

**“Perspectives on the importance of independence for
the role of the Conflict of Interest and Ethics
Commissioner”**

Speaking Notes for a presentation to

**The Canadian Political Science Association
Annual Meeting
Carleton University**

**By Mary Dawson
Conflict of Interest and Ethics Commissioner**

May 29, 2009

Introduction

- I am pleased to have this opportunity to talk about the independence of my Office – the Office of the Conflict of Interest and Ethics Commissioner.
- I will structure my remarks around the three questions provided to all of us.

How independent is the office in practice from Parliament and the public service, and what is the form of that independence?

- The first question deals with how independent my Office is in reality. Before addressing this, I think I should give you a sense of what my mandate is.
- I administer two conflict of interest regimes:
 - The first is the *Conflict of Interest Act*, which came into force in July 2007. It applies to over 2,700 public office holders. Most are appointed by the government through order in council. These include ministers, parliamentary secretaries,

deputy ministers, heads and members of various crown corporations and tribunals. It also includes ministerial staff.

- The second 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 Members of the House of Commons and was developed by them as well. It has been amended several times since 2004.
- The Act and the Code prohibit various activities that involve conflicts between public and private interests, or have the potential to do so.
- The overarching objective of these two instruments is to enhance public confidence and trust in government by holding public sector officials to standards that place the public interest above their private interests.
- I am an Officer of Parliament, appointed for a seven-year term through a Governor in Council appointment. I was nominated by the Prime Minister but the appointment could only take effect after consultation with the leader of every recognized party in the

House of Commons, and after approval of the appointment by resolution of the House. Similarly, I can be dismissed for cause by the government, but only on agreement of the House.

- My Office is part of Parliament along with the House of Commons, the Senate, and the Library of Parliament. We are a separate employer – our employees are not part of the Public Service.
- As an independent parliamentary entity, my office reports directly to Parliament, through the Speaker of the House of Commons, and not through a Minister like all government departments and other agents of Parliament.
- I submit the Office's spending estimates to the Speaker who provides them to the Standing Committee on Access to Information, Privacy and Ethics. The Committee invites me each year to discuss my estimates and to answer any other questions it sees fit to ask.
- However, I do not report to this Committee nor do I take any regular part in its deliberations. This is sometimes a matter of confusion for the public.

- I have a connection with a second committee of Parliament.
- The Standing Committee on Procedure and House Affairs has oversight responsibility for the MP Code. It has no mandate with respect to the Act. This committee deals with any clarification, change or amendment to the MP Code or any of its related forms or guidelines. Recently, I have been working with them on improving the provisions related to gifts.
- I have an independent authority to conduct investigations either as a result of a member's request or on my own initiative. In either case, there have to be reasonable grounds to believe that a contravention has occurred.
- The authority to self-initiate is a further aspect of my autonomy in and of itself.
- My investigation reports are made public without any approvals by government or parliament. In the case of the Act, my reports are made public immediately upon providing them to the Prime Minister and to the public office holder involved in the examination. In the case of the Code, I provide my report first to

the Speaker and to the Member subjected to the inquiry. The Speaker then tables the report, thereby rendering it public.

- I am not subject to the Access to Information and Privacy Act. This makes sense because I am required under both the Code and the Act, to guard the confidentiality of information provided to my Office unless there is a requirement in the Code or Act that it be reported publicly. It is also defacto recognition that our Office is not a government institution.

What is gained by having an independent office that is not connected to the public service?

- The second question asks what is gained by having an independent office that is not connected to the public service.
- As I have just described, I am independent from the government of the day. This is critical to my role if for no other reason than that I oversee the conduct of Ministers, including the Prime Minister, as well as members of the House of Commons.

- More generally, it is essential that those subject to the Act and Code trust that they will receive fair and equal treatment regardless of their political affiliation.
- Similarly, the public will only trust the legitimacy of my conclusions if they have no reason to question my independence.

Are there any circumstances where this independence is compromised?

- The third question you asked me to talk about is whether there are circumstances where my independence as Commissioner is compromised.
- There are no obvious impediments to the independence of my office.
- I have a pretty free hand, particularly so far as the Act is concerned.

- As far as the MP Code, one restraint is that I have to have my guidelines and forms approved by Standing Committee on Procedure and House Affairs. I have suggested to them that this is unnecessarily cumbersome and that they might wish to reconsider this requirement.
- The MP Code is a code rather than an Act, so it can be changed more easily. This is a double-edged sword but so far has worked to my advantage. The House of Commons was able to amend the Code quickly as a result of a suggestion in one of my inquiry reports last June and I have hopes that some of my suggestions for changes to the gift provisions may be accomplished fairly quickly as well.
- A disproportional number of complaints are directed at Members of the government by Members of the opposition parties. This, of course, is precisely because they are the party with the power. When I find that a Member has not contravened the Act or Code, there is always the possibility that critics will say I am favouring the governing party.

- There can also be attempts to draw my office into political issues, especially in a minority government situation. Any MP can request an inquiry or examination. However, my powers to carry out investigations are limited to conflict of interest matters covered under the Act or Code. Sometimes the line isn't easy to draw.
- The best way of deflecting such criticism is to be completely non-partisan in our treatment of members and to have processes in place that are demonstrably fair and transparent. And that is of prime importance to me.
- For example, when we are dealing with an allegation of non compliance, we try to be very thorough in our investigation. In writing my reports, I put a great deal of effort into documenting the reasons for my conclusions.
- We put a particular focus on actively supporting compliance rather than trying to catch people out in a contravention.
- An example of this is how we have implemented our power to impose penalties on public office holders who fail to comply with the Act's reporting deadlines. Before putting the penalty scheme in place, we instituted a practice of notices alerting public office

holders to the fact that a deadline for compliance is approaching. This system of warnings has proven so effective that to date it has not been necessary to apply a penalty.

Conclusion

- In conclusion, I would observe that independence from government is essential to fulfilling the mandate of my Office and I think the approaches of the Act and the Code support this. It is always possible that my independence will be questioned. In my view I can only deflect such criticism by having transparent processes in place that are demonstrably respectful, impartial, consistent and fair.