



Speaking Notes during a Panel Discussion on Ethics in Government at the Annual General Meeting of the Canadian Political Science Association at the University of Ottawa

Mary Dawson – Conflict of Interest and Ethics Commissioner
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Good morning. I am pleased to participate in this panel discussion. I am particularly delighted that it is part of a workshop honouring the work of Professor Ian Greene, who has contributed substantially to discussion and debate around ethics in government.

Mandate

My role is to apply the *Conflict of Interest Act* for public office holders and the *Conflict of Interest Code for Members of the House of Commons*. Simply put, I try to ensure that federal officials, whether elected or appointed, do not use their offices to further their private interests or those of their relatives or friends, or to improperly further the private interests of others.

As Commissioner, I am an Officer of Parliament who reports directly to Parliament and is independent of the government of the day. This independence is important because I oversee the conduct of ministers, including the Prime Minister, and of Members of the House of Commons.

While I derive my authority to administer both the Act and the Members' Code from the *Parliament of Canada Act*, I note that the instruments chosen to administer those two regimes are quite different, beginning with their legal status. The Act is legally binding and has the force of law. The Members' Code is a code of conduct established under the *Standing Orders of the House of Commons*. It allows for greater discretion in its application. Also, while my decisions under the Act are subject to judicial review on limited grounds, my decisions under the Members' Code are not.

In my remarks I will touch upon what I see as my three key roles: advising, educating and enforcing.

Advice and Education

My approach is based primarily on prevention. My staff and I provide public office holders and Members with confidential advice on specific matters. We also seek opportunities to educate them generally, as individuals or as groups, about the rules, how those rules apply to them and any broader considerations. We review their confidential reports on matters such as their assets, liabilities and activities, we maintain a system of public disclosure, and we investigate possible contraventions.

My Office maintains regular contact with public office holders and Members throughout their terms in office. This is done in part through the formal mechanisms set out in the two regimes, including the initial compliance process, and the annual review process. My Office also interacts with public office holders when they disclose material changes and gifts, and with Members, for the disclosure of sponsored travel.

These formal mechanisms are frequently complemented by less formal communications that take place from time to time. My Office is always available to advise public office holders and Members in relation to specific situations. Last year alone, we communicated directly with some of the approximately 2,400 individuals who are subject to the Act or the Members' Code in over 4,000 instances.

The provision of advice to individuals is enhanced by a range of education and outreach activities targeting public office holders and Members collectively. My staff and I carry out formal training sessions with various groups of public office holders and Members. I have issued numerous backgrounders and fact sheets, as well as guidelines, forms and information notices under the Act, and advisory opinions under the Members' Code, that flesh out my interpretation of their provisions as they apply in specific circumstances. These are all available to the general public on my Office website.

Mandatory Personal Meetings

I am familiar with Dr. Greene's recommendation for mandatory personal meetings between the Commissioner and those covered by the Act and the Members' Code.

I agree that mandatory consultations would go a long way towards ensuring compliance. However, given logistical considerations, in-person meetings would not be feasible in all cases because of the scope of my mandate and the fact that there are public office holders across Canada. In some cases these meetings could perhaps be done via telephone, or by using a videoconferencing tool such as Skype.

In recent parliamentary reviews of the Act and the Members' Code, I proposed adding mandatory training requirements to both regimes. I recommended amending the Act to include a requirement for all public office holders to participate in a training session within a reasonable period of time

after their appointment. I made a similar recommendation for the Members' Code, which I believe should include a requirement for all new Members to communicate directly with my Office to review their obligations.

I note also that mandatory consultations alone, while desirable, would not necessarily prevent all conflicts of interest. They would be just one measure among many that my Office is already taking to advise and educate public office holders and Members.

Enforcement

While prevention is my major focus, I also apply the enforcement provisions of the Act and the Members' Code as appropriate. The enforcement function also adds to the educational role of my Office as it has the ancillary effect of promoting awareness and understanding of the rules under the Act or the Members' Code.

There are several ways in which I can enforce the Act. I can impose administrative monetary penalties for failures to meet certain reporting requirements. I can also issue compliance orders to ensure that public office holders meet their obligations in the future. And, finally, I can initiate formal investigations of possible contraventions both under the Act and under the Members' Code.

Since I became Commissioner, I have opened more than 200 investigation files and issued 29 public reports on my conclusions.

Both the provision of confidential advice by my Office and the carrying out of investigative work require a careful interpretation of the provisions of the Act or the Members' Code as they apply in specific cases. In each instance, the facts of the situation at issue are, of course, critical, as is the exercise of applying the provisions to those facts. I also try to take into account the principles that underlie the rules whenever the provisions that I am interpreting are general enough to allow me to apply broader considerations.

