecting allegations of conflict of interest which have recently been made in various newspapers, electronic media, and in the House of Commons (8).

Stevens was granted his request for an inquiry, headed by Chief Justice Willian Parker, however, when on the witness stand, Stevens claimed that an air of McCarthyism had pervaded the entire investigation, "The McCarthyism reference was one Stevens employed regularly during his days of testimony. There was no defence, he insisted, against malicious people who juxtapose facts to show wrongdoing where none exists" (9).

The allegations of conflict of interest that brought Stevens into the inquiry are numerous and deserve some explanation. As mentioned, there was the link with Hyundai Corporation of South Korea, which built a car parts plant in Stevens riding, through the Hanil Bank in Seoul, the same bank that loaned money to York Centre.

There was also the alleged link between Stevens and Magna International, the giant Canadian auto parts manufacturer. Frank Stronach, the president of Magna assisted in arranging for a \$2.62 million mortgage from his former partner Anton Czapka, which Noreen Stevens accepted on behalf of York Centre. Although Czapka denied knowing who Noreen Stevens was at the time he gave her the mortgage, the deal was suspect because of the large sums of money that Stevens' ministry had been giving to Magna in the form of

loans and grants:

Magna has drawn heavily on federal assistance programs for industry. Most recently, it received a total of \$64.2 million in grants, interest free loans, tax credits and other assistance to build two auto parts plants on Cape Breton Island (10).

Another link that was found between Stevens' company and his ministry was Trevor Eyton. Eyton had contacted financiers on Bay Street in an attempt to find financing for York Centre. This constituted two conflicts for Stevens. First, Eyton sat on the board of the CDIC, and Stevens had approached him to help Noreen Stevens secure a loan. Second, Eyton asked two brokerage firms to see if they could help in this matter. These two firms were Dominion Securities Pitfield and Burns Fry. These two firms were involved in the privatization of Crown Corporations at the time:

The commission team labelled it 'a remarkable coincidence' when, in the third week in January, 1985, the very financial houses approached to help Stevens' corporate empire were - at precisely the same time - being considered for government work by a federal holding company for which Stevens was responsible (11).

Not all of the allegations of conflict of interest involved the Canadian corporate elite. Sinclair and Noreen Stevens had flown to New York City for a meeting with officials of the Chase Manhattan Bank, which was trying to secure contracts for consultation work with the Canadian government in the divestiture of Crown Corporations. While these meetings were being conducted, the bank informed the

Stevenses that it would not be able to finance their 'Christ Coin' proposal to raise revenues for York Centre. Because of this, the couple decided to abandon the coin proposal. It should be said that Chase Manhattan did not profit from this meeting.

But this provided evidence that Sinclair Stevens was intimately involved in his private business, and was fully aware of business propositions that his wife was working on (12). Stevens was involved in at least one other attempt to find funding for York Centre while he was in Cabinet. This was known as the La Ronge Goldplay. In this instance, Stevens contacted Donald Busby who was trying to find investors for a gold mine in Saskatchewan.

Stevens also initiated conversations with Ronald Netolitzky, a Calgary geologist, to confirm reports of gold deposits at the site. He also asked Robert Callander, a mining finance specialist with Burns Fry, if he could get financing for extraction. At the inquiry, Stevens denied any involvement in these arrangements, but Parker found that "Mr. Stevens' evidence in particular directly contradicts the evidence of the three witnesses on fundamental matters regarding the character and content of the various meetings and telephone conversations" (13).

Another area of conflict was with the appointment of board members to the CDIC. The list of directors included Edward Rowe, the president of Stevens' company York Centre,

and Frank Stronach, president of Magna International, who helped arrange the loan from Czapka to Noreen Stevens. The appointment of Stronach was also questionable because of the low interest loans and grants that Stevens' ministry was giving to Magna. Trevor Eyton also sat on the board.

In fact, a majority of the CDIC board members were executives with Brascan, which was bidding for a number of the Crown Corporations that were being privatized. Even though most of these appointments were viewed as patronage handouts, board members could influence decisions regarding which bid the government should accept. Most of the allegations surfaced as a result of the investigative work of David Scott, the Commission Council for the public inquiry. However, if it had not been for the initial efforts of the press, the entire affair might never have been uncovered.

#### Was the Stevens Case Corruption?

The case against Sinclair Stevens has to be placed in the context of the definition of corruption that was introduced in Chapter One. Stevens' actions clearly fall within that definition. By soliciting firms for aid that Stevens had granted government contracts to, or those that were in the process of bidding for CDIC contracts, Stevens initiated a reciprocal relationship, where both parties had

the potential to, and did, benefit.

Stevens initiated the two way relationship with government contractors so that he could secure loans for York Centre. Because it has been shown that Magna International was the recipient of unprecedented levels of grants and loans from the CDIC when Noreen Stevens negotiated a loan from Anton Czapka, there is an appearance of conflict. Coupled with the fact that Stevens was kept informed of how his private assets were performing financially, this violated government guidelines, and therefore the legalistic requirements were met. Although the minister's actions may not have been a blatant attempt to violate the conflict of interest guidelines, they constituted apparent conflict of interest, which according to the Prime Minister's letter, is as damaging as an actual conflict.

Even if Stevens had not tried to secure financing, or had not been informed of his family business, his other actions may have still met these criteria. Board members of the CDIC were also representatives of corporations bidding on Crown Corporations. This would be a direct conflict for any of the members in that situation, and since Stevens was in charge of this board, he should have seen to it that members disqualified themselves when such occasions arose, if the directors did not do so themselves.

The Role of the Press and  
the House of Commons in Exposing Stevens

In the Sinclair Stevens affair, two main factors contributed to the exposure and quick resolution of the allegations made against the minister. The first and most significant contribution to bringing the affair to light was that made by the press, specifically, the efforts of Michael Harris and David Stewart-Patterson, both reporters for The Globe and Mail. The second factor that contributed to a swift resolution was the Parker Inquiry which was commissioned by the government.

This inquiry, which was independent of the House of Commons, was conducted by William Parker, the former Chief Justice of the Supreme Court of Ontario. No Members of Parliament were involved in either the investigation or the inquiry of the allegations, except as witnesses. As a result, none of the political parties could take credit for the exposure of, or the resolutions made in this case. By keeping the investigation out of the Progressive Conservative dominated parliamentary committee system, it was assured that all hearings would be non-partisan.

The initial investigation into Stevens' affairs was carried out by the press, and if it had not been for the dedicated investigations of Michael Harris, all of the events may have gone unnoticed. Harris, an Ottawa correspondent for The Globe and Mail, received his first



lead in early 1986, when he got an anonymous tip, which could not be substantiated, about Stevens securing a \$5.5 million bail out for the financially troubled York Centre (14). Because of his limited knowledge of business matters, Harris enlisted the help of David Stewart-Patterson, one of The Globe and Mail's Toronto business writers. Together, the two eventually discovered the link between Stevens's business and Magna International.

Because the story was of great magnitude, implicating a member of cabinet, and one of Canada's most publicly recognized manufacturing firms, The Globe and Mail ran front page stories. For Stevens, The Globe and Mail pieces on his financial dealings signaled the beginning of the end of his political career. The first story was printed on March 27, 1986, with the headline "Hyundai-linked bank lent to Stevens firm" (15). It brought to light the dealings that York Centre had with the Hanil Bank of South Korea.

In addition, the story elaborated on the deal that Hyundai had negotiated with the federal government for locating its new Canadian factory in Quebec. Hyundai had received an interest free loan and favourable export quotas from Stevens' ministry: "One source involved in the negotiations said Hyundai got 'a sweetheart deal' from the federal and Quebec governments" (16). It was later decided that the negotiations between Hyundai and Stevens's ministry did not represent a conflict of interest, and that any

decision that came out of the ministry was not exclusively arrived at by Stevens, but made in consultation with other members of the ministry.

A second story also appeared on the front page of The Globe and Mail on April 29, 1986, a little over a month after the first. This headline read "Stevens' wife got year of free interest on loan" (17). This story exposed the loan that York Centre had received from Anton Czapka. This proved to be one of Stevens' transactions that was eventually found to be a conflict of interest by the Parker Inquiry.

Harris did have a chance to interview Anton Czapka with regard to the loan and its favourable terms for York Centre. Czapka's only reply was that "I took a little gamble" (18), feeling that it was a low risk business proposition. Harris also attempted to get a statement from Stevens, but was not able to get past Vera Holiad, Stevens' press secretary, who said "His [Stevens's] interests are in a blind trust, and he has no knowledge of the deal that you're talking about" (19).

These stories also generated a great deal of attention from other members of the press. One of the most damaging stories was filed by Diane Francis, the senior business reporter for the Toronto Star. She took a great deal of interest in the transactions that Stevens had made. Since Francis knew many of the top financiers on Bay Street, it

was easy for her to arrange an interview with one of its most influential members, Trevor Eyton.

This interview, like the articles by Harris and Stewart-Patterson, had a great deal of bearing on the charges initially brought against Stevens in the conflict of interest hearings conducted by Parker:

On Thursday evening, at 6:30, Trevor Eyton, president of Brascan, spoke to Francis. Then, she sat at her computer terminal and wrote for three hours about how some blue-ribbon Bay Street brokerage firms, eventually hired by Stevens on government contracts, were asked beforehand to raise \$5-million to bail out the minister's private company (20).

The article that Francis produced that night appeared on May 9, 1986. When Francis questioned Eyton about the meetings he arranged between Noreen Stevens and the brokerage firms, she asked if he knew whether Sinclair Stevens was in attendance on either occasion, Eyton refused to comment: "I don't want to comment...As far as I am concerned it's a non-issue and I'm not prepared to say who was at the meeting" (21).

The impact of these three journalists on the career of Sinclair Stevens was phenomenal as they were instrumental in bringing about formal allegations. When the Parker Inquiry was first established to investigate Stevens' conduct, the three articles could be considered the basis for the allegations Stevens faced. These initial allegations were based on contacts the reporters found between Stevens and various companies that were either linked to him through

loans, or an attempt to get loans for the family business.

The first allegation of conflict-of-interest was with respect to the relationship between Stevens and Hyundai corporation of South Korea. This charge was made because as Harris reported, Hyundai owned eight per cent of Hanil Bank of South Korea, which loaned money to Stevens, and Hyundai built its parts plant in Stevens' riding of York-Peel (22). The second allegation dealt with the second Globe story by Harris, Stevens' personal financial link to Magna, and his interactions with Magna as a member of the government.

The third allegation stemmed from the article by Francis. Much like the charges with regard to Magna, Stevens faced conflict of interest because he had both personal financial and government dealings with Dominion Pitfield Securities and Burns Fry. These two prominent brokerage firms were hired by the government to help in the privatization of government companies. Both were approached by Noreen Stevens, after Sinclair Stevens had asked Eyton if he would initiate discussions with these firms on behalf of his wife.

These preliminary reports were received by Members of Parliament with a mixture of rage and disbelief. Rage, because a member of cabinet had been implicated in a conflict-of-interest situation, although some ministers were angered that the press could make such allegations about a minister. Most of the criticism that the government had to

face came from Liberal members of the Commons, in particular Sheila Copps and John Nunziata, two freshmen MPs and members of the notorious 'Rat Pack'. Both were vocal about the different incidents regarding Stevens that had come to light through the press.

On May 7, 1986, Stevens was appearing before a committee on which both Copps and Nunziata sat. Instead of questioning Stevens on the issue at hand (the ministry's budget), the two began to grill him on the allegations made in the newspaper stories. Nunziata announced that he felt "The industry minister is drowning in corruption and he knows it" (23). Sheila Copps chased Stevens down a hall after he had left the committee room, and when she forced her way up to him said "You're leaving the impression with everybody in Canada that you used your connections in order to get a benefit from your position as a minister" (24).

John Turner, the leader of the federal Liberal party communicated his disapproval to Stevens, suggesting Stevens resign from Cabinet and parliament before his actions became the focus of an investigation that might harm the reputations of both himself and the institutions of government: "Turner appealed to Stevens 'either to provide a full explanation of the \$2.6 million loan obtained by your company or step down as minister until a full investigation is completed'" (25). On the other hand, members of the Progressive Conservative party responded to the stories with

disbelief.

Initially within his own party, Stevens found a great deal of support. Both the Prime Minister and the Deputy Prime Minister defended Stevens in the House of Commons. However Prime Minister Mulroney had changed his stance by the conclusion of the public inquiry:

Brian Mulroney, once one of Sinc's staunchest supporters, said that the conclusions in the report 'speak for themselves...The government accepts the commissioner's findings and concurs that the very high standards which Canadians have a right to expect from ministers of the Crown were not observed in this case.' Mulroney's attitude had changed radically since that day in 1986 when he insisted that the newly-resigned industry minister would be completely vindicated, and returned to cabinet (26).

The government response to the allegations made against Stevens had been fairly immediate. By May of 1986, Chief Justice Parker, a long time supporter of the Conservative Party, was asked to head an inquiry that would investigate all of the allegations. Given a mandate from the Privy Council, Parker quickly arranged to have David Scott, an Ottawa lawyer and supporter of the Liberal Party, to act as the chief prosecuting attorney. Scott was allowed to select his own staff to help in the investigation.

At first, Scott was wary about his appointment, he was concerned that Parker was selected as the commissioner on the basis of his political affiliation, and that the purpose of the inquiry was to make the affair disappear as quickly as possible. Or he feared that Parker might hinder the task

of investigating all of the allegations made against Stevens because of his allegiances. But these suspicions were rapidly eradicated; Parker let Scott know that he respected his abilities, and that he purposely chose a Liberal to head up the investigation so that the inquiry would be impartial, not only in appearance, but in operation.

The inquiry was not established by the government to reassure the public that it was willing to address the problem and punish members who broke the conflict of interest code. Aside from the obvious calls from the opposition, Sinclair Stevens himself had requested that an inquiry be set up. As was mentioned in his Cabinet resignation speech, Stevens wanted an open inquiry to prove that there was no truth to any of the allegations made against him. Once this had been proven, Stevens assumed that he would then be reappointed to the Cabinet. Of course, this was not the final outcome.

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## Chapter Three: The Flick Affair

### What Was The Flick Affair?

The Flick Affair centered around tax credits received by Friedrich Karl Flick for profits made on the sale of shares. Flick was able to secure the credits even though he did nothing to legally warrant them. As a result, the West German parliament investigated how Flick secured himself these credits. Exposed was a complex trail of payments made to high ranking politicians and political parties. In turn, both legislative and judicial measures were taken to curb the guarantee of political influence through large donations.

