



Opening remarks before the House of Commons Standing Committee on Access to Information, Privacy and Ethics

Mario Dion – Conflict of Interest and Ethics Commissioner

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INTRODUCTION

Mr. Chair, I would like to begin by thanking the Standing Committee on Access to Information, Privacy and Ethics for inviting me to appear today. It has already been a year and a half since I had the occasion to exchange information and views with your committee.

I understand that today you wish to discuss issues of conflict of interest as they may pertain to pandemic spending.

I have been the Conflict of Interest and Ethics Commissioner since January 2018. I applied for the position because I believed in it and wanted to play a role in helping improve the confidence Canadians have in their elected officials and public sector leaders. I still believe in it, even more so now that I have a full appreciation of the role and its potential.

My mandate is twofold. A significant part of our work involves the *Conflict of Interest Code for Members of the House of Commons* adopted in 2004 for which all of you will have, in the past year, completed your initial compliance process. I am also responsible for the administration of the *Conflict of Interest Act* which came into force in 2007.

The purpose of the Act is to set clear rules around conflicts of interest and post-employment for public office holders who may be either ministers, parliamentary secretaries, members of their staff or Governor-in-Council appointees. There are currently about 2,400 public office holders of which 1,300 are reporting public office holders, including over 700 staff members in ministers' offices.

The pandemic has had and will continue to have an impact on the work in our Office because of the two high-profile investigations related to the Canada Student Service Grant and as illustrated by the order I issued in September to nine senior officials involved in the matter relating to Mr. David MacNaughton, former Canadian ambassador to the United States.

But, if the workload of our Office has increased very significantly in the past year it, is also because we have seen the number of exempt staff increase by over 65%. This is in addition to the 98 new Members of Parliament following the last general election. New ministerial staff and Members require more support. They have to quickly familiarize themselves with a complex set of rules and provide a lot information to our Office.

COMPLIANCE

Upon appointment, all public office holders are provided information on their obligations and a compliance process is undertaken, much the same as Members do under the Code. Once their Confidential Report is received, it is analyzed to determine whether any action is required to ensure compliance with obligations under the *Conflict of Interest Act*.

Again, much like the provisions under the Code, the Act then provides for an annual review each calendar year for reporting public office holders until their term of office expires.

Throughout their term, public office holders and Members must be vigilant about any recusals or any gifts of \$200 or more. They must also report any material change to the contents of what they reported in their Confidential Report.

What I would like you to understand today is that the role of the Office is not just to advise, confirm exceptions, or explain requirements, but also to engage in oversight activities to ensure compliance with the provisions set out in the Act and the Code. Our role is also to guide Members and senior officials individually, independently, thoroughly, and consistently. That is where the lion's share of the Office's resources are directed.

Although there was an important reduction in our numbers in the first part of this fiscal year because of the shock caused by the sudden onset of the pandemic on everyone's activities, it has since picked up. I am pleased to say we anticipate a marked increase that has already started to manifest itself. While some will tell you that I am not hesitant to use the enforcement powers within the *Conflict of Interest Act*, I believe compliance based on understanding one's obligations is always best. For example, to help reinforce understanding of these requirements, just last month I hosted an educational teleconference on the duty to recuse attended by over 200 public office holders. We will be holding more teleconferences on key issues. Regulatees generally want to comply, but sometimes they breach the Code or the Act because they do not take the time to familiarize themselves with these regimes or to seek advice.

In fact, we have only received a few dozen requests that do have a link back to the pandemic and the changes it has brought about both from Members and public office holders.

The *Conflict of Interest Act* also sets out obligations governing all former public office holders during their post-employment period. There are a number of rules, some of which are applicable indefinitely, such as section 33, which states that no former public office holder shall act in such a manner as to take improper advantage of their previous public office, or section 34, which prohibits former public office holders from acting for, or on behalf of, any person or organization in connection with any specific transaction or case with respect to which the former public office holder had acted for, or provided advice to, the Crown. They are also forever prohibited from giving advice to their clients or employers using information not available to the public.

Former officials seldom seek advice and we only hear from a very small proportion of them once they leave their position. Former reporting public office holders are also prohibited from seeking employment or a contract of service with an entity with which they had direct and significant official dealings during the period of one year immediately before their last day in office. They also cannot make representations, whether for remuneration or not, for or on behalf of any other person or entity to any department, organization or board with which they had direct and significant official dealings during the same one-year period immediately before their last day in office.