The precedents that I establish in advising and investigating form a body of interpretation that gradually sheds light on the scope of the rules, and feeds into initiatives to educate public office holders and Members.

I had occasion in two examinations to interpret the term "friend" and in two others the notion of impropriety. Both terms are found in the Act's definition of conflict of interest but are not themselves defined. Under the Act, public office holders are in a conflict of interest when they exercise an official duty, power or function that provides an opportunity to further their own private interests or those of a relative or friend, or to improperly further another person's private interests.

I established my interpretation of the term "friend" in *The Watson Report*, which I issued in June 2009. As I determined in that report, a friend means a person with whom one has some history of mutual personal regard beyond simple association. While acquaintances can become friends, they do not do so simply because of frequent interaction.

I had occasion to consider the term “improper” in *The Finley Report*, which I issued this past March. The concept of “improper” by its very nature allows more latitude and discretion in interpreting it. In determining that a minister’s decision to fund a project was improper, I looked beyond the Act’s provisions. I considered the rules under which the minister was exercising her responsibilities, including a Treasury Board policy and the Prime Minister’s guidance document that is entitled *Accountable Government: A Guide for Ministers and Ministers of State*.

I have also had occasion to make observations in some investigation reports where I felt that a practice was inappropriate but was not covered by the rules.

For instance, in April 2010 I issued a report entitled *The Cheques Report* that relates to the use of partisan identifiers on ceremonial cheques and other props in making government funding announcements. Because neither the Act nor the Members’ Code gives any sense that political interests are covered, I did not find a contravention. I did, however, observe in that report that the practice of using these identifiers was undesirable and had the potential to diminish public confidence in the integrity of Members and government institutions. Shortly after my report was published, the practice stopped.

Another example can be found in my May 2010 *Raitt Report*. In that examination, I looked at a minister’s involvement in a political fundraising event organized by her riding association with the assistance of several lobbyists. I found no contravention because the Act only prohibits public office holders from personally soliciting funds where that would place the public office holder in a conflict of interest. In my report, however, I identified the need for more effective and broader fundraising rules.

This observation resulted, not long afterwards, in the addition of new guidelines on fundraising and dealing with lobbyists to the Prime Minister’s *Accountable Government* guide. These guidelines are much broader than the Act that I administer. The guidance document, however, is not administered by my Office, but rather by the Privy Council Office.

A similar case relating to fundraising arose a few years later, resulting in the publication of *The Glover Report* in November 2014. In that case, stakeholders of the minister’s department were invited to a fundraiser at which the minister was to be present. For the same reasons as in *The Raitt Report*, I did not find a contravention, even though the rules under the *Accountable Government* guide would have applied. I reiterated my concerns about such cases, and I went on to recommend amending the Act to include a contravention for ministers or parliamentary secretaries who knew, or should have known, that funds were being solicited by others in circumstances that would place the minister or parliamentary secretary in a conflict of interest and did not take appropriate action.

Under section 9 of the Act, public office holders are prohibited from using their positions to seek to influence another person’s decision if doing so would place them in a conflict of interest.

In two investigations, I had an opportunity to consider what constitutes an appropriate balance between ministers' and Members' obligations under the Act and the Members' Code, and Members' obligations to serve the public interest and represent their constituents. In *The Paradis Report*, which I issued in December 2013, and *The Clement Report*, which I released in July 2012, I made the point that Members should not use their positions as ministers to provide greater assistance to their constituents than to other Canadians in relation to their own department or larger portfolio. I found in the circumstances of both these cases that the ministers did not, in fact, abuse their positions as ministers in fulfilling their roles as Members.

Finally, I mention *The Bonner Report*, which I released in February of this year. This was my first investigation report where I found a contravention in relation to gifts (in this case, invitations to events). Both the Act and the Members' Code prohibit the acceptance of gifts that might reasonably be seen to have been given to influence a public office holder or Member in the exercise of an official power, duty or function.

My Office has consistently advised that an invitation to an event from a person or organization that has sought or might be expected to seek something from a public office holder or Member is generally not acceptable. Despite my consistent position on this issue, supplemented by guidelines and other communications, my decision in *The Bonner Report* was met with resistance and surprise by some who, it would appear, were not following the rules or did not believe in them.

Conclusion

I hope you have found this brief overview of my advisory, education and enforcement roles of some interest.

I now look forward to our discussion.