Some dismiss the Flick Affair as a simple case of tax evasion. In 1975 Friedrich Karl Flick, West Germany's wealthiest industrialist, sold his 29% share in Mercedes Benz and wanted to avoid paying \$380 million in taxes (1). So, for some, "it was merely a conspiracy to evade paying tax" (2). But, for others, it was a much more complex case that involved bribing politicians and political parties alike in order to gain the tax concessions. To decide which of these two the Flick Affair can be considered, a conspiracy by the Flick Corporation to avoid taxes, or corruption - a brief discussion of the events leading to the affair is necessary.

Legally, Flick could have avoided paying the taxes if the profit was reinvested in a way so "that it [would be] considered to be 'in the interest of the national economy'" (3). To do this, Flick invested the money in W.R. Grace and Company, an American firm. According to the definition used to decide whether concessions should be granted, to benefit the German economy either German technology must be exported, or German people must be employed over the course of the venture.

Flick's reinvestment met neither of these two conditions. No technology was exported from Germany and utilized by Grace, and at most, the Board of Directors of Grace had only three Germans sitting on it. No other Germans were employed by Grace. Although Flick did not meet either of these requirements, he still received the tax concessions. Based on this knowledge and the exposure of other irregularities, the Bundestag ordered an investigation. The events that were uncovered have commonly become known as the Flick affair.

Revealed in this investigation was a long list of financial donations to prominent politicians and to all of the political parties except for Die Gruenen (the Green party). These donations were not made by Flick himself, but by a life-long friend and dedicated employee, Eberhard von Brauchitsch. According to von Brauchitsch, the contributions were made on behalf of Flick, and not because

Flick ordered him to make the contributions. Whenever von Brauchitsch gave money, he would list the amount, the recipient, and the date in a personal diary that he kept. As with the Stevens case, it was the discovery of a diary that proved to be the downfall of the entire scheme:

von Brauchitsch was scrupulous in recording all of his transactions in a diary. It was this diary (which somehow came into the hands of the authorities) which provided complete proof of the extent of Flick's attempts at buying friendship and influence (4).

Donations per se are not illegal in the West German political system, but there are stringent rules regarding the reporting of such donations:

The political influence of the economic power of the Flick-group was not only ascertained by normal contacts and communications, but by illegal financial contributions to parties and politicians-illegal, because they were not published in the official accounts of the parties (5).

A 1967 law clearly states that for any donation in excess of \$11,916 given by an individual, or in excess of \$119,160 by a corporation, a complete public disclosure must be made (6). The disclosure must include the names of the donor and the recipient, and the amount of the contribution. This rule, when applied to the donations given by von Brauchitsch, was responsible for the conviction of von Brauchitsch, and two former cabinet ministers. These two ministers, Hans Friderichs and Count Otto Lambsdorff, were both prominent members of the Free Democratic Party (FDP), and former Federal Economics Ministers. In the entire

incident, only these three men faced any charges, and received any penalties. It was also established in section 21 of the Basic Law that parties must account for all sources of income (see Appendix I, p.151).

The first signs of pay-offs implicated the Christian Democratic Union (CDU). Initially there was no indication that money had influenced politicians in any of the political parties. One man can claim to have found the first trail of Flick donations, Klaus Foster. Foster, a member of the St. Augustine Christian Democrats association, just outside of Bonn, found this evidence in 1976, ten years before the final resolution. He discovered a long list of contributions to the CDU from a company in Liechtenstein, which was closely affiliated with the CDU (7).

Included in these documents was an extensive list of clients of this company. Feeling that there were some improprieties in the donations received from this foreign company, Foster turned over the lists he was auditing to federal investigators in Bonn. According to newspaper articles, the only reason that the Flick Corporation was singled out for an extensive investigation, was its name appeared on the clientele list of this CDU company more times than any other name. Had Foster decided not to question all of these reported donations to his party, the entire situation may have gone unnoticed.

Flick's financial influence was found to have extended

to many of the political elite on the German political scene. In fact, Flick had become known as the 'paymaster of the republic' (8). Estimates are that Flick spent \$10 million in his attempts to buy influence in Bonn (9). Although illegal, these donations did serve a valuable purpose in the political system. The political parties have to secure large donations to cover campaign expenses, and the best source for large amounts of money are those with wealth:

The parties seek to meet these expenses through large, tax deductible contributions from business and other interest groups...there is a real danger that political favors will be anticipated or actually promised by the parties in exchange for financial support (10).

In the case of Flick money, it would seem the sole purpose for these donations was to secure specific good will from the government, in all cases this was a tacit agreement.

Through the donations he made on behalf of Flick, von Brauchitsch was able to achieve political influence within the major political parties. By doing this, no matter which parties formed the coalition government, Flick would be able to access the political elite when requesting tax concessions. A second part of this strategy was to make sure that it would be in the best interest of all those involved to keep the donations a secret. If anyone gained knowledge of what was happening, political parties would have been viewed negatively by the German electorate:

In theory, this was just the sort of case that

might have brought the liberal democratic edifice tumbling down on the politicians' heads. In practice, however, - precisely because Flick's largess had penetrated so deeply into the party political structures of the Bonn Republic - this could not be allowed to happen (11).

As well, by giving unreported donations, von Brauchitsch was able to keep the tax credits out of the public eye; "Firms are not only motivated to choose illegal ways of donating to parties because they want to get tax reductions but because they can keep their activities a secret by these illegal ways" (12).

But it was not just parties that were tainted by the influence of Flick, whether directly, or through von Brauchitsch. Flick's contributions and gifts reached the top of the Bonn hierarchy. In many of these cases it was difficult to substantiate the amounts of the donations, or their effects. This was the case because many of the donations that von Brauchitsch made were in cash. Although these contributions had been listed in his diary, they could not be traced: "In many cases the money was personally slipped in plain envelopes to top-level politicians such as Helmut Kohl and F.J. Strauss by the Flick representative, von Brauchitsch" (13).

It was even suspected that Ranier Barzel, the former president of the Bundestag, was paid off by Flick in order to secure the chancellorship for Helmut Kohl (14). Barzel failed to lead the Christian Democratic Union (CDU) to victory in the 1970s, and

Because of his failure to drive the SPD [Social Democratic Party] from office, he was pushed aside for a new leader, Helmut Kohl. The story was that he was persuaded to resign because over the next several years Flick would pay about [\$1,067,250] to a law firm with which Barzel was associated- and the money would go to him (15).

When this information became public, Barzel resigned his post in the Bundestag. Kohl was also implicated in the scandal because of entries found in von Brauchitsch's diaries.

Documents alleged that Kohl had received \$336,627 in cash from the Flick Corporation (16). Kohl admitted to having received some money as donations to his party, the CDU, but disputed the documented amounts. He declared that he was only given a quarter of what he allegedly accepted. Kohl also said that

He immediately passed [contributions] on to his party treasurer. He denied that he had received further sums from Flick and also that the appearance of his name against various sums of money on a list kept by a former Flick manager, Mr. Eberhard von Brauchitsch, and Flick's accountant, Mr. Rudolph Diehl, signified any wrong doing. The money he did receive on behalf of his party had, he said, no conditions attached (17).

However, the allegations were enough to bring Kohl in front of the Flick committee for questioning. Since the Chancellor was a member of the opposition when he allegedly received the money, there is some uncertainty whether Kohl would have been in a position to influence any decision to give tax concessions to Flick.

On February 18, 1986, it was reported that Otto Schily,



a member of the Green party had drawn up a private summons alleging that Kohl had perjured himself when testifying about Flick donations. It is important to note that these were not charges brought against Kohl by the state, so it still had to be decided whether state investigators would pursue these charges. It was widely known that "Schily, a brilliant tactician, hit upon the idea of a private summons as a political and publicity device" (18). On March 12, 1986, it was decided by prosecutors in Bonn that they should investigate the charges of perjury brought against Kohl. By May 12, 1986, federal investigators decided that these allegations could not be substantiated, so they had to be dropped.

But the implications of Flick went much deeper, exposing an entire political sub-culture that existed in West Germany:

It suggests that the Flick affair may not have been about corruption in a precise legal sense but it did, in a political sense, raise serious doubts about existing political practices [uncovered by the investigation] (some of which have been changed as a result of it) (19).

Of course these dealings were not part of everyday West German politics. For the most part, the financial contributions that were being made were done in secrecy. This form of corruption had developed its own political culture, one that was not officially recognized by the state, but nonetheless used within the state:

Corruption after all, may be seen as an informal

political system. Whereas party manifestos, general legislation, and policy declarations are the formal facade of the political structure, corruption stands in sharp contrast to these features as an informal political system in its own right (20).

By no means were the methods used by von Brauchitsch to gain influence within both the government and political parties exclusive to the Flick Corporation.

Many other corporations and individuals had employed this method of influence building throughout the history of the Federal Republic (1949-). Since 1982, preliminary proceedings had begun on more than 1,800 cases of tax avoidance through illegal campaign donations. These cases have implicated all political parties except for the Green party, which was founded in 1980 (21). This illustrates how far non-reported funds had permeated the political system. These revelations turned out to be a great benefit for the recently formed Green party, as they allowed the party to "eagerly proclaim moral superiority over all opponents at home and abroad" (22).

The Flick Corporation had a history, or a tradition, of making cash donations to the leaders of Germany. There is evidence that Friedrich Karl Flick's grandfather gave money to political parties during the Weimar Republic, and his father had given money to the Nazi and Socialist parties throughout the 1930s. In a sense, for many, the most surprising element in the Flick affair was not the illegal contributions, but the fact that they had gone on for so

long without being noticed: "Representatives of the industrial group Flick...have been shown as ingratiating themselves by means of cash payments to politicians and parties in Bonn for decades" (23). Although this kind of practice had become commonplace in West Germany, in an attempt to preserve the political system, political influence was practiced in secret:

the West German political system has been founded on the principle that political reliability and the need for political consensus are vital if democracy is to flourish. There is therefore a strong impetus towards the repression of activities which might produce a decline in support for the system. On the other hand, arguably precisely because of this repressive tendency, West German politics abounds with examples of political scandals (24).

But it can also be noted that these actions have not brought about the decline or the demise of the West German political system.

#### Was the Flick Affair Corruption?

By placing the Flick affair in the context of this thesis' definition of corruption, it can be determined whether or not the actions of von Brauchitsch, Lambsdorff and Friderichs were corrupt. The fact that the affair resulted from bribery allows it to fit into the definition. Two federal ministers received money for granting special tax concessions to a private citizen, which is in violation of the West German party laws. If disclosures had been made

of Von Brauchitsch's donations, the Bundestag would not have been able to investigate the case on legal grounds. As well, the actions violate the public interest aspect of the definition. Count Lambsdorff, Friderichs and Flick all benefitted monetarily, while the general population would not be able to command the treatment that Flick could buy. On the basis of this analysis, the Flick affair can be considered corruption.

In the case of the Flick Affair, all those involved were attempting to hide the fact that Flick received the tax concession. Finally, there was the abuse of an official power. As V.O. Key Jr. noted, corruption occurs when "control [is] secured by an abuse - a perversion of the purpose - of the power granted to the official concerned" (25). This condition was also met in the Flick Affair. Both former Federal Ministers of Economics allowed Flick to get the tax credits, even though he failed to meet the conditions set out for reinvesting profits.

Flick did not export any West German technology, and aside from the token directorships handed out, no Germans were hired as a result of Flick purchasing shares in Grace Industries. Because the Flick Affair meets all of the conditions set out by the thesis' definition, it seems clear that the only conclusion that can be made is the one stated earlier, the Flick affair is a case of corruption. Although von Brauchitsch was a central character in the exchange of

money from Flick to the ministers, it is not known if he benefitted from the actions he took on behalf of his employer.

### How the Flick Affair Was Exposed

There were three elements that helped in exposing and resolving the Flick Affair. These were the coverage by the media, especially the weekly news magazine Der Spiegel, the West German equivalent of Time. Second, a powerful and effective fact finding committee that was established by the Bundestag (similar to the Canadian House of Commons). Finally, there was the development of a fourth political party, the Green Party, which was never approached by von Brauchitsch, and therefore, was considered to be both impartial and non-corrupted. The combination of these three elements helped to expose the depth of Flick influence:

thanks to the sense of duty of some (few) public officials, the investigative journalism and scandalizing interests of some (few) public magazines, and the rise of a non-establishment party, that the widespread practices of illegal party financing finally came to light (26).

In terms of getting information on the Flick Affair to the public, Der Spiegel did an exemplary job. During 1982, the magazine continually ran cover stories on the investigations of Flick's purchased political influence. It did everything from printing the transcripts of interrogations by the state prosecutors, to informing the

public of the latest news, such as the locating of the diary in which von Brauchitsch kept all of his transactions. Der Spiegel kept the public intrigued, while being able to capitalize on the situation by using enticing trailers such as "more news to come" (27), in order to keep circulation of the magazine high. In fact, it did such a commendable job of reporting what was happening, that partisan magazines and newspapers started to attack Der Spiegel because it was questioning the integrity of West Germany's political elite.

Most of the reports came out in 1982, when state prosecutors were investigating the party donations, and they followed up the reports with the final news story of the resignation of Ranier Barzel the president of the Bundestag, who was also implicated in the Flick Affair. Most of the information that the public received about the allegations made about politicians originated from Der Spiegel. This was because other news journals did not have sources giving them information: "Der Spiegel was the happy recipient of most of the Flick investigation leaks" (28). One benefit is undeniable, it provided the magazine with the positive result of increased sales when it printed stories about the Flick affair (29).

The Green Party, being new to the political scene, was not in a position to be offered cash by Flick or von Brauchitsch; in turn, this allowed the party's members to demand a thorough investigation. Even if the Green Party

had been in existence while most of the money was being passed from von Brauchitsch to the politicians and the political parties, it is doubtful that he would have considered giving money to the Greens, and it is widely accepted that the Greens would not have taken the money. The Green Party also provided the Flick Committee with its star member, Otto Schily. It has been said that without Schily, the work of the committee would not have been as effective. His absence could have meant that, "the revelations might have been more one-sided and muted" (30).

