



Presentation at a Bilateral Workshop on Perspectives on Innovation in the Public Service Hosted by the Public Service Commission for a Delegation from China

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Introduction

I am pleased to be part of this bilateral workshop, and thank Maria Barrados and the Public Service Commission of Canada for inviting me to participate.

I would also like to take this opportunity to personally welcome the members of the Chinese delegation to Ottawa.

Canada's Ethical Framework

To provide some context for my remarks, I wish to point out that the Office of the Conflict of Interest and Ethics Commissioner is just one part of Canada's ethical framework. In fact, Canadian public office holders, elected officials and bureaucrats operate under a suite of ethical regimes.

At the federal level, there is a *Conflict of Interest Code for Members of the House of Commons*, which has existed since 2004. There is also a *Conflict of Interest Act* for public office holders, which has been in effect since 2007. It applies to the Prime Minister and Cabinet ministers, deputy ministers who are the heads of federal departments, ministerial staff and appointed officials of various boards and tribunals. The Act's predecessor code originated in 1973. I administer these two regimes covering elected Members of Parliament and senior public office holders.

There is an *Accountable Government Guide* for ministers and parliamentary secretaries, which the Prime Minister oversees, that provides guidelines for the conduct of members of the Cabinet. Members of the Senate have their own Conflict of Interest Code, which is administered by the Senate Ethics Officer. Internal financial management frameworks exist for parliamentarians, and for ministers and deputy heads of departments.

Also at the federal level, since 2003 there has been a *Values and Ethics Code for the Public Service*, administered within the public service. This was preceded by guidelines established in 1973.

Canada's provinces and territories also have acts or codes to govern the behaviour of their elected officials and public servants.

As you can see, Canada's ethics framework is wide-ranging and has many players responsible for its effective administration.

In 2006, Canada's ethical framework was strengthened and expanded through the enactment of the *Federal Accountability Act*. Among other things, that legislation also established a Director of Public Prosecutions, amended the *Access to Information Act*, provided for the appointment of a Commissioner of Lobbying, and gave public servants added protection if they reported wrongdoing within a department.

The *Federal Accountability Act* also created, for the first time, a legislative regime — the *Conflict of Interest Act* that I mentioned at the outset — to govern the ethical conduct of public office holders both during and after employment. At the same time, it established the Office of the Conflict of Interest and Ethics Commissioner, to administer both the Act and the *Conflict of Interest Code for Members of the House of Commons*. I was appointed Commissioner in 2007.

Scope of Mandate

I was asked to speak today about values and ethics at the political level. I begin by observing that my mandate as Conflict of Interest and Ethics Commissioner covers individuals at both the political and bureaucratic levels.

There are 308 Members of the House of Commons subject to the *Conflict of Interest Code for Members of the House of Commons*. Those Members who are ministers or parliamentary secretaries are subject, as well, to the *Conflict of Interest Act*. There are approximately 2800 public office holders covered by the Act. Of them, about 70 are ministers and parliamentary secretaries and the rest are divided primarily between members of boards or agencies and staff of ministers.

Individuals at the bureaucratic level who are covered by my mandate include people appointed by the Governor in Council to certain positions in federal departments, boards and agencies. In the Canadian system, departments implement the policies developed by the Cabinet, made up of the Prime Minister and ministers appointed by the Prime Minister, primarily from the ranks of Members of the House of Commons.

Major Elements of Canada's Conflict of Interest Regimes

I will now review the major elements of Canada's conflict of interest regimes.

First, we must look at the purpose of these regimes. Simply put, they seek to ensure that public officials, whether elected or appointed, do not use their offices to further their own private interests or those of their families, or to improperly further the private interests of anyone else.

I am also mandated under the *Parliament of Canada Act* to provide confidential policy advice and support to the Prime Minister regarding conflict of interest and ethics issues in general.

The provisions of the *Conflict of Interest Code for Members of the House of Commons* and the *Conflict of Interest Act* are quite specific. They establish a precise mandate that may only incidentally touch upon broader ethical issues.

Both regimes prohibit various activities that involve conflicts between private and public interests, or have the potential to do so. For example, individuals subject to the Act or 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.

Under the Act and the Code, individuals are required to make a number of disclosures relating to their assets, liabilities and outside activities. My Office reviews this information in order to determine relevant compliance measures and how best to advise Members of the House of Commons and public office holders regarding their obligations. The information remains confidential, but we make brief summaries of it public.

I may investigate possible contraventions of the two conflict of interest regimes. My powers to carry out investigations, however, are limited to conflict of interest matters covered specifically by the Code or the Act. I do not have a specific mandate to carry out broad general audits or to investigate other types of ethical issues.

The majority of complaints that I receive are about ministers, parliamentary secretaries and Members of the House of Commons. On several occasions, however, I have conducted investigations of alleged wrongdoing by other public office holders.

I do not have extensive enforcement powers under the Act and the Code. This is because my role is primarily to advise, inform, and try to prevent contraventions. However, the fact that I make public my reports following an investigation, and without any approvals by the government or Parliament, makes my reports a powerful tool to discourage contraventions. I can also recommend sanctions in my investigation reports.

In enforcing the Act, I can also impose administrative monetary penalties of up to \$500 in relation to failures to report within prescribed deadlines. This is a relatively mild power because it is not directed at actual breaches of the substantive rules. I would like to see the Act broadened to provide for penalties for some of these breaches as well.

Limitations of Mandate

When it comes to values and ethics at the political level, the conduct of politicians relating to political activities and interests is largely beyond the scope of my mandate. The focus of the Code and the Act is on private interests.

There are no rules in the Code or the Act 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, however, 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.

Neither 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, fraud and corruption. My Office must suspend its investigation of any conflict of interest matter that also becomes the subject of a criminal investigation.

Commenting on Broader Ethical Concerns

In my recent investigation reports, I have commented, where appropriate, on several issues reflecting broader ethical concerns that could raise questions about the integrity of elected public officials and governing institutions.

For example, last April, I reported on my investigation into allegations that Members of the House of Commons, ministers and parliamentary secretaries had used partisan or personal identifiers on ceremonial cheques or other props in connection with federal funding announcements. While I found that enhancing political profiles is not directly covered by the Act or the Code, I observed in my report that this practice was not appropriate.

The distinction between personal and political interests was a focus of two other investigation reports that raised issues of fundraising and lobbying. In those reports, I made public my findings relating to the activities of Members of the House of Commons in connection with political fundraising events. While I did not find a breach of the Code, I pointed out the need for effective fundraising guidelines in relation to political fundraising events for Members.

In making these comments, I have sought an appropriate way to address issues of values and ethics at the political level that are of concern to Canadians. Such broader ethical issues have an impact on public trust in our institutions.

In addition to my investigation reports, my annual reports under the Code and the Act are useful vehicles for making relevant observations. I also provide relevant information and set out my interpretation of various provisions of the Code and Act in a range of documents that are posted on my Office’s website.

Conclusion

In closing, I believe that the evolution of Canada's conflict of interest regimes over almost four decades has helped make them a model for other countries, some of which are just starting to develop their own conflict of interest systems. Their development has underscored Canada's reputation as an innovator and leader in the conflict of interest field. Indeed, international research conducted by my Office has found that Canada's regimes are comparatively strict, and I believe they provide a solid foundation for further refinement in the future.

I have enjoyed this opportunity to speak with you about Canada's federal conflict of interest regimes, and the role of my Office in administering them.