



Opening remarks before the House of Commons Standing Committee on Finance in the context of the Committee's study of Government Spending, WE Charity and the Canada Student Service Grant

Mario Dion – Conflict of Interest and Ethics Commissioner
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INTRODUCTION

I would first like to thank the Standing Committee on Finance for inviting me here today to speak to a matter that has already generated a great deal of attention at many parliamentary committees. I have obviously followed the committees' work with interest.

You have in fact asked me to speak about documents that I have already received within the framework of examinations related to the WE Charity matter and you probably wish to know if they contained redactions, omissions or exclusions. In particular, you have asked me to discuss "Cabinet confidence" exclusions.

As we have already received a large portion of the documents, I believe that I might be able to help.

EXAMINATIONS

Let me first explain to you how the examination process works in order for the Office to obtain needed documents. Examinations may be initiated by the Commissioner or through a Member of Parliament or a Senator who may request an examination under subsection 44(1) of the *Conflict of Interest Act*.

There are two ongoing examinations, requested by several Members of the House of Commons and involving the conduct of the Prime Minister and the former Minister of Finance, that have brought me here before you today.

The first step that we go through is to seek documents that we believe may be relevant from individuals or institutions and ask that they be shared with us.

As we always do, we ask to be provided with documents without edits or redaction. It is made clear in our standard letter that we do not want information to be redacted.

In our view, to ensure a proper examination that is fair and impartial, we need to be the arbitrator of what is or is not relevant to an examination.

Since my arrival three years ago, there has only been one instance in the context of which I did not receive the information I requested, and I explained that situation in the *Trudeau II Report*.

There are strict confidentiality provisions under subsection 48(5) of the *Conflict of Interest Act* that severely limit my ability to share information collected in the course of an examination.

I will read the subsection in question as it is key, and I would like everyone to be clear on its wording:

(5) Unless otherwise required by law, the Commissioner, and every person acting on behalf or under the direction of the Commissioner, may not disclose any information that comes to their knowledge in the performance of their duties and functions under this section, unless

(a) the disclosure is, in the opinion of the Commissioner, essential for the purposes of carrying out his or her powers under subsection (1) or establishing the grounds for any conclusion contained in a report under section 44 or 45; or

(b) the information is disclosed in a report referred to in paragraph (a) or in the course of a prosecution for an offence under section 131 of the [Criminal Code](#) (perjury) in respect of a statement made to the Commissioner.

CABINET DISCUSSIONS

I would also like to bring your attention to Cabinet confidences and my position based upon my reading of the relevant parts of the Act that pertain to my ability to receive this information and how to treat it.

It is my view, and that of my predecessor, that the Act provides access to all needed information for an examination, including Cabinet confidences.

In Part 4 of the Act, under Mandate and Powers of the Commissioner, subsection 44(9) reads as follows:

Confidentiality

(9) The Commissioner may not include in the report any information that he or she is required to keep confidential.

So, the protection is there. Former Commissioner Mary Dawson addressed the Standing Committee on Access to Information, Privacy and Ethics on the topic of Cabinet confidences, as did I in the *Trudeau II Report*.

In her 2013 submission regarding the five-year review of the *Conflict of Interest Act*, she said:

It must be clearly understood that the Commissioner has the authority to access any document needed to conduct his or her investigations. Moreover, these documents must be provided directly to the Commissioner and not vetted by another party, so as not to compromise the integrity of the investigative process.¹

This is not what happened during the Trudeau II examination in 2019, but as I had enough information, I was able to proceed.

To avoid potential delays in examinations and to carry out my proper investigative mandate, I must have access to all information I consider necessary to execute my duties.

I have outlined for you the confidentiality obligations in examinations that apply to all information, including protecting the confidentiality of Cabinet documents. There are further confidence obligations under section 51 of the *Conflict of Interest Act*, pertaining to recusals while a matter is under Cabinet confidence, as well as under section 90 of the *Parliament of Canada Act*, pertaining to my obligation to protect Cabinet confidences in the production of annual reports.

¹ Office of the Conflict of Interest and Ethics Commissioner, [The Conflict of Interest Act: Five-Year Review](#), Submission to the Standing Committee on Access to Information, Privacy and Ethics, 30 January 2013, p. 65.

I wish to reinforce that Cabinet confidences, when relevant, are a vital component of an examination and they are properly protected by the Office. I believe that as an independent officer of Parliament, I must have unfettered access to them when they form part of the evidence I must consider.

WITNESS TESTIMONY

Since your committee began its study last summer, there have been dozens of hours of witness testimony. If only I could use this testimony, I would be able to finalize my reports more quickly and avoid wasting the time of the many witnesses involved in the matter. From a legal point of view, I am not able to refer to it at the moment as it is protected by parliamentary privilege.

The Speaker of the House of Commons has informed me about 10 days ago that he did not have the sole authority to grant my request to use this testimony and suggested that I direct my request to the Standing Committee on Finance.

Therefore, for the purposes of the Office's ongoing examinations, I respectfully ask, Mr. Chair, that you recommend that the House waive the privilege associated with witness testimony before the Standing Committee on Finance in the context of its study on WE Charity and the Canada Student Service Grant.

Mr. Chair, those are my remarks. I would simply like to remind members of the Committee that there are considerable limits to how open I can be in answering your questions here today as I must be mindful of the strict confidentiality obligations set out in the *Conflict of Interest Act*.