In the Bundestag itself, allegations made against any member were frowned upon and more than likely punished by the legislature. An example of this was with Juergen Reents: "So far, the Greens alone have suggested that Mr. Kohl was involved, and for saying that his way to the top was 'bought by Flick', Mr. Juergen Reents, a Green member of the Bundestag, was evicted from the chamber" (31). Because of the penalties imposed for speaking out against another member of the legislature, little was done to uncover more involvement in the Bundestag. This was left entirely to the committee system of the Bundestag.

The third component that contributed to the Flick Affair's wide public exposure, has already been touched upon briefly, the Flick Committee of the Bundestag. Established in May of 1983, the Flick Committee of the Bundestag sat until February 1986. This committee was established under

the Basic Law (the West German constitution), and was charged with the responsibility of getting all of the information that it could out of the witnesses. The major problem that the committee encountered was trying to get information out of the defendants and government ministries:

The fact-finding committee of Parliament according to article 44 of the Basic Law, however, had many problems clearing-up the Flick affair. Not only were the witnesses very reluctant in saying anything, but also the Ministries of Economics and of Finance refused to hand over documents that were relevant for the investigation of the affair (32).

This problem was quickly resolved when the Constitutional Court found that holding back these documents violated article 44 of the Basic Law (see Appendix I, p.151), at which time the ministries surrendered the documents.

Even an attempted early dissolution of the committee was cause for some speculation. It appears to have been a case of attempting to stop the investigation before other private and public citizens were implicated in the Flick Affair. If dissolution had occurred, it would have minimized the damage caused by the entire affair. It was felt that for political reasons - an election in one of the Laender (similar to a Canadian province) - the three established political parties were trying to bring an early end to the committee's investigations, so that allegations of corruption would not hurt them during the campaign:

The fact finding committee finished its taking of



evidence in March 1985. The member of the party Die Gruenen [Otto Schily] on the fact-finding committee, who opposed the termination of taking evidence, suspected that the CDU/CSU [Christian Social Union], FDP and SPD wanted to close the investigations because of the elections in Nordrhein-Westfalen in May 1985 (33).

In West Germany, the Land elections tend to reflect the people's attitude towards the federal parties, and it was speculated that a continuing investigation could have harmed the parties implicated in the Flick Affair. With a dark cloud such as this looming over the dissolution of the committee, it is hard to tell if the committee was completely effective. Clearly the committee was not as effective as Otto Schily would have liked it to be when it dissolved in 1986.

But, at the same time, it exposed not only the Flick Affair, but also other cases of influence peddling, detailing how deep these practices had penetrated both the bureaucratic (appointed) and elected branches of politics:

In the material of the fact-finding committee of the Bundestag one finds a lot of examples that illustrate the network of connections between the Flick management and the civil service of the Ministries of Economics and Finance. One has the impression that civil servants that give information from inside the bureaucracy to a company like Flick are not the exception that proves the rule of the rational character of bureaucratic power in the sense of Max Weber. The Flick affair demonstrates developments in the bureaucratic power which used to be power by knowledge (34).

These findings may not have maintained strong public confidence towards the integrity of the institutions of

state, but it made the electorate aware that the political system voluntarily aired its dirty laundry in public. If nothing else, this kind of response proved to the public that the Flick Committee of the Bundestag was making an attempt to expose and correct the corrupt practices that gave corporations excessive power in the political process. In the end, the committee did make some recommendations as to drawing guidelines that would curb under the table exchanges of money for political favours.

But at the same time, the Bundestag did not respond legislatively to any of the suggestions made by the committee. Nor did the final report that was issued arouse any public interest: "The committee report, when published, aroused hardly any public interest, and none of the remedial measures that had been proposed were enacted" (35). The report released by the committee was quite harsh regarding the actions of politicians and political parties alike. It was "stressed that politicians of the CDU, the CSU, the FDP, as well as the SPD had made themselves too accessible to the requests of the Flick Corporation" (36), which was the focus of all the investigations.

There were those who voiced criticisms regarding the committee's lack of initiative. Otto Schily, the committee member from the Green Party was the most vocal critic of the committee's investigations. Knowing that all of the parties except his had been influenced by Flick, he questioned the

integrity of the other committee members. Schily was of the opinion that even the opposition party was negligent for not actively pursuing all of the evidence: "The Greens' representative on the commission commented sharply in a dissenting report that even the SPD opposition had not contributed actively enough in the process of clearing up the factual findings" (37).

It is also interesting to note that Otto Schily felt that the Flick Affair involved corruption. In his dissenting report, Schily stated:

By means of donations the Flick Corporation has gained fields of influence systematically, so that it must be stated that political corruption on a large scale is involved, regardless of whether the punishable act of bribery or corruptibility has been realized in one or another case (38).

Schily was also of the opinion that the report issued by the committee investigating the Flick affair was an attempt to disguise what had actually happened to corrupt the system. Schily "denounced as a cover-up the final report of the all-party parliamentary investigative committee, which found that Flick had failed in any attempts it may have made with its donations to political parties" (39). In both the committee report, and the dissenting report, the actions of von Brauchitsch, and the politicians were condemned. Although the committee was not willing to report that corruption had actually taken place, it did acknowledge that the Flick Corporation had gained too much influence within all of the political parties.

News organizations and the political system were both responsible and responsive in their treatment of the Flick Affair. Of course, sections of the media, especially the print media, benefitted from this by increasing the share of their market share when they reported on the activities of the Flick committee, and the state investigation. The political system also benefitted by giving an outward appearance of being concerned about such dealings. It recognized the inherent representative inequalities that such actions impose upon the political system, and suggested measures to try and stop such activities.

#### Notes

1. All currencies have been converted into Canadian dollars, the rate used was posted on January 31, 1986. On that date, one West German Mark traded for \$0.5958 Canadian, and the American dollar was posted at \$1.4230 Canadian, according to the currency exchange rate, Globe and Mail, February 1, 1986, p.B7.

2. Anthony Glees, "The Flick Affair: a hint of corruption in the Bonn Republic", in, Corruption and Reform, Vol.2, No.2, 1987, p.114.

3. Erhard Blackenburg, Rainer Staudhammer, Heinz Steinert, "Political Scandals and Corruption Issues in West Germany", in Political Corruption: A Handbook, editors, Arnold Heidenheimer, Michael Johnston, Victor Levine (New Brunswick, N.J., Transaction Publishers, 1989): p.930.

4. Glees, "The Flick Affair: a hint of corruption in the Bonn Republic", p.113.

5. Christine Landfried, "The Flick Affair in the Federal Republic of Germany", (University of Heidelberg), pp.3-4.

6. David Conradt, The German Polity, Third Edition, (White Plains, New York, Longman Inc., 1986), p.127.

7. Frank Johnson, "Who is Flick's Frank Wills?", London Times, March 15, 1986, p.48.
8. Glees, "The Flick Affair: a hint of corruption in the Bonn Republic", p.113.
9. Ibid., p.113.
10. Conradt, The German Polity, Third Edition, pp.127-128.
11. Anthony Glees, "Political Scandals in West Germany", (Department of Government, Brunel University): p.4.
12. Landfried, "The Flick Affair in the Federal Republic of Germany", p.7.
13. Von Alemann, "Bureaucratic and Political Corruption Controls: Reassessing the German Record", p.855.
14. "Not Quite Wassergate", The Economist, November 10, 1984, Vol.293, No.7367, p.49.
15. Alex Dragnich, Jorgen Rasmussen, Major European Governments, (Chicago, The Dorsey Press, 1986): p.392.
16. "Not Quite Wassergate", p.49.
17. Ibid., p.49.
18. Frank Johnson, "Kohl Fights Perjury Charge", London Times, February 18, 1986, p.7.
19. Glees, "The Flick Affair: a hint of corruption in the Bonn Republic", p.111.
20. James Scott, "Handling Historical Comparisons Cross-Nationally", in Political Corruption: A Handbook, editors, Arnold Heidenheimer, Michael Johnston, Victor Levine (New Brunswick, N.J., Transaction Publishers, 1989): p.129.
21. Blackenburg, "Political Scandals and Corruption Issues in West Germany", p.920.
22. Arthur Gunlicks, "Campaign and Party Finance in the West German 'Party State'", Review of Politics, Vol.50, No. 1, Winter 1988, p.39.
23. von Alemann, "Bureaucratic and Political Corruption Controls: Reassessing the German Record", p.855.

24. Glees, "Political Scandals in West Germany", p.1.
25. V.O. Key, Jr., "Techniques of Political Graft", in Political Corruption: A Handbook, editors, Arnold Heidenheimer, Michael Johnston, Victor LeVine (New Brunswick, N.J., Transaction Publishers, 1989): p.41.
26. Blackenburg, "Political Scandals and Corruption Issues in West Germany", p.927.
27. Ibid., p.924.
28. "Flickering Scandal", The Economist, October 27, 1984, Vol.293, No.7365, p.50.
29. Blackenburg, "Political Scandals and Corruption Issues in West Germany", p.924.
30. Glees, "The Flick Affair: a hint of corruption in the Bonn Republic", p.117.
31. "Flickering Scandal", p.50.
32. Landfried, "The Flick Affair in the Federal Republic of Germany", p.14.
33. Ibid., p.15.
34. Ibid., p.12.
35. Blackenburg, "Political Scandals and Corruption Issues in West Germany", p.926.
36. von Alemann, "Bureaucratic and Political Corruption Controls: Reassessing the German Record", p.865.
37. Ibid., p.865.
38. Ibid., p.866.
39. Frank Johnson, "Accuser of Kohl Bows Out With Final Barb", London Times, March 14, 1986, p.9.

## Chapter Four: Comparing Responses

### The Public Inquiry into the Stevens Case

The Commission of Inquiry into the Facts and Allegations of Conflict of Interest Concerning the Honourable Sinclair M. Stevens (the Parker Inquiry), was established by Order in Council PC-1986-1139 of the Privy Council. Such public inquiries gain their authority from Part I of the Inquiries Act. On the recommendation of the Prime Minister, William Dickens Parker was appointed as the commissioner. The order was passed on May 15, 1986, entrusting Parker to inquire into and report on:

- (a) the facts following allegations of conflict of interest made in various newspapers, electronic media and the House of Commons, with respect to the conduct, dealings or actions of the Honourable Sinclair M. Stevens; and
- (b) whether the Honourable Sinclair M. Stevens was in real or apparent conflict of interest as defined by the Conflict of Interest and Post Employment Code for Public Office Holders and the letter from the Prime Minister to the Honourable Sinclair M. Stevens of September 9, 1985 (1).

With this, Parker had a mandate to conduct a full inquiry into the allegations against Sinclair Stevens.

Hearings were held from July 1986 to February 1987. Initially, the inquiry focused on five categories of allegations of conflict of interest involving Stevens. First there was the conflict with Magna. Second was the conflict with two brokerage firms, which were awarded

government contracts to sell shares in Crown Corporations being privatized, at the time when they were asked to help out York Centre. Third was the private dealings with Hanil Bank and the government's interactions with Hyundai. Fourth was that Stevens may have "mingled his private interest and the public interest" while he was a minister (2). Fifth, his blind trust was not blind as required by the Conflict of Interest Guidelines for Ministers of the Crown.

The Parker inquiry was one of the longest and most expensive inquiries commissioned by the federal government. Exact costs are not known because much of the commission was paid for by the Privy Council, which does not have to release figures on its expenditures. But it seems that the only conclusion that can be drawn about the inquiry, regardless of the criticisms it received, is that it was effective because it was able to uncover evidence that proved guilt.

The major reason behind the commission's success was the investigative work done by David Scott and his staff. If they had not discovered the diaries that Shirley Walker kept of Stevens's private affairs, many of the allegations made against Stevens could not have been substantiated. These diaries also led to further charges being brought against Stevens.

Parker's final assessment of the Stevens affair was



that Stevens had been in violation of the conflict of interest guidelines on a total of fourteen separate occasions. Some of the initial allegations had to be dropped either because of lack of evidence, or because there was sufficient evidence that no conflict had ever existed. It is important to mention that there is no need for an actual conflict to exist in order to be convicted of conflict-of-interest, and that the appearance of conflict by a minister (apparent conflict) is as condemning. As Parker stated: "I was directed to inquire into the facts following these allegations and report on whether Mr. Stevens was in real or apparent conflict of interest under the code of conduct governing public office holders" (3).

What is interesting is that Parker, when discussing apparent conflict, mentions that there may be differences in each person's perception:

An appearance of conflict could thus exist even where there is no real conflict in fact. Real conflict requires, inter alia, knowledge on the part of the public office holder of the private interest that could be affected by his or her actions or inactions. No such actual knowledge is necessary for an apparent conflict because appearance depends on perception (4).

Although this is only a minor point, it does become an issue when discussing apparent conflict. Just because a member of cabinet may not be aware that a conflict exists, members of the media or the public may view actions as an actual conflict, which can in turn harm the integrity of the government.

For the purposes of deliberation, Parker had to devise his own definitions of the ambiguous terms, real and apparent conflict of interest, which were agreed to by the prosecuting counsel and Stevens' lawyer. As specified by Parker, three conditions have to be met for real conflict of interest; 1) existence of a private interest; 2) the office holder is aware of the interest; 3) the connection with public duties is sufficient to influence those duties. As well, Parker determined that there does not have to be a divergence between public duty and private interests for a real conflict to exist. This test was left broad, because Parker felt:

if the need to show an actual decision conferring a benefit is to be required as part of the test for conflict of interest, the test would be narrowed down to what is already proscribed by our criminal law (5).

Parker placed a great deal of importance on the need to move away from reliance on the criminal code, and wanted to create a more stringent measure for public officials (6).

The formal definition that Parker settled on was:

A real conflict of interest denotes a situation in which a Minister of the Crown has knowledge of a private economic interest that is sufficient to influence the exercise of his or her public duties and responsibilities (7).

Parker's next task was to decide upon a working definition of apparent conflict of interest. Again, Parker did not want to impose the rule of law on guidelines, and he was lenient in classifying an act as an apparent conflict.

Apparent conflict would not include any decision made where a minister was unaware of the effects the decision would have had upon private holdings. In the end, Parker decided on this definition: "An apparent conflict of interest exists when there is a reasonable apprehension, which reasonably well-informed persons could properly have, that a conflict of interest exists" (8).

