



## Presentation to Special Committee on Ethics from the National Assembly of the Republic of Korea

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### Introduction

Welcome to our Office. I am pleased to meet with you today to provide you with some information about the Office of the Conflict of Interest and Ethics Commissioner.

I understand you are particularly interested in investigations and the structure of my Office, and I will address those two areas in the latter part of my remarks.

To provide some context for them, I will also discuss my mandate and look at how my Office fits into Canada's ethical landscape.

### Mandate

My mandate is very specific about the kinds of issues I can deal with. It deals primarily with applying two conflict of interest regimes, one for public office holders and the other for Members of the House of Commons.

One of the regimes that I administer is the *Conflict of Interest Act*, which came into force in July 2007. It applies to over 2,800 public office holders.

All public office holders are subject to the Act's core set of conflict of interest and post-employment rules. More than half of those covered by the Act are subject only to these general rules. This group is primarily made up of part-time members of federal boards, commissions and tribunals, as well as some part-time ministerial staff.

About 1,100 public office holders are designated as reporting public office holders. They are subject not only to the Act's general rules but also to its reporting and public disclosure provisions, as well as prohibitions against outside activities and holding controlled assets. Reporting public office holders include ministers, parliamentary secretaries, ministerial staff and all full-time Governor in Council appointees such as deputy ministers and heads of Crown corporations.

The other regime that I administer is the *Conflict of Interest Code for Members of the House of Commons*, which has been in place since 2004. It applies to all 308 elected Members of Parliament.

Ministers and parliamentary secretaries are subject to both the Act and the Members' Code. The Act, governing public office holders, is generally more stringent than the Members' Code.

These two regimes set out prohibitions against activities that could or do involve conflicts between public and private interests. Both regimes have rules regarding disclosure of assets and liabilities, acceptance of gifts, and the pursuit of outside activities.

Their aim is to enhance public confidence and trust in government by holding elected and appointed officials to standards that place the public interest above private interests.

### **Other Organizations**

Before reviewing some of the specifics of the Act and the Members' Code, it is useful to situate my mandate within Canada's ethical landscape. This will help you understand what areas of governance are covered under our regimes, and what areas are not.

- There is a separate *Conflict of Interest Code for Senators* administered by the Senate Ethics Officer.
- The Commissioner of Lobbying enforces the *Lobbying Act*. That Act includes a five-year ban on lobbying for specific former public office holders.
- In Canada, except for the most senior leadership positions, employees of the Public Service of Canada are not covered by the *Conflict of Interest Act*. Instead, they are subject to the *Values and Ethics Code for the Public Service*, developed and administered by the Treasury Board, a central agency of government.
- The Public Sector Integrity Commissioner reviews allegations of wrongdoing by public service employees.
- And, Canada's provinces and territories have their own conflict of interest and ethics commissioners.

Now I will highlight some aspects of the *Conflict of Interest Act* and the *Conflict of Interest Code for Members of the House of Commons*.

## **Disclosure**

Disclosure is a key area.

Reporting public office holders and Members of the House of Commons are subject to declaration and disclosure requirements.

Both the Act and the Code require reporting public office holders and Members to file a detailed confidential declaration of their assets and liabilities with our Office.

We maintain public registries under both the Act and the Code of publicly declarable information. They include summaries of assets and liabilities, and disclosures of gifts, recusals and outside activities. The registries are accessible through our website and in paper form at my Office.

We rely on the honesty of public office holders and Members in providing us with this information. We would only probe if we had reason to suspect that the information was incorrect or incomplete. Generally, we find that public office holders and Members are forthcoming with their information.

In my view, public disclosure is a very powerful tool in ensuring transparency and accountability.

## **Divestment**

Another important area is divestment.

Under the *Conflict of Interest Act*, reporting public office holders are prohibited from holding controlled assets such as publicly traded securities, and are required to divest any that they hold when they are appointed.

My Office provides advice on and facilitates the divestment of controlled assets through arm's-length sales or blind trust agreements.

No conflict of interest test applies to the divestment requirement. Many other regimes apply such a test.

There is no divestment requirement under the *Conflict of Interest Code for Members of the House of Commons*.

## **Gifts and Invitations**

Gifts and invitations is the area where we get the most questions from public office holders and Members of the House of Commons. Gifts can include bottles of wine, meals, invitations to fundraising events, tickets to sporting events, and golf club memberships.

Public office holders, Members and their family members can only accept gifts in specific limited circumstances. The restrictions apply regardless of the gifts' monetary value.

We tell public office holders and Members to ask themselves: "Why is the gift being offered and by whom?" If the gift might reasonably be seen as an attempt to influence their decision-making, it must be refused.

Gifts from family members and friends are normally acceptable. Gifts that are a normal expression of courtesy or within customary standards of hospitality are also acceptable under both the Act and Code.

Public office holders may keep "acceptable gifts" but must publicly disclose any gift, other than one from a family member or friend, if it is worth more than \$200. Gifts worth more than \$1,000 must be forfeited to the Crown and disclosed publicly.

