



Backgrounder

Conflict of Interest Act and Members' Code

What to expect during an investigation

The Conflict of Interest and Ethics Commissioner's duties in applying the [Conflict of Interest Act](#) (Act) for public office holders and the [Conflict of Interest Code for Members of the House of Commons](#) (Members' Code) include investigating alleged contraventions of these regimes.

This document seeks to provide participants in an investigation (called "examinations" under the Act and "inquiries" under the Members' Code) with an idea of what to expect. It focuses on practices common to examinations under the Act and inquiries under the Code, noting differences where relevant.

Nature of Investigations

The primary purpose of examinations and inquiries conducted by the Office of the Conflict of Interest and Ethics Commissioner is to determine the relevant facts surrounding an alleged breach of the Act or the Members' Code in order to permit the Commissioner to draw conclusions and make appropriate observations or recommendations.

These investigations are not like proceedings before a court or tribunal because the Commissioner does not preside over a dispute between two adverse parties. The Commissioner's investigations involve gathering and analyzing the relevant information in order to make findings of fact and conclusions. Under the Members' Code, the Commissioner is expressly mandated to make recommendations.

Under the Act, the Commissioner can require witnesses to provide written or oral evidence, under oath, and to produce documents. The Members' Code explicitly requires Members of the House of Commons to cooperate with respect to an inquiry, whether they are the subject of the inquiry or are called as witnesses.

Confidentiality

Examinations and inquiries are conducted in private. The Commissioner and Office staff maintain the confidentiality of information collected during an investigation except as necessary to carry out the investigation or to establish the grounds for the analysis and conclusions in a report.

Subjects and witnesses are asked to keep information confidential. They have a responsibility to help maintain the confidentiality of investigations by not discussing the content of any interviews or written correspondence with anyone other than their counsel, if applicable.

The Commissioner will not normally comment on an investigation. Under the Code, the Commissioner is prohibited from making any comments in relation to any preliminary review or inquiry except to confirm that a review has been completed or to describe the reasons for not proceeding with an inquiry where the matter to which the inquiry relates has already been made public.

Information for Subjects

The subjects of investigations under the Act or the Members' Code are assured of certain rights.

As neither the Act nor the Members' Code sets out the procedure for conducting investigations, the Commissioner has adopted a process that balances confidentiality obligations, the integrity of the investigation process and procedural fairness. Both the Act and the Code contain provisions that require the Commissioner to provide the subject with a reasonable opportunity to make representations during the investigation.

The subjects of investigations are permitted to have a lawyer or may choose to be assisted or represented by a person of their choice.

Process

When an investigation is initiated, the Commissioner writes to the subject to explain the examination process and sets out the details of the alleged contraventions, providing a copy of the written request for an investigation, if applicable. Under the Members' Code, a preliminary review is required as a first step to determine whether an inquiry is warranted.

Subjects and witnesses may be asked to provide documentary evidence, to present themselves at an interview or to respond to questions by telephone or in writing.

Those being interviewed will be asked to swear an oath. Interviews are recorded and transcripts are made of the proceedings.

The Commissioner generally has two interviews with the subject: one at the outset of the investigation and the second at the end of the fact-finding process. The subject has the right to make representations to the Commissioner, personally or through counsel, at any time during the investigation process.

Finally, the portions of the report that set out the facts determined by the Commissioner are provided to the subject and his or her counsel, if applicable, for review before the report is finalized. They may make representations to the Commissioner, and those recommendations are taken into consideration before the report is finalized.

Information for Counsel

Investigations under the Act and the Members' Code are substantially different from the adversarial processes associated with conventional civil or criminal litigation.

The investigation process does not involve hearings, but fact-finding interviews with the subject of the investigation and witnesses. The Office of the Conflict of Interest and Ethics Commissioner is responsible for gathering some of the information required to make the factual determinations that will underpin the Commissioner's analysis and conclusions. The Commissioner does not make findings of civil or criminal liability, but gathers information to determine the relevant facts in order to make appropriate conclusions as to whether the person who is the subject of the investigation has breached the Act or the Members' Code. The Commissioner's reports are made public. Under the Members' Code, the Commissioner is expressly mandated to make recommendations in the final reports.

The Office considers that the role of counsel is to assist their clients in presenting their views and to assist the Commissioner in obtaining all the relevant facts in an expeditious manner.

Counsel may accompany their clients to their own interview(s), but counsel does not have the right to be present during the interviews of other witnesses or to cross-examine them.

In order to protect the integrity of the fact-gathering process, counsel representing the subject of an investigation may not also represent a witness in the same investigation.

Counsel may make representations during their client's interview(s) or in writing during the investigation process.