Parker stressed the importance of formulating these definitions at the end of the inquiry's public hearings. Each was decided upon in consultation with counsel from both sides, so some consensus was arrived at by the three parties involved. When the final report of the Inquiry was released, its findings of guilt were challenged by John Sopinka on the basis that Parker's definitions did not coincide with those arrived at by Sinclair Stevens. Parker was aware that these definitions had some shortcomings, and warned that they could only be applied to a situation after all of the facts have been collected, and that in certain circumstances they may have to be adjusted for as yet unforeseen situations (9).

In the end, Parker found Stevens guilty of contravening the conflict of interest guidelines on at least fourteen separate occasions. First, there was Stevens' continued involvement with York Centre affairs. Testimony given by Mel Leiderman, the accountant for the York Centre group of companies, supported these charges. Leiderman admitted to

the inquiry that Sinclair Stevens attended, and actively participated in discussions about York Centre's financing after he was appointed to cabinet. This led Parker to "find that Mr. Stevens was present on both occasions not as a casual observer providing background commentary but as an individual who was vitally interested in the management of his companies" (10).

Second, Parker dealt with the gold mining interest. Again, Parker found that there was a conflict. Not only did Stevens know about the attempt by York Centre to invest in the gold play, but he initiated all of the contacts with those that were trying to find financing for the project. Parker further found:

that Mrs. Stevens kept Mr. Stevens fully informed as to the progress of the gold play and that Mr. Stevens remained interested and involved as the initiative developed (11).

The third issue that Parker addressed was the Christ Coin proposal that York Centre was attempting to develop. The focus was on the meeting that Sinclair Stevens and his wife had with officials of the Chase Manhattan Bank. During that meeting, members of the bank brought up the issue of financing the coin while they were trying to secure contracts as government consultants. Both Mr. and Mrs. Stevens were in attendance at this meeting. Parker found this to be further evidence of conflict: "discussions and meetings revealed important evidence concerning the nature and extent of Mr. Stevens' involvement in private business

matters while he was a Minister of the Crown" (12).

Parker also felt that Stevens was in violation of the conflict of interest code on a number of other occasions, such as when he privately solicited financial aid from members of the business community on behalf of his wife. As well, there were a number of major conflict of interest charges. These involved the loan from Anton Czapka, and Stevens' continued dealings with Magna International (13). Suspicion was also cast on Stevens' selection of board members to the CDIC. Board members represented business interests that Stevens approached for financing of York Centre; some of these members were in conflict of interest themselves because they had to vote on privatization bids that were submitted by the private firms by whom they were employed (14).

#### Parker's Responses to the Stevens Affair

The federal government has made attempts to stop abuses of blind trusts, and avoid conflicts of interest by ministers. On the basis of federal reports and recent legislation passed by provincial governments, Parker offered some suggestions on how to reduce these problems. Borrowing from the 1984 Starr-Sharpe Report (Ethical Conduct in the Public Sector: Report of the Task Force on Conflict of Interest), Parker suggested that all Cabinet ministers make

full public disclosures before assuming executive duties. He felt that this measure was necessary in order to enhance public confidence in the government's impartiality (15).

Stevens was under no obligation to make a public disclosure of all holdings; most notable is the guidelines' omission of listing controlled assets. A controlled asset is defined as an "assets that could be directly or indirectly affected as to value by Government decision or policy" (16), placing a minister, or any legislator, in a position to profit from decisions. Parker also found that the guidelines which controlled conflict of interest lacked strength in one important respect: there was no definition of conflict of interest. It was only stated that a minister should avoid such situations, and each minister should have discerned these situations individually. Another concern was the operation of a blind trust, which Parker declared did not work in the case of Sinclair Stevens. Parker saw no need for this measure in the future, as it was an inadequate way of prohibiting a minister's involvement in the management of a family business.

It was noted by Parker that a blind trust was

designed to distance the minister from his or her private business interests. There is no attempt to blind the minister to the existence of these business interests - indeed, the minister [was] informed of any material changes in the trust holding (17).

As this shows, Parker did not believe that a trust could perform the function it was designed to do, and that a full

disclosure would do a more than adequate job in replacing it. Another point that Parker touched on was the position of a minister's spouse. He offered the suggestion that a full disclosure be made of the spouse's holdings because it is impossible for a minister to "ensure, first, that a spouse's activities do not create a conflict for the minister, and, secondly, that a spouse is not used as a vehicle to circumvent restrictions on the minister's behaviour" (18).

In response to Parker's suggestion of full public disclosures of assets, Mitchell Sharpe, one of the co-authors of the Starr-Sharpe report said that "Disclosure will reveal potential conflicts of interest, but will do little to resolve them...It doesn't do anything to protect the public against the breaking of the rules" (19). More importantly, Sharpe felt that the best recommendation of the Starr-Sharpe Report was overlooked by Parker: the foundation of an ethics commissioner. This commissioner would have the power to advise ministers of areas of real or potential conflict, and police their activities. However, Prime Minister Mulroney seemed quite enthusiastic about Parker's suggestions for reform. It was also during this time of renewed interest in the Stevens affair that Sinclair Stevens voiced his opposition to Parker's findings. And Stevens continued to contend that Parker was incorrect in his definitions of both actual and apparent conflict of

interest.

### The Flick Trial

After the Flick Committee of the Bundestag concluded its hearings, Hans Friderichs, Otto Graf Lambsdorff and Eberhard von Brauchitsch were tried by the Constitutional Court. Each was charged with tax evasion, bribery and corruption. The hearings drew to a close on February 16, 1987. All three were found guilty of tax evasion, but the charges of bribery and corruption were dropped because of a lack of evidence. As the chief justice noted, it was too difficult to substantiate the charges of corruption because of the "poor memories on the part of witnesses" (20). All of the men received fines for their part in the Flick Affair, and von Brauchitsch was given a two year suspended sentence.

What the court found most reprehensible about the entire affair was that it showed the inequalities that existed in the West German political system. These inequalities had affected the levels of influence that some private citizens have with regard to the nation's politicians and political parties:

West Germany's highest court stated on July 16 1986 that there had been a 'violation of the citizen's right to an equal share in the political decision - making process' - equal to that exercised by those with large sums of money to dispose of. This must mean that it was believed-



at the top - that Flick had tried to use his wealth to exert pressure on politicians and that this 'violated' democratic norms (21).

The charges of corruption and bribery were dropped solely because of a lack of evidence. At no time did the court question the legitimacy of these charges. According to the judge, Hans Henning Buchholz, although the charges could not be substantiated, they were rightfully implied because money had passed from von Brauchitsch to Friderichs and Graf Lambsdorff: "It therefore seems reasonable to wonder - as did the Court - whether the lack of evidence truly meant that corruption had not been attempted" (22).

There were also the problems that arose with the testimony of key witnesses at the trial. Of great importance was that given by Rudolf Diehl, the chief book-keeper for Flick industries. During the trial, Diehl "said he had sometimes written names of politicians next to Flick donations in a secret list without actually knowing they took the money" (23). Because of the prosecution's inability to confirm the information in the secret diaries, it was not possible to bring charges against all of the politicians listed in its pages.

In the past, the court had tried to eliminate these inequalities by striking down legislation that allowed those with large financial resources to donate as much money as they wanted to parties and politicians, and in return, receive a full tax credit for the amount of the

contribution. Since the court had not previously allowed these pieces of proposed legislation to become law, it was quite logical for the court to follow these precedents when finding the three defendants guilty. The court wanted to help in the creation of a system where all Germans have equal access to, and representation from, those who possess political power.

### Comparing Judicial Responses

The Parker inquiry had a more formidable task than that given to the Constitutional Court, since the Bundestag had established a committee which did most of the investigative work into allegations of secret funding from the Flick corporation. Parker's mandate left the inquiry with this responsibility in the Stevens case, as well as coming to a decision based on the evidence. Although the tasks varied, both judicial bodies had to proclaim either innocence or guilt in the two cases. In each, a verdict of guilty was handed down.

Neither of these decisions found the men on trial guilty of corruption. However, the two judicial bodies did have reasons to find them so. West Germany's Constitutional Court was forced to dismiss all criminal charges of corruption because of lack of evidence. But it was clearly stated by the jurors that they determined the behaviour of

the defendants had warranted the original charges. In the Stevens case, Parker had to abide rigorously by his prescribed mandate to determine if Stevens had violated the conflict of interest code. Parker did not attempt to define the actions of the former minister as corrupt. Nevertheless, Stevens' actions were found to be in contravention of the Prime Minister's code. When Stevens' actions are placed in the context of the specified definitional criteria, they can be considered corrupt in that Stevens gave the appearance that he was mixing government and private business.

In the written decisions, both judicial bodies sent strong messages to their respective legislatures, that more stringent rules for legislators had to be implemented so that these forms of illicit dealings would not become commonplace. Each decision contained a comprehensive list of amendments to existing codes that could accomplish the desired goals. The greatest weakness that the two forums shared was the inability to enforce the development of a more stringent code for legislators. Any recommendations were simply that; suggestions that the institutions could consider, but were under no obligation to include in current or future legislation.

One difference between the two outcomes - which could influence legislators' behaviour - is the ability to impose punishment on the convicted. As noted, the West German

Ministers had to pay fines for accepting Flick money. Parker was only able to determine Stevens' guilt in terms of violating guidelines. Any form of punishment would be left to the House of Commons or the Progressive Conservative party. It cannot be determined if this fact has acted as a deterrent in West Germany or as a catalyst in Canada. But if punishment does act as a deterrent, the results of the Flick trial would have had a greater impact in terms of reducing abuses because Stevens was not penalized by the House of Commons.

#### Public Responses to the Case of Sinclair Stevens

The purpose of this section is to see what reaction the press had to the final report of the Parker inquiry. Judge Parker submitted the report to Prime Minister Mulroney on November 27, 1987, and it was tabled in the House of Commons on December 3, 1987. In the case of Sinclair Stevens, mass public opinion is extremely difficult to measure. Just prior to the release of the report, opinion polls showed that only 22% of Canadians supported the Progressive Conservative government, but its popularity was beginning to increase due to the popularity of the free trade deal that was being negotiated with the United States. By the fall of 1988, Mulroney had assured himself a second term with a majority government. Instead, the most accurate way of

formulating what mass public opinion may be is through examining the print media and its response to the final report.

The press seemed to be negative towards both the government's existing conflict of interest rules that govern a ministers actions, and towards the monetary expense involved in the Parker inquiry. Much of the criticism the press had was towards the guidelines Mulroney had developed to govern ministers' behaviour. As Ross Howard mentioned:

In laying down his 1985 ethics package, Mr. Mulroney had rejected the urgings of a 1984 parliamentary task force to create an ethics commissioner to advise on, administer and investigate potential conflict situations (24).

The parliamentary task force that Howard mentions is the Starr-Sharpe committee that made recommendations regarding what types of rules should be developed for a conflict-of-interest code. Although there were criticisms regarding Mulroney's less than effective guidelines, some reporters took the opportunity to direct more pointed criticism at the Prime Minister himself.

Jeff Sallot, a reporter with The Globe and Mail, took the occasion of the commission's final report to criticize Mulroney's staunch defence of the existing guidelines, which were proven to be ineffective. Sallot stated:

in response to a barrage of questions from opposition MPs about the Stevens case, Mr. Mulroney said his Government had the toughest conflict-of-interest guidelines in any Western democracy. Yesterday's report by Judge Parker suggests Mr. Mulroney was wrong...His rhetoric has

come back to haunt him once again (25).

The second focus of the press was the cost of the public inquiry. Only the costs of the hearing, and the bill submitted by David Scott had to be released publicly, the total of which was estimated to be approximately \$3 million (26). Speculation had it that the bill submitted by John Sopinka, and his associates, for Stevens' defence came close to \$650,000 (27). Exact figures were not disclosed because the bills were paid for by the Privy Council and are therefore protected by Cabinet secrecy.

All of the renewed media attention surrounding the Sinclair Stevens affair gave many members of Canada's political establishment an opportunity to comment on the affair, on Parker's recommendations, and on what should be done by Parliament to stop such conflicts from occurring in the future. Regarding the affair itself, Prime Minister Mulroney stated the day after Parker's report was tabled that "his government agrees with Parker's finding and concurs that the high standards Canadians expect of ministers "were not observed in this case" (28). Even the government was willing to admit that Stevens did not abide by the honour system or the Prime Minister's guidelines. But this failing did not encourage the government to reform the system.

With all of the renewed attention given the Stevens case upon the release of the Parker inquiry report, the

former Minister made it clear that he did not agree with Parker's decision. Stevens felt that Parker had misdefined the conflict of interest guidelines that the Prime Minister had issued to Ministers. Even though John Sopinka had been consulted, and agreed to the commissioner's definition, Stevens believed the inquiry would have found him innocent if his definitions for real and apparent conflict had been used. An interesting note is that Stevens never divulged his definitions for real and apparent conflict of interest.

However, Stevens understood that the Prime Minister had no other choice but to accept Parker's ruling on the basis of Parker's definition. Definitional differences were also the basis of Stevens' appeal in the court system:

Sinclair Stevens announced yesterday [December 11, 1987] that he is appealing to the Federal Court of Canada to try to overturn the Parker commission's findings..Lawyers for Mr. Stevens said the review is being sought partly on the grounds that the judge erred in his definition of a conflict of interest (29).

With all of the criticism that the government received from the press and the opposition parties, Deputy Prime Minister Donald Mazankowski announced that the government would no longer be responsible for Stevens' legal bills.

Just three days after Stevens announced his appeal, he called another news conference. This time he attacked The Globe and Mail for what he felt was reporters stalking him, and making news, not reporting it. He also accused Geoffrey Stevens, the managing editor of The Globe and Mail, of

celebrating the minister's guilt. Sinclair Stevens declared: "Do you think it is normal for the managing editor of The Globe and Mail, the night that the Parker report comes out, to throw a party and rejoice at what he felt was a victory" (30). Geoffrey Stevens, no relation to the minister, immediately denied all charges made against him. He cited that there was no party held in his offices, and that if Sinclair Stevens had carefully read The Globe and Mail, he would realize that reporters also investigated the actions of other Cabinet ministers.

However, Stevens's accusation of being pursued by reporters, was not limited to The Globe and Mail. He and his wife both felt that they had been under the constant surveillance of the entire media when charges surfaced in Toronto newspapers. The couple felt that the renewed interest in the case in December of 1987 had caused the entire scenario to happen over again: "For four days last May we felt like we were hostages. Once again we look out the window and there's the media" (31); however, the media circus came to an end for the two with the resolution of the inquiry. All that remained of Stevens's political career was another eleven months as MP, culminating in the Prime Minister's refusal to sign Stevens' nomination papers for the 1988 election.



