



## **Presentation during a panel discussion on “Corruption and Official Responsibility”**

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### **Introduction**

Good morning. I'm pleased to be part of the Ethics in Democracy Conference. It is an innovative and important way of helping to strengthen democratic governance in the Meso-American region, through dialogue and the exchange of ideas and best practices. I commend the Canadian Embassy, particularly the Canadian ambassador, Claire Poulin, the Centre for Ethics at the University of Toronto and their local partners for their initiative in organizing this event.

Thank you to the organizers for inviting me to participate in this session on Corruption and Official Responsibility. Corruption and scandals erode public trust and confidence in government, and it is for this reason that governments must seek to improve accountability, transparency and probity within their institutions.

Ethics, in particular, is critical to building and maintaining the public trust that is at the heart of the democratic process. It is important to keep in mind that regulating the ethical behaviour of public officials is not a final destination, but an ongoing journey.

As my contribution to our dialogue, I will be sharing with you a Canadian perspective on the role that strong ethical frameworks can play in preventing corruption by public officials.

I hope you will find our experience useful as you determine what would be the most appropriate mechanisms for consolidating democratic governance in order to achieve greater transparency, better protect human rights and freedoms, and achieve common goals of economic development.

Building and maintaining public trust is a continuing challenge for all of us— established, new and emerging democracies in all regions of the world. That's true even in countries like Canada, which has a comparatively long democratic tradition, and extensive regulatory and ethical frameworks.

For example, public trust in the integrity of Canada's national government and its institutions was eroded by a series of controversies that culminated in a major spending scandal uncovered in 2004.

It involved a program under which the federal government provided organizations with financial resources to support cultural and community events. The program's managers were found to have broken or ignored rules that were supposed to ensure accountability and transparency. Some \$250 million of taxpayers' money was spent over four years, with little to show for it, and more than \$100 million of that total was paid in fees and commissions to companies with ties to government officials.

This weakening of public trust prompted the introduction of a 2006 law designed to increase government accountability.

Among other things, it tightened political party financing, amended the political appointments process, and created a legislative regime governing the ethical conduct of public office holders, both during and after employment. It also established the Office of the Conflict of Interest and Ethics Commissioner.

Together, these measures have strengthened the ethical framework governing the conduct of federal officials in Canada, thus reducing the potential for corruption.

## **History**

Although my Office has been in its current form for little more than two years, a role similar to ours has been performed at the federal level in Canada for three and a half decades.

The first conflict of interest guidelines for cabinet ministers were issued in 1973. Some reflected informal policies that had been in place for a number of years, while others were borrowed from other jurisdictions. Similar guidelines were introduced for various groups of public servants and government appointees.

A *Conflict of Interest and Post-Employment Code for Public Office Holders* was issued in 1985, consolidating in one document the rules for ministers, parliamentary secretaries, ministerial staff, all public servants and government appointees.

That code was amended several times before it was replaced by the *Conflict of Interest Act*, which came into effect in July 2007.

The *Conflict of Interest Code for Members of the House of Commons*, which is separate from the Act, came into effect in 2004.

It is important to note that predecessors of my Office were part of the government until 2004, when the former Office of the Ethics Commissioner was made a separate parliamentary entity in order to help ensure its independence.

Independence is critical to the Commissioner's ability to administer the conflict of interest regimes. This is because the Commissioner oversees the conduct of government ministers, including the Prime Minister, in addition to other public office holders and Members of the House of Commons.

More generally, those subject to the Act and the Members' Code must be assured that they will receive fair and equal treatment regardless of their political affiliation. And, the public will trust the legitimacy of the Commissioner's conclusions only if the Commissioner is truly independent of the government of the day and is perceived to be so.

## **Other Offices**

Canada's ethical framework at the federal level includes a range of other offices and instruments beyond those which I administer.

For example, there is a separate conflict of interest code for Senators administered by the Senate Ethics Officer.

Most public servants are subject to the values and Ethics Code for the Public Service, developed by a central agency of government and administered within the government.

There is a management accountability framework for deputy ministers.

The Public Sector Integrity Commissioner reviews allegations of wrongdoing by Public Service employees.

And, the Commissioner of Lobbying regulates the conduct of people who are paid to carry out lobbying activities involving the Government of Canada.

We also have an Access to Information Commissioner. We discussed the importance of an access to information regime at our meeting yesterday.

It is important to keep in mind that while corruption can manifest itself in many ways, from minor breaches to outright criminality, Canada's ethical framework does not contemplate the more serious manifestations.

Its focus is on ethical, not criminal, behaviour, which is left to the criminal law. Canada does not have a major public safety problem around corruption, so our ethical rules tend to be fairly non-intrusive. Of course, countries facing destabilizing, or even violent, forms of corruption may opt for a more rigorous and comprehensive ethics regime.

## **Roles**

As Commissioner, I have a variety of roles, from advising and educating people, to investigating possible contraventions, to administrative decision-making, to imposing penalties.

The bulk of our day-to-day work consists of giving advice and keeping people out of trouble. My Office has, above all, a preventive role. Its strength lies not in penalizing or even exposing cases of non-compliance, but in encouraging widespread adherence to ethical rules and principles. Our advisory role is somewhat unusual in that we provide advice on compliance issues to the same people we could end up investigating.

I have an investigative role, with the same powers to compel witnesses and records under the *Conflict of Interest Act* as a court of record.

My Office spends a significant amount of time investigating cases of alleged non-compliance with the Act or the Members' Code. This involves determining the facts of a case and also involves, in most cases, a careful interpretation of the provisions of the Act or the Code, often creating new precedents.

My final role is one of administrative decision-making. I render administrative decisions after investigating matters raised in individual cases, with the power to recommend sanctions.

