



Opening Statement before the House of Commons Standing Committee on Access to Information, Privacy and Ethics

Mary Dawson – Conflict of Interest and Ethics Commissioner
Ottawa, Ontario, October 26, 2016

Introduction

Mr. Chair and honourable members of the Committee, I thank you for inviting me to appear before you today.

I am pleased to have this opportunity to share with you some comments and observations from my experience in administering the *Conflict of Interest Act* and the *Conflict of Interest Code for Members of the House of Commons* over the past nine years.

My Office

I was appointed Conflict of Interest and Ethics Commissioner effective July 9, 2007, the same day that the *Conflict of Interest Act* came into force. The Members' Code had been in effect since 2004.

The Act and the Members' Code have similar rules, but also some key differences. Generally speaking, the Members' Code is less strict than the Act although more information is disclosed publicly under the Members' Code than the Act.

When I took office, I set out to apply and interpret both regimes fairly and consistently, with a focus on preventing contraventions. I also undertook to be as transparent as possible.

Given that the Act was new, I had to put in place the structures and processes necessary to support its effective administration.

Early in my term, I created a Legal Services unit and an Investigations unit and developed investigation procedures.

I also implemented various process improvements, such as a system of reminders to notify reporting public office holders and Members of approaching compliance deadlines.

The public registry is accessible online and my Office recently made it possible for reporting public office holders and Members to submit their public declarations through a secure electronic portal.

I have built a strong internal management framework that helps to ensure the effective, efficient and economical use of public resources. When my Office was created in its current form in July 2007, it was given a budget of \$7.1 million. I have never had to seek a budget increase. Instead, I have been able to proactively offer several small reductions.

My Office has lapsed some funds. That's because, given the nature of our work, I have always maintained a reserve in order to respond to exceptional circumstances, such as an increase in investigation requests or a particularly complex investigation, that could significantly impact our workload.

Focus on Prevention

My focus has always been on prevention, through education, outreach and the provision of advice to public office holders and Members. My goal has been to ensure that public office holders and Members have the information and the tools they need to comply with the Act and the Members' Code.

A top priority has been, and continues to be, to provide clear information to public office holders and Members about their obligations under the Act and the Members' Code. I have issued a number of documents for their guidance and made them available on my website. Topics addressed under the Act include gifts, fundraising, outside activities and post-employment.

My Office has instituted regular direct communications with reporting public office holders and Members, including an annual review of their *Confidential Report* and measures to be taken under the Act and the Members' Code. In 2010, my Office started sending an annual letter to those public office holders who are not reporting public office holders, in order to remind them of their obligations under the Act.

My Office also provides confidential advice on an individual basis to public office holders and Members. I note that the number of requests for advice has generally increased since I became Commissioner, to over 2,200 a year.

Enforcement

Although my focus is on prevention, I apply the enforcement provisions of the Act and the Members' Code as appropriate.

Under the Act, I can impose administrative monetary penalties of up to \$500, largely for failures to meet reporting deadlines. I can also issue compliance orders. It took a couple of years to develop internal systems to implement these provisions, but I have found them to be useful tools in ensuring compliance. I have issued quite a few monetary penalties and a number of compliance orders.

I can also conduct investigations of possible contraventions of both regimes. Not all of my investigations lead to examinations or inquiries that result in reports. In fact, because I follow up on any information related to possible contraventions that comes my way, I often find that there are no grounds to move to a formal examination or inquiry. I have opened an average of 33 investigative files a year since my appointment.

Over the years, the number of published investigative reports has remained relatively constant. I have issued a total of 25 examination reports under the Act and seven inquiry reports under the Members' Code.

The reports on my examinations under the Act and inquiries under the Members' Code have explored important issues such as gifts, post-employment, fundraising and preferential treatment. In a number of reports, I commented on practices that were not covered by the Act and the Members' Code when I felt it was appropriate to do so.

I believe that my investigation reports have an important educational role that can help prevent contraventions of the Act and the Members' Code.

Reporting to Parliament

In keeping with my obligations under the *Parliament of Canada Act*, I have issued two annual reports each year, one on the administration of the Act and one on the administration of the Members' Code.

I am proud of these reports; they are very comprehensive and provide detailed information on my administration of both regimes. They are one method of maintaining a dialogue about my administration of the Act and the Members' Code with Members of Parliament and the broader public.

I have used my annual reports to highlight particular issues and challenges, under the heading "Matters of Note." In my last annual report under the Act, for example, I discussed political fundraising. The year before, I wrote about gifts and other advantages.

I also prepare and publish an annual *List of Sponsored Travel* under the Members' Code.

Challenges

It has been an honour to serve as Conflict of Interest and Ethics Commissioner over these past nine years, but there have been a number of challenges.

Given that my title contains the word "ethics," Canadians at times expect my Office to be able to deal with any ethical issues, including those that go well beyond my jurisdiction and mandate. Partisan political conduct is one example. I have suggested that the House of Commons consider implementing a separate set of rules in relation to partisan political conduct for Members and their staff.

My experience has been that public office holders and Members want to comply with the Act and the Members' Code. Indeed, I have found that the Act and the Members' Code work well overall. This does not mean that there is no room for improvement. I have recommended a number of possible amendments to the Act and the Members' Code in my annual reports, in my investigation reports, and in my submissions during parliamentary reviews of the two regimes.

I contributed to the one-time statutory review of the Act. The recommendations that I submitted to the Committee and those that I made elsewhere cover a number of priority areas:

- Increasing transparency around gifts and other advantages;
- Narrowing the Act's overly broad prohibitions against engaging in outside activities and holding controlled assets;
- Establishing some disclosure and public reporting requirements in relation to outside activities, recusals and gifts for public office holders who are not reporting public office holders;
- Addressing misinformation put into the public domain in relation to investigative work;
- Extending the administrative monetary penalties provisions to cover clear breaches of the Act's substantive provisions;
- Strengthening its fundraising and post-employment provisions; and
- Harmonizing the Act and the Members' Code to ensure consistency of language and process where appropriate.

The review of the Act did not result in any amendments, and the Committee might wish to take up the study again in the future.

I participated in two reviews of the Members' Code, and many of my recommendations were reflected in subsequent amendments. These included the lowering of the disclosure threshold for gifts, prohibiting Members who have made a complaint about another Member from making the complaint public until I have received it and let the other Member know about it, as well as the establishment of some deadlines for the completion of the initial compliance process and the annual review process.

Conclusion

I will conclude by reiterating that, despite any potential for improvement, the Act and the Members' Code have, in large measure, done their job.

I take great pride in the contribution that I have made in administering the Act from its inception until now and in administering the Members' Code. I would also like to acknowledge the support of my talented and hard-working staff.

Thank you again for inviting me to appear before you. I will now be happy to answer any questions that the Committee may have.