### The Public's Response to the Flick Affair

Although little has been written about the public (or the electorate's) response to the Flick Affair in terms of voting behaviour, some responses, and the political parties' concerns towards the public's response can be noted. Since only three parties are ever considered to be true coalition builders, the Christian Democratic and Christian Social Union (CDU/CSU), the Social Democratic Party (SPD), and the Free Democratic Party (FDP), it is difficult to determine if the electorate responded negatively towards these three parties. The fourth party with Bundestag representation, the Green Party, has only gained this representation during the 1980s. Most perceived the electorate as being indifferent to the corruption that was being investigated.

#### Public reaction

has been characterized by indifference rather than moral indignation... this may be explainable with some popular knowledge or belief, corresponding to everyday experience, that a certain degree of corruption - a certain degree of bending the rules - is needed to make life bearable in a bureaucratized and highly regulated world... public indifference may be attributed to a view that expects politicians to be corrupt anyway (32).

Responses by the political parties did not reflect the public's perceived attitude of indifference towards the political system. Members of all the parties, except the Greens, wanted to have the Flick Committee report brought down in advance of a Land (provincial) election.

The general consensus was that if the Bundestag's

investigation continued, it could hurt the ability of the three large parties to attract votes. Indeed, some reporters believed that there was an initial sign of negative voter response to the parties implicated in the Flick affair. Evidence was provided by the Lander election in Schleswig-Holstein, which coincided with Otto Schily's allegations of perjury against Chancellor Kohl:

Some opinion polls suggest that in the wake of this announcement [allegations of perjury] the Chancellor's personal popularity rating fell by exactly the same amount as the Christian Democratic vote has fallen in Schleswig-Holstein—some six percentage points (33).

However, this one result did not start a new pattern for elections that took place while the Flick affair was still in the headlines, and it did not seriously harm the electoral draw of the three established parties.

Speculation had it that the public was not concerned about the corrupt practices, because they were used to these allegations being levelled at other public officials:

so far, the Flick affair has had less impact in West Germany than might have been expected. This is partly because allegations of receiving money illicitly have been levelled at various times against all the main parties, apart from the Greens (who were not around at the time) (34).

In some respects, it was never expected that any of the former regulations governing party donations would have the weight to curb unreported donations. This came as a result of guidelines that had been labelled "restrictive and vague" (35). Thus they allowed many precarious situations to occur

because cash gifts could not easily be detected, and in some instances it was doubtful whether certain donations were illegal.

Ulrich von Alemann noted that the Flick affair acted as a catalyst for public awareness, and caused "hot debate on political corruption in the German public" (36). If this was truly the case, it illustrates that there is not the wide - spread acceptance of corruption that some claimed to exist. Much of the credit for any heightened awareness goes to the media that published details of the Flick Committee findings, and to the proceedings of the Constitutional Court. Ulrich von Alemann made a point of praising the efforts made by members of the media to bring information out into the open. He stated that: "In the 1980s corruption has been a topic of 'muck-raking' by committed journalists and by a few academic outsiders, but not by political scientists" (37).

This point can be somewhat contradicted, even by Von Alemann himself. He questioned whether much of the public was concerned with corruption in the political system. The argument behind this sentiment are election results, which clearly show the public was not so discouraged by the evidence of corruption that it would boycott the parties implicated in the Flick affair:

Those parties, namely the CDU/CSU and the FDP, which profited most from illegal party donations, were able to win the federal parliamentary elections with a distinct majority at the climax

of the scandal in spring 1983, and have been ruling since then without any contest. Only a minor critical part of the public reacted in a sensitive and alarmed way" (38).

### Comparing Public Response

In West Germany and Canada the parties to which the accused Ministers belonged maintained their status as part of the governing coalition or the government. This is peculiar in a number of respects. The first is that when the cases had been exposed to the general public, there was no noticeable disdain towards the politicians involved and the parties that they belonged to. Nor was there a notable decline in electoral support for the two political parties to which the three ministers belonged. Although polls did show a marked decline in voter support for the parties, this did not translate into lower levels of voter support when federal elections were held in each country.

The second result from the public exposure was a loss in trust of public officials. Of course there are those who never have, nor ever will trust politicians; but many people feel that the position of a Minister is one which should assist in the development of public trust towards the executive. Others believe that positions of authority allow politicians, considered to be unscrupulous, an opportunity to gain private benefits for performing their prescribed duties. A breakdown in trust can then occur because those

who do not possess financial resources, realize that they cannot command similar levels of representation as those with wealth. Skepticism of this magnitude would normally indicate that the electorate would want to change their party preference by the next election.

Of course the German and Canadian publics were angered by what was exposed in the press, but the press did not publish information regarding public outcry for new legislation. The media may not have found this necessary, and that public expression of disapproval was a strong enough sign to the political elites that the public wanted rules guiding legislators' behaviour made more restrictive. Or it could have been that there was no public demand for legislative reform, just that the three ministers were punished by the judicial system. And because of the limited media coverage after the cases had been resolved, it cannot be determined how the public regarded the legislative responses that were taken.

Elite public response (academics and the media) also showed signs of disapproval towards the actions of the ministers. As well, they were irate towards the legislatures, which in the past did little to legislate against abuses, nor did these bodies respond to the requests of the judiciary to reform codes. The Canadian news media took advantage of the limited government response to the Parker inquiry report to criticize the Prime Minister's

endless defence of existing codes. Both the media and the general public let the events slide, seemingly forgetting about the allegations shortly after they were resolved.

Cases such as these have generated renewed interest on the part of academics in both countries towards work in the field of political corruption. Some skepticism has been voiced toward these academic responses, with criticism focusing on the fact that attention would be given to a case when it was in the public eye, but their interest would fade when corruption was not a fashionable topic. The attention given these two cases after they had been resolved refutes this hypothesis. Work has continued to concentrate on what has or has not been done by the respective legislatures.

#### How Can Conflicts Be Stopped in Canada

It has been commented that "conflict of interest rules may be regarded as nothing more than cumbersome regulations which promote the...search for loopholes" (39). In actuality, codes are devised to aid public officials in the avoidance of conflicts of interest. One area that must be addressed by guidelines is that of "personal economic interests...which substantially affect the independence of the legislator" (40). No matter how much legislation is enacted there will still be some areas where discretion will be required.

A valid argument can be made for the necessity of guidelines governing the conduct of ministers in Canada. These "rules against conflict of interest can be deduced from the principle that decisions made about the application and administration of the law should be made impartially" (41). Impartiality must be the overriding principle to be followed, and the basis for this can be found in both the rule of law and the bounds of social equality. Essentially, this part of the doctrine of fairness which prescribes "decision makers shall not be in a position whereby they could favour people who are currently or were recently closely associated with them" (42). Simply put, rules would require ministers themselves to avoid conflicts of interest, and remain neutral when making decisions. Since the Sinclair Stevens affair, the Canadian government has initiated two pieces of legislation with stringent regulations.

The Members of the Senate and House of Commons Conflict of Interest Act (Bill C-114), was first introduced February 24, 1988. This legislation has three main sections. First is an annual declaration of assets by members of the Senate and the Commons. It also required spouses and all dependent children to file declarations. This would ensure that conflicts would not arise because of any family members' assets. It also means that direct family members could not take control of a Member of Parliament's assets.

Second, the legislation calls for the establishment of an independent three-member commission. The commission would perform a number of functions. One of the roles would be an advisory one - letting parliamentarians know which holdings they should divest themselves of. They would also make sure that all officials and their families fill out the necessary public declarations of assets. The final function would be to initiate investigations into any alleged misconduct. As can be seen from this brief discussion about the commission, its main purpose is to act in an advisory capacity, trying to help members avoid conflicts, and not to try and prosecute anyone needlessly.

Third, the legislation established penalties for non-compliance. These penalties ranged from fines, to members losing their seats. In November 1988, Prime Minister Mulroney called an election, and Bill C-114 died on the Order Paper. Since then, Bill C-46, which shares its full title with Bill C-114 has been proposed. Introduced on November 9, 1989, Bill C-46 was essentially the same as its predecessor.

Even though the Stevens case illustrates the need for such comprehensive codes, there has been one group particularly adamant in its rejection of Bill C-114. This group was the spouses of high ranking Members of Parliament. Generally, it was felt that this type of legislation was an invasion of privacy and was against the constitutional



rights of spouses and dependents. To protest the legislation, spouses started a letter campaign against the bill. It cannot be determined whether or not this campaign was responsible for the demise of the proposed legislation, but it may have been a convenient way of disguising the true goals of the elected officials. Keeping this in mind, it remains to be seen if Bill C-46 will become law.

Both of these bills contained measures which Parker suggested be included in any ethics code to regulate MPs. Most importantly, they both had provisions for public disclosures of assets by members, their spouses and dependent children. Through initiation of a process of public disclosures, any policy adopted by the House of Commons would be more effective because it would promote public vigilance. In turn, this should make Members of Parliament more conscientious about taking appropriate measures to ensure their actions conform to the governing guidelines (43). However, there are some reasons against a stringent code of conduct for all MPs, and there are those who feel that backbenchers should not have to be restrained by the same codes as Ministers because of the limited power they possess.

At the extreme, there is the belief that the existing rules already serve their function well. Of course there is the problem that conflict of interest remains undefined, so that "it became obvious that the unwritten code of conduct

was being interpreted in widely divergent ways, leading to unresolved internal disputes over standards" (44). Another reason for not developing a more stringent code is that "corruption in Canada has been rare; those cases that have arisen have been dealt with satisfactorily" (45).

There are two faults in this logic: first, rarity does not make an activity legitimate. The fact that only a few cases have been disclosed does not mean that the problem is limited in scale. As well, the process of dealing with the abuses is costly and time consuming, and the penalties given to Graf Lambsdorff, Friderichs and Stevens were minimal, so they do not act as effective deterrents.

It has been argued by our elected representatives that we should have faith in the integrity and honour of the MP to observe existing rules and unwritten codes. Evidence of this is given by Canadian Members of Parliament themselves, as can be seen in a study conducted by Michael Atkinson and Maureen Mancuso. Legislators consider a written code redundant (46). This paper challenges this claim on the basis that Stevens knowingly broke the few regulations he was committed to observe. At the other end of the spectrum, some hold that codes cannot "anticipate those types of wrongdoing which are not strictly criminal" (47). The problem with this logic is that there are wrongdoings that can be regulated, and violations that were not anticipated by such a code can be dealt with when they occur.

One of the traditional arguments against strict rules is that successful business people want to keep track of their private holdings, so a stringent code will act as a deterrent to these people who might otherwise consider entering politics. Most provinces have codes as strict, or more restrictive than either Bill C-46 or C-114, and are still able to attract qualified candidates from the private sector. If MPs are financially secure, the next line of reasoning goes, they are less likely to be influenced by outside forces. The final argument is that backbench MPs should not be held to the same rules that cabinet Ministers have to adhere to. It is believed that these MPs have little influence in the decision-making process, and therefore do not need as stringent regulation as Members of the Cabinet.

The Prime Minister did review existing guidelines during his first year in office, making few changes. Instead of enacting legislation that would empower the court system to deal with conflicts of interest, Mulroney opted to establish a Code of Conduct. By doing so, any violation would be dealt with through a public inquiry which does not carry the same authority as a court of law. While considering amendments to the code of conduct, it had been suggested to the Prime Minister that an ethics commissioner (called an ethics 'czar' by Erik Nielsen), be appointed to ensure that the code was being enforced, and all MPs were

complying with it. However, this was swiftly dismissed by the Deputy Prime Minister who was aware that the Prime Minister wanted "to retain accountability and the capacity to exercise his political judgement on conflict sanctions" (48).

There is a history to the conflict of interest letters issued by Prime Ministers. Lester Pearson was the first to do so, writing a simple warning to ministers that their actions should bear the closest public scrutiny. Pierre Trudeau expanded on Pearson's original letter. New requirements made ministers file full disclosures of non-personal assets, and brought about the establishment of blind trusts. In 1974 the office of Assistant Deputy Registrar General was created to ensure compliance with the guidelines.

When Joe Clark was elected, he kept the basic guidelines issued by Trudeau, but made them more restrictive. Under these new rules, Clark also required ministers' spouses and dependent children to fill out full disclosures, and for the first time, the guidelines were made public. Supposedly, public knowledge of the guidelines would encourage Members of Parliament to fully comply with them. After the short - lived Clark government, Trudeau again adjusted the rules governing legislators by removing the provisions regarding spouses and dependent children submitting disclosures. As tradition seemed to dictate,

Mulroney formulated his own conflict of interest code.

### Legislative Response to the Flick Affair

Laws on party financing in West Germany have existed since the writing of the Basic Law in 1949, and have been revised from time to time to stop abuses of the system. Fifteen years before the Flick affair was exposed, there had been an attempt to reform party financing in West Germany in what came to be known as The 1967 Party Law. Section 4 allowed all parties that received a minimum of 2.5% of the votes in an election to receive \$1.49 for each vote to recover campaign costs. This amount was raised to \$2.09 in 1979, and \$2.98 in 1986 (49). The purpose of this law was to reduce the necessity for political parties to rely on illegally obtained donations as was the case with von Brauchitsch. It was also the intention of the legislation to reduce the reliance on large donations from wealthy individuals or corporations.

In order for the 1967 law to meet constitutional requirements of Section 21 of the Basic Law (see Appendix I, p.151), it had to include some regulations that would force all parties to account for their sources of income. Section 5 of the legislation contained this clause so that all donations to political parties would be reported, thereby eliminating hidden contributions. Full disclosures would be

required to be made for any donations by individuals in excess of \$11,916 and \$119,160 by corporations. As well, these donors would not be able to deduct more than \$357 from their taxes for donations of any amount (50). These disclosures would expose those that donate large sums to parties and politicians, and thereby lessen the representational inequalities previously allowed by such donations, as fewer would find it advantageous to give large amounts.

Even though some measures had been taken well before Flick had been exposed, secret funding continued to plague the West German political culture. This practice became known as Umwegfinanzierung. The term referred to the practice of illegal donations because "businessmen and corporations were not interested in being named in the [party] reports" (51). An example of the illegal funding can be seen by a close examination of the CDU. The party had established the European Business Consulting Firm which was located in the neighbouring country of Liechtenstein. For all intents and purposes, this firm was nothing more than a clearing house for tax deductible party contributions. This firm would write reports for corporations and individuals at a minimum cost of \$5,958, for which a tax receipt would be issued. In turn, the consulting firm donated all of the money it received to the CDU.