Members of the House of Commons must publicly disclose gifts worth more than \$500 but there is no limit on the value of gifts that they may accept.

### ***Outside Activities***

Another important area under the *Conflict of Interest Act* is outside activities.

The Act contains rather broad prohibitions against engaging in outside employment or other activities. In most cases, there is no conflict of interest test.

The rule under the Code is not the same for Members of the House of Commons, who are, by and large, permitted to carry on any outside activities.

Because there is very little discretion in the Act, we often have to inform people that they cannot continue with activities that would appear to have little or no impact on their public duties. For example, professionals such as doctors, lawyers, engineers and accountants may not hold office in professional associations, and students who work full-time during the summer in a minister's office cannot continue any part-time positions they held during the school year.

### ***Post-employment***

Post-employment is also an area of interest under the *Conflict of Interest Act*.

The Act sets out post-employment rules that aim to prevent former public office holders from taking improper advantage of their previous office, from switching sides, and from improperly using information obtained from their previous office. These restrictions last for life.

For reporting public office holders, there is a cooling off period—one year for most but two years for ministers—during which they cannot work for or contract with an entity with which they had official dealings in their last year in Office, and cannot make representations to their former organization.

We provide former public office holders with detailed information on their post-employment responsibilities as soon as we are informed of their departure. We also follow up when we become aware of post-employment activity that might contravene the Act.

There is a particular challenge in tracking these post-employment activities because there is no reporting requirement and we rarely get requests for advice from former public office holders.

If I do determine that a former reporting public office holder has failed to comply with his or her post-employment obligations, I have the authority to order any current public office holder not to have any dealings with him or her.

### ***Examinations and Inquiries***

You asked about my power to conduct investigations in order to determine whether the Act or the Code has been contravened, and I will review that now.

Investigations are called examinations under the Act and inquiries under the Code.

Under the Act, I can investigate any present or former public office holder—on the request of a Member of the Senate or House of Commons, or on my own initiative where I have reason to believe that the person has contravened a specific section of the Act.

Under the Code, I can conduct an inquiry into a possible breach on the request of a Member, by a resolution of the House of Commons or on my own initiative when I have reasonable grounds for believing that a contravention has occurred.

My decisions arising from these investigations have served to clarify some of the language of the Act and Code.

All of my investigation reports are made public without any approvals by government or Parliament. In them, I can recommend sanctions against anyone whom I have found contravened the Act or the Code.

Under the Act there is a scheme for administrative monetary penalties. These penalties have a maximum of \$500 and apply generally to failure to meet certain reporting deadlines.

### **Office Organization**

Although it had several predecessors, my Office has been operating in its current form since July 2007, when the *Conflict of Interest Act* took effect and I was appointed Commissioner.

To support the work we do, I have organized the Office into five divisions:

- Advisory and Compliance is the largest division. This reflects the fact that much of our day-to-day work consists of providing confidential advice to public office holders and Members of the House of Commons, receiving their confidential disclosures and maintaining internal records of this information, and administering a system of public disclosure as required by the Act and Code.
- Staff in our Reports and Investigations division investigate alleged contraventions of the Act and Code. They are responsible for reports on those investigations and also coordinate the preparation of my annual reports.
- As its title suggests, the Policy, Research and Communications division contributes to policy development, compiles research and handles public communications. It also coordinates our dealings with Parliament and its committees.
- Our Legal Services division provides strategic legal advice on all facets of the Office's work, including legal advice on the interpretation and application of the *Conflict of Interest Act* and the *Conflict of Interest Code for Members of the House of Commons*. It also plays an integral role in conducting investigations and preparing investigation reports.
- And, the Corporate Management division provides administrative services and establishes policies and procedures to help the Office function effectively.

We are a fairly small Office, with fewer than 50 employees, and staff from across all divisions consult one another on a daily basis. They also work together on many projects and initiatives.

### **Working with Parliament**

As Commissioner, I am an Officer of Parliament who is completely non-partisan and independent from the government of the day. This is important because I oversee the conduct of ministers, including the Prime Minister, as well as Members of the House of Commons.

I report directly to Parliament, through the Speaker of the House of Commons and not through a minister.

I also testify before parliamentary committees about my Office and its work. I appear most frequently before two committees of the House of Commons:

- One is the Standing Committee on Access to Information, Privacy and Ethics. It has oversight responsibility for the Office and reviews its annual spending estimates, as well as matters related to my reports under the *Conflict of Interest Act*.

- The other is the Standing Committee on Procedure and House Affairs. It has responsibility for the *Conflict of Interest Code for Members of the House of Commons* and, with my input, recommends changes to the Code to the whole House of Commons.

Both the Act and the Code are subject to review, generally on a five-year cycle.

### **Conclusion**

I hope you have found these remarks helpful in understanding my mandate and role and the work of my Office.

I will now be happy to answer any questions you may have.