I am not here today to give you an exhaustive list of obligations, but rather to give you an idea of the type of obligations that exist both during and after a term of office. There is a one-year cooling-off period for those obligations that are time-limited. As I said earlier, some of them apply forever. In the case of a minister, this period lasts two years.

In the matter of former Canadian ambassador to the U.S. David MacNaughton and his post-employment obligations under the *Conflict of Interest Act*, Mr. MacNaughton has acknowledged, with the benefit of hindsight, that certain communications and meetings, to the extent they could have furthered the interests of Palantir Technologies, were contrary to section 33 of the Act and I took action on that basis.

INVESTIGATIONS

Most of you understand that I also have the authority to conduct investigations when a Member alleges that there are reasonable grounds to believe the Code or Act has been breached. If I receive such a communication, I must investigate unless, of course, the request is frivolous or vexatious or is made in bad faith. Since 2007, it has not happened very frequently where a request was seen to have been made in bad faith. I also have the power to initiate an investigation on my own initiative under section 45 if I have reason to believe that a public office holder or former public office holder has contravened the Act.

When I investigate, my job is to gather the facts, analyze them and conclude whether there has been a contravention. Of course, we are very careful to ensure that the individuals involved have the opportunity to express their views throughout the process and that we conduct it in private. There are strict confidentiality provisions both during and after the investigation.

The purpose of my report at the end of an investigation is to provide sufficient information to ensure the reasons for my conclusion are understood.

The final report is provided to the individual concerned and to the prime minister under the Act and the Speaker of the House of Commons under the Code. It is made public the same day on our website and Twitter accounts.

On September 16, 2020, instead of continuing to investigate a matter where there was a clear admission of a number of contraventions, I issued an order under subsection 41(1) of the Act to nine public office holders to restrict their official dealings with Mr. McNaughton which effectively ensures that this breach would not reoccur. The order, including the details in the related annex, is available on our public registry.

Under my direction, we strive to complete investigation reports within one year, unless extraordinary complexities arise. Since my appointment, we have been able to meet this objective and have completed 18 such reports under either the Act or the Code. Each report generates a varying degree of interest, depending of course on the person named in the report and the seriousness of the alleged breaches. The reports can also serve as an important educational component for both those who must comply with the Act or the Code, as well as the media and general public. I believe they also serve to deter similar deviant behaviour on the part of others.

OUTREACH

Both the Act and the Code have strict confidentiality requirements, which can create challenges for us in terms of transparency. I have always undertaken to be as forthright as possible about our work while always respecting confidentiality requirements.

However, since each Member must comply with the Code at all times and section 19 of the Act makes compliance a condition of employment for public office holders, we are increasingly focusing our efforts on providing more extensive and varied educational programs to equip those who are accountable for their own conduct with knowledge of their obligations. We have hosted webinars and educational conference calls, revised our guidance materials to make use of plain language when possible, and encouraged dialogue with regulatees.

In the context of the pandemic, I also made use of subsection 26(4) of the Code to publish an opinion of general guidance to Members who may, in the course of their work with constituents or their private life, be affected by economic repercussions relating to COVID-19.

With attention being brought towards contracts pertaining to COVID-19, questions were asked of our Office, both from the general public and the media pertaining to the post-employment obligations of former Member of Parliament Frank Baylis. Unlike the *Conflict of Interest Act*, there are no post-employment provisions under the Code. Former Members are no longer subject to the Code, effective the day they leave their parliamentary functions. They can therefore seek employment as they wish. However, this not to say that I was not aware of the broader matter in the context of the conduct of business by public officer holders. I can confirm that at the moment there is no ongoing investigation by our Office pertaining to the government's involvement with Baylis Medical Company Inc., as well as Mr. Baylis, including the awarding of a procurement contract for medical devices.

OUR ROLE

During the past many months, while all Canadians have been doing their part to help stop the spread of COVID-19, the work of our Office has continued nearly unfettered due to connectivity and technological support provided to us from the House of Commons. I would like to thank the employees of the House and of our Office that have allowed our work to proceed. It is some of this same infrastructure that enables us to provide more accessible and resource-efficient education and communications options.

Under my direction, the Office will have a continued focus on quality advice that is fair and non-partisan, have rigour in procedures and investigations to uphold standards that are consistent for all Members and public office holders, and ensure constant consideration is given to how we communicate and educate. These are the main ways in which the Office and the two regimes I administer maintain and enhance public trust in elected officials and public confidence in the integrity of the public institutions in which they serve.

I would be pleased to answer any questions from Committee members on my remarks and the work of the Office.