Another method of securing further secret funding is through party education groups. All parties have established public political education foundations, to which tax deductible contributions can be made. These foundations would in turn give substantial monetary gifts to their associated parties each year, which meant that the actual contributors would never be exposed. Both of these methods of soliciting contributions are examples of how "parties were interested in obtaining more funds, if necessary, by engaging in illegal practices to grant the contributors tax deductions" (52). By 1978, 105 firms had been charged on suspicion of tax fraud for their donations to the CDU (53).

Renewed attention was given to financing problems by the Bundestag because of the publicity that the Flick Affair generated, and some legislation was drawn up in response to this. However, it is important to mention that the legislation that was introduced did not try to restrict the amounts that either individuals or corporations could donate to politicians or political parties. These virtually unlimited donations, which could be made under the legislation, would have been fully tax deductible. It cannot be honestly said that it was the Flick Affair that brought about this type of legislation regarding financial donations. Other attempts had previously been made to achieve the same objective, and in each case, the legislation heavily favoured those with money.

The final legislation, called the Party Finance Laws of 22 December, 1983, was approved by the constitutional court in July, 1986, with some minor changes. And,

To the surprise of many observers, the court upheld almost all of the new provisions, and where the court did act against the laws as predicted, its judgement was far more generous than almost anyone had expected (54).

The change that the court made was the 5% clause included by the parties. In essence, this clause would allow an individual or corporation to donate up to 5% of their annual income to the political parties, which would be fully eligible for a tax deduction. For the court, this clause was the only objectionable part of the law. The court stated that, "on constitutional grounds for disproportionately favoring high income earners" (55), it would not allow that solitary clause. Instead, the court suggested a maximum donation of \$59,580 annually. It is easy to see from this that the courts acquiesced to the political parties because the average German income at the time was \$23,832 (56).

As well, this decision reversed what the court had earlier tried to accomplish, because each of the subsidiaries of a corporation could donate up to \$59,580. When the parties had previously tried to pass a similar bill the courts always struck them down, using the same argument as they did when they finally let the legislation pass: "The judges said that the original figure 'violated the citizen's



right to an equal share in the decision-making process', thus implicitly accepting the obvious truth that Flick had bought political influence" (57). The main reason why the \$59,530 cap was placed on the donations was that political parties were not public interest groups.

Public interest groups can receive donations of any amount, and in return the donor can receive a full tax credit:

the constitutional court had repeatedly (in 1958, 1968, and again in 1979) ruled out this possibility, drawing repeated distinctions between public interest organizations (which do not have legislative authority or participate in the exercise of state power) and political parties (which have both of these) (58).

Although the courts had more or less allowed those with greater financial resources the ability to give much more in terms of donations, and allow these people, or corporations, to get tax credits, they did not allow political parties to define themselves as anything but political parties. In effect, this limited the parties' ability to receive unlimited contributions from donors.

As mentioned earlier, there was also the increase in the election reimbursement funds. All parties received \$2.98 for each vote that they gained in an election. Prior to 1986, a party had to get 5% of the total vote to have election expenses returned; however, the court felt that this level should be reduced to one half of a per cent. By increasing the amounts parties retrieved for their costs, it

was less likely that a party would have to rely on private donations. Also, this higher level of funding was to serve as a vehicle to promote equity between all political parties.

Party financing had risen at a rate higher than inflation, which may have encouraged the series of hidden contributions. Because of the political competition, each party had to be able to spend at similar levels, which meant parties became more competitive for scarce financial resources. It was assumed that by increasing amounts of available public funding, parties could then reduce their reliance on private funding. It was known that financial "reforms may not end the pressure for parties to keep up financially with their competitors, but they may lessen the likelihood that this pressure will lead to abuse of the political process" (59). This decision by the court illustrates that it was sensitive to the monetary needs of the parties, while trying to preserve the constitutional premise of equality in representation which was not present with parties accepting large contributions.

In essence, it can be said that the constitutional court finally gave in to the demands of the political parties: "The persistent noncompliance with existing legal rules had finally paid off" (60). Blackenburg also stated that, "it is plain to see that the court has in fact sanctioned the practice that parties had employed illegally

in the past, blatantly contradicting its own former jurisprudence" (61). In other words, the court legalized the corrupt practices it had formerly judged illegal. The large donations that were not allowed in the past became acceptable with the judgement; therefore, the court helped in perpetuating the inequalities that existed prior to the Flick affair, although previously illegal. Other areas of financing were also recognized by the new law.

An attempt was made in these laws to warn parties and politicians alike to avoid certain donations. This was actually presented in the form of a list that accompanied the laws. Included in this list of donations that recipients should be wary of, were those "from any source that indicates expectations of political or economic favoritism" (62). Although common sense would dictate to avoid these contributions, the list, which appears to be somewhat simplistic, may be necessary to assist in prosecuting future corruption cases. It acts as another provision that must be abided.

Some measures were taken to impose penalties on parties that were recipients of non-reported donations. Most notably is that if a party does not report a contribution, it may have to pay a fine of twice the donated amount to the President of the Bundestag. A number of difficulties could be encountered in the implementation of the newly announced laws and their penalties. If a donation goes unreported,

this is probably because neither the recipient nor the donor want the amounts publicized, and there are no prescribed methods of uncovering these transactions, unless, as was the case with the Flick affair, investigators stumble across records that would confirm suspicions.

There is also the problem of determining how much money was involved in an uncovered exchange. Again, if the amounts are not reported, there must be a reason for it. It would be likely that in these instances, there may not be a diary containing amounts and recipients that prosecutors could use. Since cases may be hard to substantiate, these sanctions may all prove to be in vain.

Of all the legislative action taken in response to the Flick affair there is one piece that is particularly interesting and the most controversial. In 1984 there was an attempt to pass legislation that would grant amnesty to all corporations and individuals that were being investigated for contributions that might have led to political favours. But, the legislation eventually had to be dropped because of strong public opposition (63):

the FDP and the CDU/CSU, [tried] to grant an 'amnesty' to individuals and firms under investigations for illegal political contributions, [which] failed when the Free Democrats, reacting to intense media and voter criticism, withdrew their support (64).

If nothing else, this illustrates how the political parties have, whenever possible, tried to protect themselves financially, and their donors legally. Even though the

parties were not able to protect those who donated illegally through existing or proposed legislation, they have insured themselves unlimited funding in the future. As well, they have insured those with wealth, greater access to political power through the new legislation.

The court's decision to support the new Party Law was not unanimous. Two justices in their dissenting opinion stated that the court was instrumental in "[smoothing] the way for individuals or groups having specific interests and big capital to exert influence on the development of political opinion in combination with tax-relief" (65). Two dissenters obviously were not enough to carry the court against the new legislation, but they demonstrate the existence of a core of resistance towards easing the rules that govern political donations. Clearly it is in the favour of parties to have non-restrictive guidelines, but the court could either continue on its present course of loosening such laws, or it may revert back to its more traditional stance of strict regulatory laws.

#### Comparing Legislative Responses

For the purposes of comparison, legislative responses constitute the most interesting section. The House of Commons in Canada, and the Bundestag in West Germany were both placed in the unenviable position of having ministerial

misconduct publicly exposed. At the same time, the cases provided the two legislatures with the perfect opportunity to adopt new and comprehensive legislation to keep these embarrassments from happening in the future. Instead of capitalizing on these occasions to initiate reform, the legislatures let the opportunities pass, deciding to restrict any legislation's effectiveness for governing legislator's behaviour, and little has been done to incorporate judicial suggestions.

One obvious difference in the two legislatures is that the Bundestag did pass legislation after the Flick affair was resolved in the court system. But it did not address the problems created in the political system by secretive campaign contributions. Before any proposed bill could become law, it had to pass the scrutiny of the Constitutional Court. Here, the weaknesses of the legislation were criticized. The judges found in the bill the legalization of formerly illegal campaign contributions. Precedent would have dictated that the Court not allow the proposed legislation to become law. When the Court decided that the legislation would stand, with the exception of the maximum donation clause, it knowingly gave in to the long standing desire of the political parties.

Recognizing the shortcomings of the legislation, and inability to legislate in place of the Bundestag, the Court issued its decision fully aware that high caps for maximum

donations would only serve to entrench representative inequalities. Of course there was also the introduction of the notorious amnesty legislation which did not make it through the Bundestag because of strong public opposition to it. Considering the Court's objection to the bill that had already been passed, it would be unlikely that it would have allowed the amnesty bill. However, the mere fact that the Bundestag introduced such a bill illustrates how lightly it takes such infractions, and the willingness of political parties to protect donors.

The House of Commons has not yet passed any new conflict of interest legislation. Since the resolution of the Stevens case, two conflict of interest bills have been introduced in Parliament. Neither have been adopted; the first failed with an election call in 1988, and the second is currently proceeding through the legislative system. What separates the Canadian effort from the West German is that the Canadian legislation did address the problems found in the Stevens case. Both pieces of legislation called for Ministers to make full public disclosures of their assets, and gave the legislature the power to enforce penalties on those found in violation.

The penalties which could be imposed ranged from fines to expulsion. As well, legislating a code of ethics would mean violations would be heard in a court of law. These sections of the legislation were suggested both by Parker

and the earlier Starr-Sharpe report. What each neglected was the establishment of an ethics commission, which would act as both a watchdog and a consulting body that MPs could approach if they were not certain whether an action complied with guidelines. If Bill C-46 makes it through the legislative process, it would clearly represent a more comprehensive effort to abolish conflicts. Failure to pass any such legislation will mean that there are no checks on a Minister's behaviour beyond the Prime Minister's letter and the conflict of interest code.

These two responses are divergent in that the Bundestag responded quickly to calls for reform by proposing two pieces of legislation. In Canada, the House of Commons has successfully avoided the passage of any new legislation. What the two legislative bodies have in common is an effort to avoid restrictive legislation, a behaviour which displays a level of complacency towards the discovered abuses. This is not to say that legislators accepted the abuses of their colleagues, but obviously felt there was no need to respond to the legislative weaknesses that allowed the abuses to occur in the first place. Clearly the judicial bodies that heard the two cases would be disappointed by these responses. Although the actions of Stevens, Graf Lambsdorff and Friderichs have not been legalized within either system, nothing has been done to outlaw them.

Without passage of either of these bills, the House of



Commons will display the same complacency as the Bundestag. Failure to pass C-46 will not result in an acceptance of Ministers placing themselves in situations of conflict in terms of private influence over legislative decisions, which the Bundestag effectively did with the passage of the newest election financing laws. However, failure to adopt more restrictive guidelines will mean that there are insufficient checks on a Minister's behaviour.

#### Sinclair Stevens Conclusion

For the Canadian political culture, the Sinclair Stevens case displayed the weaknesses inherent in the conflict of interest guidelines. It exposed the willingness of a Minister of the Crown to abuse his position of public trust in an attempt to save his private business, with which he was to have nothing to do under existing conflict of interest rules. From the evidence that was brought forward, and on the basis of the decision of Chief Justice Parker, it appears that some of the people that aided Stevens benefitted in return.

On the basis of the evidence, there are two groups which lost because of the incident. First, there is the public, who may have lost whatever faith they did have in the honesty and integrity of cabinet ministers. The electorate expects cabinet ministers to possess both of

these qualities. It may also have reduced the confidence the public had in the government as a whole; however, this is not supported by the subsequent election results. The next election was held in November of 1988, a year and a half after the Parker inquiry ended, and it is clear from the majority of constituencies that the Progressive Conservative party won, the Stevens case was only a minor part of party choice, if it played any role at all. The other group that lost were other industries that had legitimate need for money from Stevens' ministry, money that may have instead gone to Magna Industries.

There are two interesting end notes to the Sinclair Stevens affair. One is that Stevens could, and did appeal the decision of the Parker Inquiry (66). Since the Parker Inquiry was a public commission, it had no legal or political jurisdiction, it was not able to impose any penalties on Stevens. It was only able to render a decision regarding his guilt or innocence.

As well, Stevens did attempt a comeback in the political arena. In July of 1988, Stevens was nominated by the York-Simcoe Progressive Conservative riding association to be the candidate for the November election of that year. A month before the election, Prime Minister Mulroney announced that he would refuse to sign Stevens' nomination papers, citing: "Public confidence in the political process and in the candidates who offer themselves for public office

is essential. In my view, Mr. Stevens' candidacy would be inconsistent with that requirement" (87).

What Sinclair Stevens did was unprincipled, violating a code that he should have been familiar with. It can be speculated what would have happened if the case had taken place in West Germany, it would probably have received far less attention than it did in Canada. If the case had involved a high ranking member of the executive, the media may have spent some time investigating and reporting the incident, although it would not have afforded the case the same intense scrutiny as the Canadian media gave it. This conclusion is based on the fact that Stevens placed no conditions on the government funds he was in a position to distribute, so benefits could not have been a pre-condition for funding, especially in relationship to Magna Corporation. Considering the large number of cases of unreported campaign contributions that have been exposed in Germany, an incident of a minister acquiring aid for his own business pales in comparison to the influence Flick had acquired. Most likely, the Stevens case would have been viewed as a benefit that a ministerial post grants its occupant.

Presumably, public response would be even less notable than that of the media. Germans seem to have a built in suspicion regarding the integrity of their elected officials, as is made evident by the limited public response

towards the allegations of the Flick affair. Politicians are viewed as willing to use their power in order to benefit themselves, and in the Stevens case, there never was a question of creating representational discrepancies among the general public. Any decision made by Stevens' ministry would only affect wealthy corporations. So any corporation that would want its bid considered in the privatization process would be aware they would need to pay for this consideration. A large majority of private citizens would not be involved in the bidding for these companies, regardless, it illustrates that most citizens could lose authority in the political system if payment is required for consideration of a request made of a legislator.

In terms of legislative response, this is the area of the greatest discrepancy. When it was found that von Lambsdorff and Friderichs accepted large cash donations on behalf of the FDP from the private sector, the Bundestag took measures that increased the limits of funding allowed. It in no way addressed the issue of a private citizen receiving extra-ordinary considerations because of the donations. This is not to suggest that legislation would require a bid on a government contract be accompanied by a gift for the official in charge of granting such work. This would be a private condition attached by the minister him/herself. But it does prompt a conclusion that no legislative reform would be taken to counteract such

behaviour, regardless of whatever the Constitutional Court might decide.

