



## **“The Relationship Between Parliament and the Agents of Parliament” Seminar Offered by the Canadian Study of Parliament Group**

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### **Introduction**

I am pleased to be part of today's seminar on the relationship between Parliament and the agents of Parliament, and I thank the Canadian Study of Parliament Group for inviting me to participate.

This seminar uses the generic term “agents of Parliament” to refer to eight commissioners, including myself. I note, however, that some may also be referred to as “officers of Parliament.” As Conflict of Interest and Ethics Commissioner, I am actually an Officer of the House of Commons.

Agents of Parliament are not a homogenous group; there is no single template for the bodies that are responsible to Parliament. We have different mandates, different means of exercising our mandates and different administrative structures. Traditionally, the role of agents related to the historic functions of Parliament: authorizing expenditure and redressing grievances. Their purpose is largely to assist Parliament in its scrutiny of government by providing oversight that helps it hold the executive to account.

The term “Agent of Parliament” or “Officer of Parliament” denotes a special relationship of accountability to Parliament and the designation implies independence from the executive.

My focus today will be on that independence, which is critical to the ability of agents of Parliament to fulfil their mandates. This means not only being independent, but also being seen to be independent. I will talk about the formal mechanisms that uphold that independence, such as the method of appointment and dismissal, funding, staffing and oversight of the offices, and the reporting structure upholds this independence.

## **Mandate**

I will be using my own position as a reference in my discussion of independence. Some but not all of the aspects of my position also apply to other agents of Parliament including my colleagues here today with me, the Auditor General and the Access to Information Commissioner.

Under the *Conflict of Interest Act*, I oversee the conduct of public office holders, including the prime minister, government ministers, parliamentary secretaries, ministerial staff and Governor in Council appointees. Under the *Conflict of Interest Code for Members of the House of Commons*, I oversee the conduct of Members of the House of Commons. These regimes seek to prevent conflicts between the public duties of appointed and elected officials, and private interests, which are largely financial.

It is essential that those subject to the regimes that I administer be assured that they will receive fair and equal treatment regardless of their political affiliation and whether they belong to the governing party. As well, the public will trust the legitimacy of my conclusions only if I am truly independent of the government of the day and am perceived to be so.

I am empowered to investigate alleged contraventions of the Act by any public office holder and alleged contraventions of the Members' Code by any Member of the House of Commons.

My Office was created in July 2007, when the *Conflict of Interest Act* took effect and the position of Conflict of Interest and Ethics Commissioner was created. The lack of independence from the government of my predecessors provides an important contrast when considering the independence of my position.

## **Appointment Processes**

The appointment process can help ensure the independence of agents of Parliament.

Before the Conflict of Interest and Ethics Commissioner can be appointed by the Governor in Council, the Government is required, under the *Parliament of Canada Act*, to consult with the leader of every recognized party in the House of Commons.

The nominee's biographical notes must also be tabled in the House of Commons and the Standing Committee on Access to Information, Privacy and Ethics, a committee which is chaired by a member of the opposition, is empowered to consider the qualifications and competence of the nominee at pre-appointment confirmation hearings.

The appointment must be ratified by a resolution of the House before it can be made. In the case of some other agents, consultation with the leaders in the Senate is also required as is a resolution of the Senate.

The Conflict of Interest and Ethics Commissioner is appointed for a seven-year term and is eligible to be reappointed for one or more terms of up to seven years each. I was appointed for an initial seven-year term in July 2007 and then to an additional two-year term that was scheduled to end in July 2016.

Another section of the *Parliament of Canada Act* provides for the position to be filled on an interim basis for up to six months at a time. I have twice been appointed under that provision, currently until July of this year.

I have had reason to wonder whether the Commissioner's term should be made non-renewable, like those of the Auditor General and the Chief Electoral Officer, in order to forestall any doubts about the incumbent's independence. Without the possibility of reappointment, there would not be any suggestion that the Commissioner might be in a conflict of interest when making determinations about the government.

Repeated use of the interim appointments for the same position can also create perceptions of a lack of independence and becomes problematic.

## **Removal Processes**

The removal processes also help safeguard the independence of agents of Parliament, by ensuring that we cannot be removed at the whim of a government that might take issue with some of our decisions. This requirement protects us from dismissal for such reasons.

All the agents of Parliament are appointed to hold office during good behaviour rather than at pleasure and may only be removed for cause, in my case by the Governor in Council on address of the House of Commons, and in others by the Governor in Council or the Governor General on address of the Senate and the House of Commons.

## **Reporting**

A key feature of independence for agents of Parliament is our accountability to Parliament, rather than to the government or a minister.

We all report directly to Parliament, submitting our reports to the Speaker of the House of Commons and/or the Speaker of the Senate, as the case may be. I submit my annual reports, my inquiry reports under the Members' Code, and my annual list of sponsored travel under the Members' Code to the Speaker of the House of Commons for tabling. Once they have been tabled, I make them public.

The reporting relationship for matters related to the administration of the Members' Code is established in the *Parliament of Canada Act*. It directs me to perform the duties and functions assigned by the House of Commons for governing the conduct of its members when they are carrying out the duties and functions of their office as Members of the House of Commons. It also states that those duties and functions are carried out within the institution of the House of Commons, and that I must carry them out under the general direction of any committee of the House that may be designated or established by the House for that purpose.

Unlike any of the other agents, my Office is considered an entity of Parliament and is part of the Parliamentary Precinct.

The Standing Committee on Access to Information, Privacy and Ethics has oversight responsibility for my Office and reviews its annual spending estimates, as well as matters related to my reports under the *Conflict of Interest Act*. The Standing Committee on Procedure and House Affairs has responsibility for the Members' Code.

The *Parliament of Canada Act* states that my Office is covered by parliamentary privilege when I carry out duties and functions related to the Members' Code. This is not the case for the other agents of Parliament.

I note that my decisions under the *Conflict of Interest Code for Members of the House of Commons*, which is an appendix to the Standing Orders of the House of Commons and not an Act of Parliament, are not subject to judicial review. With respect to the *Conflict of Interest Act*, my orders and decisions are final and may not be reviewed in any court, except by judicial review in accordance with the *Federal Courts Act* and only on certain specified grounds.

## **Funding**

The independence of agents of Parliament may also be affected by the method by which budget allocations are made.

My Office is an entity of Parliament and is not included in the schedules to the *Financial Administration Act*. The Treasury Board has no authority to make policies applicable to the House of Commons or, by extension, to my Office, nor does it determine the amount of funding available to my Office.

Under the *Parliament of Canada Act*, my budgetary estimates are considered by the Speaker of the House of Commons and then transmitted to the President of the Treasury Board, who simply includes them without change in the estimates of the government for that fiscal year.

The offices of my fellow commissioners are listed in a schedule to the *Financial Administration Act* and their budgets are negotiated with the Treasury Board.

I am called to defend my Estimates before the Standing Committee on Access to Information, Privacy and Ethics. Similarly, my fellow officers are called before the committees that have been designated with oversight responsibility for their offices.

Also relevant to the notion of independence is the fact that I am a separate employer. My Office has its own terms and conditions of employment and my employees are not part of the public service. Instead, they are employed under the *Parliamentary Employment and Staff Relations Act*.

## **Conclusion**

In considering the relationship of agents of Parliament with Parliament, I have briefly looked at several characteristics of my Office that uphold that independence: the method of appointment and dismissal, funding, staffing and oversight.

I hope my remarks have provided some food for thought, as well as some fodder for discussion.