## **Mandate**

The mandate of my Office can be summed up quite simply. We help ensure that public officials, whether elected or appointed, do not use their offices to further private interests, whether their own or those of others.

We do that by administering two separate conflict of interest regimes: the *Conflict of Interest Act*, and the *Conflict of Interest Code for Members of the House of Commons*. I am also mandated to provide confidential advice on conflict of interest and ethics issues to the Prime Minister.

Both regimes prohibit various activities that involve conflicts between private and public interests, or have the potential to do so. For example, those subject to the Act and the Code are not allowed to accept gifts or benefits that could have been given to influence them in exercising their official duties. They cannot participate in discussions, decisions, debates or votes on any matter in respect of which they would be in a conflict of interest. And they must not take improper advantage of their former position after leaving office.

The Act states expressly that compliance is a condition of employment for public office holders. It applies to people appointed to full- and part-time positions by the Government of Canada, numbering about 2700. All of them are subject to its general rules on avoiding conflicts of interest.

Full-time appointees, who include cabinet ministers and their staff, deputy ministers, and heads and often other members of boards and agencies, and who number about 1100, are also subject to additional, more stringent requirements.

The Act requires them to file detailed, confidential declarations of their assets and liabilities with my Office, and to divest themselves of certain controlled assets such as publicly traded securities. It also restricts their outside activities and requires a number of public declarations.

The Members' Code applies to Canada's 308 elected Members of Parliament. Cabinet ministers are subject to both the Code and the Act.

The Code includes rules on conflict of interest for Members similar to those found in the Act. It sets out processes for the confidential disclosure of private interests to the Commissioner, procedures for making Members' summary information public, an advisory role for the Commissioner, and a process for conducting inquiries into alleged contraventions.

However, unlike the Act, it does not require Members to divest controlled assets, and does not restrict their outside activities.

In administering the Act and the Code, my staff and I advise public office holders and Members about their obligations, receive their confidential declarations, maintain a public registry of publicly declarable information, and investigate alleged contraventions.

The enforcement provisions and the powers that the Act and the Code give the Commissioner are limited. This reflects the fact that my role is primarily to advise, inform, and try to prevent contraventions. Public disclosure following an investigation is the most potent sanction for a failure to comply.

In enforcing the Act, I can impose administrative monetary penalties of up to \$500 in relation to failures to report within prescribed deadlines. I can issue compliance orders. I can also conduct examinations that result in reports that are made public and can contain recommendations as well as findings.

In enforcing the Members' Code, I cannot impose monetary penalties for contraventions. I am, however, empowered to conduct inquiries under it. As is the case with my reports on examinations under the Act, my reports on inquiries under the Code are made public without any approvals by the government or Parliament. However, it is up to Parliament to decide if any measures should be taken against a Member of Parliament for failure to comply with the Code. Ultimately, it would be for the voters to decide in the next election.

It is important to note that my powers to carry out investigations are limited to conflict of interest matters covered specifically by the *Conflict of Interest Act* or the Members' Code.

Furthermore, I do not have a mandate to carry out general audits or to investigate other types of ethical issues.

The rules of the Act and the Code deal primarily with possible conflicts between the official duties of public officials and private interests, and not with all ethical issues that may also be of concern to Canadians.

Nor would I pronounce on the ethical merits of matters that relate to personal morals, like lying and cheating, or that are criminal in nature, such as theft, murder and fraud. In fact, my Office must suspend its investigation of any matter that also becomes the subject of a criminal investigation.

Although many Canadians are concerned about the conduct of public officials in the political sphere, that, too, is generally beyond the scope of my mandate.

For example, there are no rules in the Act or the Code to deal with politicians exaggerating or misrepresenting issues in debate. Thus, I would not intervene in policy disputes or other political matters unless they also involve a deliberate and focussed attempt by a Member of the House of Commons to further a private interest. It is sometimes difficult to determine exactly where to draw the line between a private interest and a “political” or “partisan” interest, and it will always depend on the circumstances of the case.

## **Conclusion**

As you can see, Canada has been in the business of preventing conflicts of interest for a long time. Many newer democracies, including those in Central America that have faced civil wars and economic crises, are only just starting to build ethical frameworks to address the possibility of corruption that arises when public offices can be used to further private interests.

No one can implement a comprehensive regime overnight—effective systems develop and evolve over time, in keeping with the needs and desires of the population. Citizens’ negative perceptions of corruption in politics and in government institutions can be corrected only if all stakeholders work together to put in place effective mechanisms that ensure transparency and promote respect for the rule of law.

Corruption among public officials and institutions not only erodes public trust, but leads to contempt for the rule of law, undermines competition in the marketplace, and has a devastating effect on investment, growth and development.

Canada’s federal conflict of interest regimes are important dimensions of democratic governance and the democratic process in terms of accountability, transparency and ethics.

And I believe the Office of the Conflict of Interest and Ethics Commissioner is an important part of Canada’s ethical framework. However, as I have noted, there is no single window into the regulation of ethical behaviour.

Indeed, I believe it is impossible to regulate all behaviour of public officials through explicit rules or codes.

In a democracy, where governments are accountable to the people for their very futures, transparency through public access to information is perhaps the most powerful inducement to ethical behaviour. Public opinion, influenced by effective, responsible opposition, can elect or unseat individual political representatives and whole governments. The ultimate judge of those in positions of power is the general population—the people.

We all deserve the highest standards from our elected and non-elected government officials. Canada has demonstrated that it is committed to meeting those expectations, by putting in place over the years a number of initiatives and structures, like the Office of the Conflict of Interest and Ethics Commissioner, that are designed to build and maintain Canadians’ trust in government.

I look forward to our upcoming discussion.