### Flick Affair Conclusion

Although the West German political culture may regard the Flick Affair as a simple scandal, it goes far beyond being a scandal; corruption did occur. For the most part, evidence shows that Flick was willing to use his financial clout in order to guarantee himself favours that could only be secured through the misuse of legislative or executive powers. As well, public officeholders were willing to abuse their authority in order to obtain private financial benefits. Both sides involved in this corrupt act benefitted financially, and the only ones to lose out were the people without enough financial resources to command similar benefits.

The constitutional court did recognize this discrepancy, and tried to rectify it on a number of previous occasions, but the parties and politicians allowed it to persist by continuing to accept large donations without reporting them. If there was any decrease in the numbers of illegal contributions, the credit for this has to be given to the media. As Arthur Gunlicks noted that due to "the recent negative publicity and prosecutions concerning donations, large contributors had become a rare species in

Germany" (68), which illustrates the effectiveness of public exposure. There seemed to be little else that would reduce the large sums that individuals and corporations would give to parties and politicians, often in return for receiving illegitimate representation.

Count Lambsdorff and Friderichs may represent only a small proportion of ministers of finance involved in receiving cash donations for their party. On a number of occasions,

Investigations by lower-level officials and tax-inspectors [into tax fraud] were usually stopped at an early stage by political interventions 'from above'. Not infrequently, ministers of finance (being responsible for the investigation of tax fraud) were former party-treasurers (the ones who stood most to gain from illegal practices of party financing) (69).

Had these investigations been allowed to continue, they most assuredly would have been damaging to the minister of finance, and other high ranking political figures. Having the authority to suspend investigations, and not have these decisions undermined when such powers were used, the ministers were able to minimize the political damage. This executive interference does lead to one question, how many more German corporations, or wealthy individuals, and politicians would have been tainted besides those in the Flick affair?

What is truly interesting in this investigation is the response of the Bundestag, or lack of response. Instead of trying to limit large donations from a single source,

legislation was drawn up that would legalize them, so that these transactions would no longer have to be concealed. And the court, although not willingly, gave in to the wish of the legislature to make funding more accessible. In essence, the discrepancies in the political buying power of the public that existed before in the German political culture had become institutionalized. In terms of public standards, it would seem that none had been broken by Flick. Due to the high cost of financing a campaign, secret funding has become expected by the West German public, and a necessity for the political parties. There is nothing to show strong public resentment towards those people or corporations that may seek special considerations on the basis of monetary donations to the political elite.

If the Flick affair was put into the context of the Canadian political system, it would definitely be considered a real conflict of interest. Cash donations given directly to a minister could not be mistaken for anything else but bribery, which would be in direct contravention of the Prime Minister's guidelines. An infraction such as bribery would be a violation of the Canadian criminal code, as it is in West Germany, and as such would be tried in a court of law. Unlike with the Stevens case, it is doubtful that ministers implicated in bribery would be allowed to continue representing their party in the House of Commons, where Stevens was staunchly defended. This conclusion is arrived

at because Canada is the same country where a defense minister, Robert Coates, had to resign for being discovered in a West German night spot, with a woman of questionable character seated on his lap, and leaving his briefcase behind with government documents.

A case of the Flick affair's magnitude may have even forced the House of Commons to respond to such acts by not only introducing new legislation tightening up provisions for ministers to follow, but by actually passing such a bill. The public response would probably be far more condemning of a case of bribery than they were towards Stevens' conflict of interest. However, it is not evident as to whether a public call for reforms would persist over time, or dissolve soon after the judiciary came to a decision of guilt or innocence regarding the minister's actions.

Media response would be as strong, if not stronger in a case of bribery than it was in the case of Stevens. In Canada, the media has adopted the role of watchdog over parliamentarians, and did a worthy job of gathering evidence against Stevens. Since bribery would be considered a greater offence, the media would most likely be more persistent at insisting the government amend and strengthen conflict of interest codes. In all, a Canadian response to the Flick affair would be more condemning and direct than that taken in West Germany. The government would have to



respond in a forceful way to ensure ministers do not act on legislative requests from the private sector because they were accompanied by money.

#### Notes

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2. Parker, Commission of Inquiry into the Facts of Allegations of the Conflict of Interest Concerning the Honourable Sinclair M. Stevens, p.5.
3. Ibid., p.XV.
4. Ibid., p.32.
5. Ibid., p.27.
6. Ibid., pp.25-27.
7. Ibid., p.35.
8. Ibid., p.35.
9. Ibid., pp.33-34.
10. Ibid., p.115.
11. Ibid., p.126.
12. Ibid., p.127.
13. Ibid., p.258.
14. Ibid., pp.296-297.
15. Ibid., p.348.
16. Ibid., p.346.
17. Ibid., p.352.
18. Ibid., p.355.
19. Hugh Winsor, Globe and Mail, December 14, 1987, p.A3.
20. Blackenburg, "Political Scandals and Corruption

Issues in West Germany", p.926.

21. Gleees, "The Flick Affair: a hint of corruption in the Bonn Republic", pp.116-117.

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25. Jeff Sallot, Globe and Mail, December 4, 1987, p.A9.

26. Howard, "Report on Stevens inquiry to be tabled today", Globe and Mail, December 3, 1987, p.A1.

27. Cleroux, Polanyi, Globe and Mail, December 12, 1987, p.A2.

28. Bird, Toronto Star, December 4, 1987, p.A1.

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31. Sherri Aikenhead, "Bearing Up To Hard Times", MacLean's, December 14, 1987, Vol.100, No.50, p.13.

32. Blackenburg, "Political Scandals and Corruption Issues in West Germany", p.929.

33. Frank Johnson, "Herr Kohl's Tide of Trouble", London Times, March 5, 1986, p.13.

34. "Won't Lie Down", p.46.

35. Ibid., p.46.

36. von Alemann, "Bureaucratic and Political Corruption Controls: Reassessing the German Record", p.856.

37. Ibid., p.856.

38. Ibid., p.866.

39. Ian Greene, "Conflict of Interest and the Canadian Constitution: An Analysis of Conflict of Interest Rules for Canadian Cabinet Members", Canadian Journal of Political

Science, Vol.23, No.2, June 1990, p.234.

40. Bruce Carson, James Robertson, "Conflict of Interest Rules for Federal Legislators", Library of Parliament, Research Branch, Current Issue Review, 79-3E, November 10, 1983, p.2.

41. Greene, "Conflict of Interest and the Canadian Constitution: An Analysis of Conflict of Interest Rules for Canadian Cabinet Members", p.236.

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43. Warren Bailie, David Johnson, "Free From Interests", in Policy Options, Vol. 9, No. 2, March 1988, p.3.

44. Greene, "Conflict of Interest and the Canadian Constitution: An Analysis of Conflict of Interest Rules for Canadian Cabinet Members", p.244.

45. Carson, "Conflict of Interest Rules for Federal Legislators", p.3.

46. Atkinson, Mancuso, "Do We Need a Code of Conduct for Politicians? The Search for an Elite Political Culture of Corruption in Canada", p.480.

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48. McQueen, Blind Trust: Inside the Sinclair Stevens Affair, p.20.

49. Gordon Smith, Democracy in Western Germany: Parties and Politics in the Federal Republic, Third Edition, p.68.

50. Conradt, The German Polity, Third Edition, p.127.

51. Gunlicks, "Campaign and Party Finance in the West German "Party State", p.37.

52. Ibid., p.38.

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54. Ibid., p.44.

55. Blackenburg, "Political Scandals and Corruption Issues in West Germany", p.928.

56. Ibid., p.928.

57. Glee, "The Flick Affair: a hint of corruption in the Bonn Republic", p.122.
58. Blackenburg, "Political Scandals and Corruption Issues in West Germany", pp.927-928.
59. Russel Dalton, Politics: West Germany, (Glenview Illinois, Scott, Foresman and Company, 1988): p.280.
60. Blackenburg, "Political Scandals and Corruption Issues in West Germany", p.928.
61. Ibid., p.928.
62. Gunlicks, "Campaign and Party Finance in the West German "Party State", p.43.
63. Ibid., p.44.
64. Conralt, The German Polity: Third Edition, p.88.
65. von Alemann, "Bureaucratic and Political Corruption Controls: Reassessing the German Record", p.366.
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67. Globe and Mail, October 3, 1988, p.A1.
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69. Blackenburg, "Political Scandals and Corruption Issues in West Germany", p.927.

## Conclusion

Evidence from the two cases does make them appear dissimilar at first. This is because the Flick affair is a clear case of bribery. On the other hand, the Stevens case initially involved normal associations between a minister and members of the corporate elite, interactions that carried over into personal business interests, creating a conflict of interest. In the Flick affair, corruption was initiated by a private citizen, while in the Stevens case it was initiated by a member of the executive. Regardless of these differences a comprehensive comparison can be carried out. Of utmost importance is that these two cases grant an opportunity to examine both the judicial and legislative responses to corrupt actions, as the transgressions did become public knowledge.

Apparently, few cases of corruption of the magnitude of Flick or Stevens are exposed. The reason for this must lie somewhere within these three excuses; these actions are rare occurrences within a political culture; cases that are discovered are usually dealt with quietly by the institution(s) where they occurred; or governments lack the willingness or ability to discover, and bring forward, evidence to prove a case, and eventually come to a resolution. Recently, questionable political practices have been receiving more attention by the media, as can be seen

at both the federal and provincial levels in Canada, and academics are giving serious consideration to the study of such cases. This in turn may encourage a reaction from the mass public, which presumably should not tolerate this form of behaviour from the officials they have elected to public office.

Below the surface, there are many points of similarity between the two cases. A decision in the Stevens case came a little more than a year after the West German Constitutional Court handed out criminal sanctions to those implicated in the Flick affair. As a result, a fair comparison can be made with respect to judicial response, thus avoiding the complications of comparing judicial responses over time. However, discrepancies do exist in the time frame in which evidence was exposed in the two cases. This is due to the fact that the Flick affair was tried in a court of law, which required a comprehensive criminal investigation to be completed before criminal charges could be laid. In this instance, federal investigators spent approximately a decade researching files, then a fact finding committee established by the Bundestag sat for another three years, this was followed by the trial.

In Canada, investigative responsibilities were given to the public inquiry's appointed prosecutors, who continued to collect evidence while the inquiry was sitting. The entire process consumed only eight months, and Parker released his

findings less than a year after the inquiry came to an end. There was no necessity to define any legal charges in order for the inquiry to hear and evaluate evidence against Sinclair Stevens. Differences of time in the investigations had no bearing on the judicial comparison.

However, at the judicial level there is one very notable difference between the Flick and Stevens cases. In the West German case, charges had also been brought against a member of the private sector, von Brauchitsch, who initiated the corruption. In Canada, while individuals outside the government did as much to undermine the system as Stevens, in that they aided a minister in breaking the conflict of interest codes, they faced no sanctions. All that these businessmen suffered was a brief over-exposure to public scrutiny when called upon to testify before the public inquiry.

As mentioned in the first section of this paper, a key consideration was that the corruption occurred at the same level, the executive. In these two cases cabinet ministers from both West Germany and Canada were implicated, and in each instance, found to have been in violation of either statutory laws, or codes of conduct for legislators. In both cases, the Cabinet ministers probably recognized that their actions were in violation of rules because they attempted to conceal their activities.

Knowledge of involvement was denied by all of the

ministers. If unaware of the existence of the codes or laws that governed their behaviour, these men must have known that they were taking part in something others might consider unethical. Even if no violation had actually occurred, an appearance of a conflict of interest, or accepting a bribe, could be just as damaging for the integrity of the ministers, their political parties and the government. As pointed out by Justice William Parker, appearances do matter to the judiciary, and more importantly, to the public. Since the cases have been fully examined, comparisons can be made of the public, judicial and legislative responses taken after all of the evidence was collected.

At the level of public response, measures of reaction were difficult to observe. The most accurate measure is afforded by election results which could reflect electoral dissatisfaction with the politicians involved in corruption, and the parties which they were affiliated with. All other attempts to measure public reaction are completely ambiguous. Public opinion regarding a government's integrity must take in a broader range of factors, as the public response to the Flick affair clearly illustrates. If the measure was limited merely to electoral results, only one conclusion could be drawn; people seemed unaffected by the revelations made about their political representatives. It is possible that other factors may have made the



electorate look beyond the allegations made against the ministers, which again illustrates the limited importance given to the misconducts. In West Germany, elections at both the land and national levels did not result in any change of governing parties.

On only one occasion did a governing Land party suffer a significant loss in votes, but this was more likely on the basis of regional issues, not national. This non-response by the public may easily be explained by the fact that the three major parties (CDU, SPD, FDP) which make up governments at these two levels were all implicated to some degree in the Flick affair, and the electorate found no credible alternative to vote for. The emerging Green party, which was not tainted by Flick money, was unable to take advantage of the circumstances to increase its electoral support. Although the party maintained representation in the Bundestag, holding approximately five percent of the seats, it could not capitalize on the situation by drawing voters from those that were disenchanted by the main stream parties. Perhaps the best way to utilize electoral results is in terms of voter turnout. Average turnout in West German federal elections since 1949 has been 87 per cent (1). In 1987, only 84.3 per cent of eligible voters cast their ballots. This was the second lowest turnout for a federal election since the first one held in 1949 (2).

In Canada, the public responded in a similar fashion,

not allowing issues of executive conduct to determine their vote. The Progressive Conservatives were able to attract over forty percent of the popular vote, which allowed the party to maintain its large majority in the House of Commons. Voter behaviour did not appear to be negatively influenced towards the Progressive Conservative party by the revelations in the media that Stevens had violated conflict of interest guidelines. The electorate may well have to balance the various issues that would effect voting preference, with corruption being one of numerous considerations. However, it may be that voters do not equate corruption with a party's ability to govern effectively. It could just be perceived as a weakness solely attributable to the individual minister.

