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"The State of Public Sector Ethics: Exploring Emerging Issues and Challenges in the Field" Panel Presentation Public Sector Ethics Conference

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I will focus in my remarks on the Canadian model of public sector ethics using examples from my own jurisdiction, and will finish by highlighting some of the current issues.

The importance of preventing and addressing conflicts of interest is widely recognized in Canada. Conflict of interest guidelines for federal cabinet ministers were introduced in 1973, and Canada's first independent ethics commissioner was appointed 28 years ago, in Ontario. Today, all provinces and territories, as well as the Senate and House of Commons, have conflict of interest codes or acts. Such regimes are also becoming more common at the municipal level.

Canada is seen internationally as a leader in regulating conflicts of interest. My Office is contacted regularly by officials and researchers from other countries—some of which are still struggling with corruption—who view our system as an example to follow.

I administer the *Conflict of Interest Act* and the *Conflict of Interest Code for Members of the House of Commons*. The private interests that are covered in those two regimes are primarily financial.

Other related matters, such as lobbying, whistleblowing and election financing, are dealt with by other offices. Some provincial conflict offices also deal with breaches of expenditure rules.

The federal Act came into force in 2007. It applies to some 2400 public office holders. The largest group is ministerial staff, followed by Governor in Council appointees. Ministers and parliamentary secretaries, the most visible public office holders, together number fewer than 50. The Act replaced a code of conduct. Codes of conduct, which do not carry the force of law, tend to be written with greater reference to general principles, leaving more room for discretion in their application.

The Members' Code was adopted by the House of Commons in 2004 and is part of the Standing Orders. It can be amended by a vote in the House and its provisions are not as strict as those of the Act.

My mandate is quite precise and touches on many ethics issues only incidentally. I do, however, comment on ethical matters of concern to Canadians that are not covered by the Act or the Members' Code where I believe it is useful to do so.

A case in point is my 2010 Cheques Report, dealing with the use of partisan or personal identifiers on ceremonial cheques and other props in government funding announcements. Even though I found no breach of the Act or the Members' Code, I suggested that the practice was inappropriate and should be stopped. The government ended it immediately.

Canadian Model

There are differences in the coverage of Canada's various conflict of interest regimes and the structure of the offices that administer them. They apply to different numbers and combinations of public officials.

Most provincial ethics commissioners deal only with parliamentarians. In Quebec, the commissioner also deals with the staff of Members of the National Assembly. Public servants are usually dealt with under separate regimes, except in the case of municipal offices.

Despite these differences, however, there are many similarities.

A key feature is the independence of the commissioners. In my case, for example, I am responsible only to Parliament and do not report through a minister. I am a separate employer and have financial independence, submitting my spending estimates directly to the Speaker of the House for inclusion in the Main Estimates.

Most, if not all, Canadian ethics offices focus on advice and education. Unlike in many American jurisdictions, we prefer a preventive rather than a punitive approach.

My Office, like most others in Canada, maintains regular contact with public office holders and Members. We help them complete the compliance process and give them confidential advice on specific matters. We also seek opportunities to educate them generally about their obligations.

Although my focus is on prevention, I also apply the enforcement provisions of the two regimes. In enforcing the Act, I can impose administrative monetary penalties for failures to report within prescribed deadlines, and I can issue compliance orders.

I am also empowered to investigate possible contraventions of both regimes. At the same time, I am aware of the potential consequences to an individual's reputation and have always worked to ensure procedural fairness. Investigations provide an opportunity to elaborate on the interpretation of the various conflict of interest rules in determining whether a contravention has occurred. My investigation reports are, I believe, effective educational tools.

The Canadian model is also distinguished by a focus on transparency, as some form of public disclosure is required in the various conflict of interest regimes. At the federal level, I maintain a searchable public registry on my website. I report annually on my activities under the Act and the Members' Code. My investigation reports are made public. I am also as open with the media as I am permitted to be under the two regimes. I believe the media can help to communicate the existing ethics rules, thus performing an educational role.

None of Canada's conflict of interest regimes covers criminal matters. Nor do most conflict of interest regimes cover broader ethical matters that go beyond conflict of interest issues. I note, however, that the Quebec regime, and Senate rules that were recently added, include provisions requiring that the reputation of their institutions be upheld, opening up greater discretion. The general approach, however, remains to give minimal discretion to Canada's conflict of interest commissioners.

Emerging Issues

The issue of gifts has been a constant source of debate over the years. Some individuals have difficulty seeing themselves bound by the gift rules. Some protest that they cannot be bought so easily.

Last year, I issued an investigation report under the Act in which I found a contravention in relation to invitations to dinner events for which tickets were purchased by stakeholders. *The Bonner Report* served as a wake-up call and has resulted in greater attention being paid to the gift rules, particularly by lobbyists.

The problem with gift rules is that people have quite divergent opinions about the extent to which gift-giving should be regulated. Some feel that all gifts should be acceptable, while others think none should be. To encourage compliance, I have suggested that the establishment of a relatively low dollar amount be considered below which all gifts would be acceptable so long as they were not given as part of a pattern.

Political fundraising has also been raised across many jurisdictions, including my own, particularly in the last year. Activities that give a small number of attendees the opportunity to meet a featured minister in exchange for the price of admission have been characterized as "selling access" to persons with power. Such activities are not addressed directly in the Act I administer, or in most provincial conflict of interest legislation.

Currently in the federal Act, the only provision related to fundraising is a prohibition against public office holders, including ministers, personally soliciting funds from stakeholders. There is no direct prohibition in the Members' Code. There is a rule in the Prime Minister's guidelines prohibiting ministers from targeting stakeholders for fundraising events, but it is administered by the Privy Council Office.

Both the Act and the Members' Code deal with private interests. Political interests are generally beyond the scope of my mandate.

None of Canada's conflict of interest regimes at the federal, provincial or territorial levels deals with political interests. In fact, certain political activities of Members of the House of Commons are expressly excluded from the scope of the rules that I administer.

The regimes that I administer refer, for the most part, to actual conflicts of interest as opposed to apparent or perceived conflicts of interest. Some of the rules, however, give me a measure of discretion.

One example is the gift rule, which adds the element of perception in that it prohibits public office holders from accepting gifts that might reasonably be seen to have been given to influence them in the exercise of an official power, duty or function. Room for some interpretation or discretion is also inherent in the terms "improperly" and "improper," which appear in certain provisions of the Act and the Members' Code.

Conclusion

As Commissioner, I have tried to fulfil my mandate with clarity, consistency and common sense. The ideas of clarity and consistency are relatively straightforward.

Common sense is more elusive as a broad standard and harder to get agreement on in any particular situation. It requires the application of more discretion. There is less room to apply common sense in cases where the rules themselves are narrowly defined.

For example, the Act I administer prohibits reporting public office holders from participating in outside activities, regardless of whether those activities pose a conflict of interest. This makes it difficult to resort to common sense in cases that call for it. The same observation applies to the requirement for public office holders to divest certain types of assets.

I will close with the observation that conflict of interest regimes are important dimensions of Canada's ethical framework. There is no single window, however, into the regulation of ethical behaviour. Indeed, it would be folly to try to regulate all aspects of the behaviour of public officials through explicit laws or codes.