On the other hand, media response showed disapproval for the behaviour of the one Canadian minister and the two from West Germany, but there were some dissenters. Prior to the resolution of the Stevens case, some Canadian journalists levelled accusations of "pack" journalism against their colleagues, and made charges that the Parker inquiry was established on faulty grounds (3). Even though these accusations were unfounded, as the outcome of the Parker inquiry illustrates, it is fair to say that the hearings were initiated by newspaper reports. The inquiry was also suspected of being a forum which would quickly exonerate Stevens of all allegations on behalf of the

government. When the inquiry's final report was released, it was clear that media response was one of disdain, not only towards Sinclair Stevens, but against Prime Minister Mulroney, who had vehemently defended his minister. Mulroney also stood by Canada's meager conflict of interest codes which were supposed to protect the political system against such abuses as perpetrated by Stevens.

Due to Mulroney's continued defence of both Stevens and the code, the media expressed reservations about all announcements of future, more complete codes that would replace what the Prime Minister had so energetically endorsed. In the Flick affair, media and academic response are similar in that they both condemned the actions that were uncovered. However, the media were somewhat more patient in the West German case. They waited to hear the evidence, and the court's decision, before proclaiming guilt; they did not rush to its own conclusions. However, Der Spiegel did at times find itself being persecuted by other West German media sources for a breach of privacy, and "anticipating condemnation of mere suspects"(4).

Academic papers which were examined clearly displayed signs of disapproval for the disregard that Friderichs and Count Lambsdorff had for the public trust granted to their office. Not only had they secured benefits for themselves, but they aided in increasing the already noticeable discrepancies in representation between the wealthy and the

poor. As with legislative response in Canada, West German legislative response has been viewed as ineffective, because it appears the new laws are only partial attempts at placing limits on party funding levels. Even dissenters on the Constitutional Court expressed astonishment at their colleagues' acceptance of the 1986 party law, which entrenched discrepancies in representation. Beyond this was the attempt to pass legislation that would have stopped investigations into a number of other cases of illegal campaign funding, and grant full amnesty to all suspects, from both the private and public sectors. This bill failed to be passed because of the strong public outcry against it.

One minor difference does exist in the forum of judicial comparison, however, it is easily overcome. While the Flick affair was judged in the Constitutional Court, Stevens was prosecuted by a public inquiry. Considering the mandate given the Parker Inquiry by the Privy Council, to determine guilt or innocence, it served in a similar capacity as a court of law. Although the definitional differences can be resolved for comparison, one area of jurisdiction cannot be resolved. Justice William Parker was unable to impose any sanctions on a guilty Stevens. However, Parker's decision could be used as a basis for either parliamentary sanctions, or any penalty the Progressive Conservative party wished to impose.

In both of the cases, the defendants were found guilty

of violating their positions of public trust. But in neither case did the decisions state that such behaviour constituted corruption. It was clearly stated in the decision of the West German Constitutional Court that although charges of corruption and bribery had to be dropped due to a lack of evidence, this did not necessarily mean that either had not taken place. As well, the decision stated that the original charges all seemed to have validity because of the supposed ability of citizens to command legislative action on their behalf. Since the case was heard by a court of law, penalties were imposed upon von Lambsdorff, Friderichs and von Brauchitsch.

For the two former ministers, this meant fines for not reporting taxable income; von Brauchitsch was fined and also given a suspended sentence for not reporting taxable income. In Canada, the Parker Inquiry was only assigned the task of deciding if Stevens had violated conflict of interest codes. Its mandate did not state that the inquiry should determine whether the minister's actions were corrupt. As with the Flick affairs resolution, Sinclair Stevens was found guilty, but only of violating conflict of interest codes that were applicable only to ministers, not the Canadian criminal code. Because only a code was violated, no prescribed criminal sanctions could be imposed on the minister, a weakness shared with the inquiry. The House of Commons could have sanctioned Stevens, but chose not to.

In both cases, there was full recognition by the judicial bodies that ministers had gone beyond the limits authorized by their posts. The three had used privileged access to their nation's business elite so that they could attempt to improve their own financial standing. Due to this, the two courts expressed a concern for the development of more comprehensive rules for legislators, especially members of the executive.

All three ministers found that their political careers were at the very least interrupted because of the allegations made against them (5). Friderichs and Graf Lambsdorff had both resigned from their ministries prior to their trial. Stevens had resigned from Cabinet before the inquiry began hearings, but he continued to represent his constituency of York-Simcoe as a member of the Progressive Conservative party for a year after Parker had released his decision. It was the Prime Minister, under his authority as leader of the Progressive Conservative party, who denied Stevens the opportunity to contest the York-Peel riding in 1986, overriding the wishes of the riding's nomination committee.

Stevens did have one option available to him which the three defendants in the Flick affair did not. Since it was only a public commission that found Stevens guilty, he still had the opportunity to appeal the decision in a court of law. An announcement of his intention to do so came

immediately after the Parker report was issued in December 1987. In contrast, since Friderichs' and Graf Lambsdorff's cases were pursued through West Germany's highest court, they could not file for an appeal.

As a result of the decisions that were brought down, the two legislatures took some initiative and tried to enact new regulatory legislation. The Bundestag had little interest in trying to reduce levels of party funding from the private sector because of the high cost of running election campaigns. Election costs were considered to be one of the impetuses for the persistent habit of politicians receiving secret funds on behalf of their parties. Since these funds were not reported in any fashion, there was no way of assuring that these hidden contributions would be deposited into the party accounts.

Instead of trying to reduce the ability of those with vast financial resources to influence those who can make decisions in their favour, the Bundestag drew up legislation that would allow these inequities to persist. This new Party Law dramatically increased the limits which individuals and corporations could contribute to political parties. Representative discrepancies were entrenched by the lack of reasonable limitations on campaign contributions, although these contributions were no longer kept secret.

Astonishment was voiced by political observers when

this new law was accepted by the Constitutional Court, which had previously taken measures to stop laws that would allow these high levels of private funding. On numerous occasions between 1967 and 1984 other such legislation had been brought to the Court by the Bundestag, but all were rejected on the grounds that they would give disproportionate representation based on wealth. One measure that the court allowed to be incorporated into this new law was an increase of public campaign financing, which gave each party \$2.98 for every vote received in a federal election. A minimum of one half a percent of the total vote had to be gained in order for a party to be eligible for such funding. By increasing the level of public funding, the court expected that parties would be able to reduce their reliance on private funding, thus resulting in the desired effect that the court had hoped the parties would implement through parliamentary legislation.

In Canada, two notable, and potentially restrictive pieces of legislation have been proposed. The first conveniently died in 1988 on the Order Paper because of the election called by the Prime Minister. It may be considered a convenient death because it proposed many means of ensuring compliance to codes of ethics that were unpopular among many legislators and their immediate families. Bill C-114 would have required that all legislators, their spouses and dependent children, give a full public



disclosure of all assets. Such a disclosure had been suggested by Parker in his final report, and earlier in the Starr-Sharpe report, which was commissioned by the Liberal government of Prime Minister Trudeau to recommend measures that would resolve any weaknesses in the conflict of interest codes. This would have eliminated the need for the instrument of the "blind trust" which Parker found to be a myth, and may have created heightened levels of public vigilance since the public could be informed of government guidelines, and have full access to MP's disclosures.

A public disclosure would also result in making it impossible for legislators to place their personal assets under the name of a spouse as Stevens was able to do. This legislation would also have allowed the House of Commons to impose sanctions on any member found to be in violation of it, which currently is not mandatory. One of these sanctions would be the immediate resignation of a member, a step which Stevens never voluntarily took, even after the inquiry decided he was guilty of violating codes.

A second attempt to pass a more stringent code of ethics began in November 1989. Again, bill C-46 would require public disclosures by all those listed in bill C-114, and retains the ability to penalize violators. This bill has not yet had its third reading, and there is no indication whether it will eventually pass.

These legislative responses are surprising in two

regards. In Canada and West Germany, news of abuse of executive authority did not bring about a public call for more stringent guidelines to control executive actions. Nor did election results clearly reflect disapproval with governing parties maintaining power. Although it was just members of the FDP, and not the party itself that faced criminal prosecution, the party marginally increased its small federal constituency which allowed it to remain in a governing coalition with the CDU. Since the CDU is ideologically closer to the FDP than the SPD, it was not surprising that the coalition was able to survive after the allegations. The FDP made efforts to distance itself from the entire affair through its withdrawal of support from the proposed amnesty bill.

These circumstances are similar to those in Canada, where the government was not adversely affected by any of the revelations, and the Progressive Conservatives also took action to distance themselves from one of its own members. Legislatively, there appears to be little desire for the House of Commons or the Bundestag to implement restrictive legislation, even though pressure was applied to these bodies by the judicial fora that tried the two cases. All of this means that these abuses could occur a repeated number of times, which in turn would mean that these separate investigations, trials, and recommendations have all gone for naught.

Of course, even the passage of comprehensive legislation in either Canada or West Germany would not assure the end of such practices in either country. Without a strong public demand, little if anything may be done by the legislatures to cease these actions. Condemnation by the media may initially arouse a public outcry against non-responsive legislation, but such calls are short-lived as the media leaves the issue for more pertinent ones. It may only be that the House of Commons and the Bundestag will be pressured into passing comprehensive legislation by the courts if further cases of abuse are tried. Once a case gains the levels of notoriety achieved by the Flick affair and the Stevens case, which brings with it a high level of media attention, legislation may become more restrictive.

Aside from the negative response that the judicial bodies had towards each case, the only other source of opposition to such activities was the media. They alone acted in the role of vigilante for the mass public, and it will be expected to continue in this self-defined role, because it does not appear that the public is willing or able, to assume this responsibility for itself. Even if the public did want to oversee legislator's actions, it may be hard to obtain information except through the media. In some instances, charges of abuse may be unfounded, but that is a necessary evil if the system is to operate honestly and openly. The Globe and Mail reporters, Harris and Stewart-

Patterson, might not have found evidence that Stevens did partake in any illicit activity. Had this been the case, a public inquiry would have been a tremendous waste of time and money, but it would still have been effective, in that it would clearly convey the message that such actions will not be tolerated by the Canadian political culture.

This examination of the Flick affair and the Sinclair Stevens case shows that many similarities exist between West Germany and Canada in terms of resolving recent allegations of corruption. The media is a necessary tool for informing the public, and the judiciary has proven that self-regulation does not work for the legislatures in question. In the two situations, only the judiciary was willing to proclaim members of the executive guilty of violating ethical regulations.

From the legislatures themselves, a clear message has been sent. They felt little need to formulate more stringent regulations, and this sentiment may have been confirmed through the almost negligible public outcry. In an effort to appease a skeptical press, the German Bundestag designed and passed minimalist legislation: it had no impact on the conduct of financial donors, political parties or politicians.

Canadian legislators have proposed restrictive rules, but none have yet been passed. Based on these facts, legislators do not seem concerned about executive

mistreatment of authority that has distorted their political culture. Idle responses to severe breaches of trust will do nothing to stop the press from continuing to monitor executive actions. Although evidence would point to a lack of public concern, with further announcements of abuse there may be a voter rebellion. But it is obvious that the judiciary, although in both cases its desires have been defeated by the legislators, would not put up with abuses. Legislative bodies need to enforce judicial wishes, instead of continuing to work against judicial advances in recognizing the harm of corruption.

The advantages to be found by completing a comparison are evident, in that it offers an opportunity to measure attitudinal differences at the public, judicial and legislative levels of two or more countries. Of the three levels of comparison, it is the legislative response to acts of corruption that indicate the differences that exist between each nation's attitudes towards corruption. Legislation should reflect both public and judicial demands for reform. Legislative responses come in two forms; the ability of the legislature to expose all the facts in a case of corruption; how the legislature resolves problems of corruption, if they are resolved, legislatively.

By comparing responses elicited in each nation it can be seen to what degree a legislature is willing to restrict the behaviour of its members. Such a study can be fruitful

in a number of ways. Aside from its' obvious merits, that a comparison can be drawn between two nations, the work may encourage further studies into the realm of legislative response. As has been observed in this thesis, legislation in response to corrupt acts can at best be described as minimal, when it has been passed. Pointing out the lax attitude of legislators towards their colleagues' indiscretions means that the field of corruption is ripe for continued work. In fact, further developments in Canada and West Germany at trying to resolve legislative shortcomings, and the ensuing reactions deserve to be followed.

Benefits from studies of corruption should go beyond the bounds of academia, and may in fact force the issue of developing more stringent rules back to the legislatures. As research continues in the field of corruption it will become more difficult for elected representatives to avoid adopting, and adhering to codes governing their behaviour. A vigilant press and academic community could help assure compliance to rules (laws) because issues as serious as corruption would not be pushed aside for the next big news story. With increased attention, the public is granted the opportunity to become aware of the rules their representatives must comply with, which will give added incentive to legislators to do so.

Notes

1. Conradt, The German Polity, Third Edition, p.58.
2. Karl H. Cerny, "Between Elections: The Issues, 1983-87", in West Germany at the Polls: The 1980 and 1983 Federal Elections, editor, Karl Cerny, (Durham and London: Duke University Press, 1985): p.190.
3. The best example of criticisms leveled against the Parker Inquiry can be found in George Bain, "Consequences of Pack Journalism", Maclean's, Vol. 99, No. 47, November 24, 1986, p.54. Bain charged that: "Anyone who knows journalism knows that a relative handful of journalists did original research in the subject [allegations against Stevens]. The rest took their facts from news wires, other newspapers and magazines and off radio and television and elaborated on them as they saw fit". The inquiry also received criticism because it, "more than any inquiry we have had in recent times, and perhaps ever, is media-induced".
4. Blackenburg, "Political Scandals and Corruption Issues in West Germany", p.925.
5. Otto Graf Lambsdorff resigned from the Bundestag in June 1984 because of the charges that were brought against him. Dragnich, Major European Governments, p.392.

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Appendix I

The Basic Law of the Federal Republic of Germany

Article 21

(1) The political parties shall take part in forming the political will of the people. They may be freely established. Their internal organization must conform to democratic principles. They must publicly account for the sources of their funds.

Article 44

(1) The Bundestag shall have the right, and upon the motion of one fourth of its members the duty, to set up a committee of investigation which shall take the requisite evidence at public hearings. The public may be excluded.

(2) The rules of criminal procedure shall apply mutatis to the taking of evidence. The privacy of posts and telecommunications shall remain unaffected.

(3) Courts and administrative authorities shall be bound to render legal and administrative assistance.

(4) The decisions of committees of investigation shall not be subject to judicial consideration. The courts shall be free to evaluate and judge the facts on which the investigation is based.

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