



Office of the
Conflict of Interest and
Ethics Commissioner

Commissariat aux
conflits d'intérêts et
à l'éthique



The Conflict of Interest Code for Members of the House of Commons: Five-Year Review

**Submission to the Standing Committee on Procedure
and House Affairs**

May 14, 2012

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**THE FIVE-YEAR REVIEW OF THE *CONFLICT OF INTEREST CODE FOR*
MEMBERS OF THE HOUSE OF COMMONS:
INPUT FROM THE CONFLICT OF INTEREST AND ETHICS COMMISSIONER**

I. INTRODUCTION

The five-year review of the *Conflict of Interest Code for Members of the House of Commons* presents an important opportunity to explore how well the Code is working and whether it can be enhanced to meet its purposes. As the Standing Committee on Procedure and House Affairs (the Committee) begins its study of the Code, with the goal of providing recommendations to the House of Commons on how it may be improved, I am providing the Committee with recommendations based on my own experience in administering the Code.

Many of the challenges that I highlight in this submission will not be a surprise to the Committee, as I have over the past few years raised a number of issues during my appearances before the Committee, in my annual reports and in my inquiry reports. Some of these issues, mainly relating to gifts, have already been addressed through amendments to the Code that were approved by the House of Commons in June 2009.

In March and October 2010, I submitted suggestions to the Committee for amendments to the Code relating to the disclosure provisions (sections 20 to 25), and the inquiry provisions (sections 27 and 28), as well as a proposed form to be used when requesting an inquiry. To assist the Committee, I provided draft language, along with detailed explanatory notes and a table to highlight the differences between the existing language and the proposed amendments. Those suggestions are described in this submission, some in greater detail than others. The submissions of March and October 2010, themselves, are set out in their entirety in the Appendix.

I note that the timing of the Code's five year review is close to that of the *Conflict of Interest Act*. Since the two have similar provisions, it would be an opportune time to explore areas where the two could be harmonized. I have found that each regime has strengths. In some cases, I believe that the Act might benefit from an amendment to follow the Code's model. In other cases, it is the Act that sets out clearer provisions. Since my mandate is governed by three separate instruments – the Act, the Code and the *Parliament of Canada Act* – amendments to all three might be required to bring changes that would harmonize, streamline and make more efficient the federal conflict of interest regimes.

I hope that the Committee will find this discussion useful, and will consider my recommendations for actions that could be taken to strengthen the Code and assist Members in meeting their obligations, with the goal of maintaining and enhancing public confidence and trust in the integrity of Members and the House of Commons.

II. ADMINISTERING THE CODE

No deadline to complete compliance process or annual reviews

Subsection 20(1) of the Code establishes a deadline for Members to file a confidential statement of their private interests and those of their families, within 60 days after the notice of their election appears in the *Canada Gazette*. In contrast to the *Conflict of Interest Act*, the Code does not impose deadlines for Members to complete their initial compliance process. As a result, it may sometimes take many months for Members to finalize their initial compliance arrangements. I have noted that it takes significantly longer for Members under the Code than for reporting public office holders under the Act to complete their initial compliance process. This should not be the case since the Code is less restrictive in some areas and Members are therefore not required to take specific compliance measures such as divestment or ceasing to hold certain positions of office.

As I noted in my 2009-10 Annual Report under the Code, “I believe that the lack of a deadline under the Code diminishes the urgency and importance of completing the compliance process”. I have recommended on several occasions that the Code include deadlines to complete the initial compliance process, that is reviewing and signing the disclosure summary so that it can be made available on the public registry. While in March 2010 I proposed 150 days as a deadline, I believe that the 120-day deadline to complete the initial compliance process, like that set out in the Act, is a reasonable model. I therefore recommend that the Code be amended to include the same deadline of 120 days.

RECOMMENDATION 1

That the Code be amended to include a 120-day deadline to complete the initial compliance process.

Moreover, there is currently no deadline in the Code for completing the annual review process. In many cases, this process has taken several months to complete, despite several reminders by my Office. It would be worthwhile to impose a deadline of 30 days for the annual review process.

RECOMMENDATION 2

That the Code be amended to include a 30-day deadline to complete the annual review process.

Amendments to the disclosure provisions

In my submission of March 2010, I identified a number of amendments that would help to clarify and strengthen the Code's disclosure provisions and make them more easily understood. I suggest that the Committee consider them along with this submission.

Section 20 of the Code provides general instructions to Members relating to the disclosure statement, but combines two distinct requirements, namely the initial disclosure subsequent to an election and the annual review of the information initially disclosed. The March 2010 submission proposed to separate these processes to provide greater clarity and to avoid overlap and duplication for re-elected Members.

As previously mentioned, the March 2010 submission also addressed the need for specific deadlines for finalizing the initial compliance process and completing the annual review process. I also suggested that the Commissioner be given the discretion to extend deadlines where it is reasonable to do so in unforeseen circumstances.

Finally, the March 2010 submission also proposed that some of the practices that the Office follows relating to the disclosure summary (which is made public) and the reporting of material changes be reflected.

RECOMMENDATION 3

That the Committee consider the suggested amendments to sections 20 to 25 of the Code set out in the Appendix.

Approval of forms and guidelines

Section 30 of the Code requires that I obtain the approval of the House of Commons, on the recommendation of the Procedure and House Affairs Committee, for all forms and guidelines under the Code. This requirement causes significant delays due to time constraints of the Committee and, in practice, limits the independence of my Office. I have raised my concern with the Committee in the past and asked it to consider whether there is a need for this approval.

Under the *Conflict of Interest Act*, there is no requirement to have guidelines or forms approved by the House or a committee. I have issued several guidelines aimed at assisting public office holders to better understand their obligations under the Act, as well as several forms, including one for requesting that the Commissioner launch an examination. I have had feedback from public office holders that they appreciate having these tools.

Significant delays were encountered in the past when seeking approval of essential forms. I submitted a standard form for approval to the Committee in March 2010 that was to be used to request an inquiry. This form would help to streamline and expedite the inquiry process. As of the date of this submission, no response has been received from the Committee. In order to allow me to issue guidelines in a timely manner, and establish forms that would improve the administration and understanding of the Code, it would be desirable to be able to do so without waiting for approval. I therefore recommend that the Committee reconsider the requirement for approval of forms and guidelines.

RECOMMENDATION 4

That the requirement for approval of forms and guidelines by the House of Commons upon recommendation of the Procedure and House Affairs Committee set out in section 30 of the Code be removed.

III. ENCOURAGING AND ENFORCING COMPLIANCE WITH THE CODE

Administrative monetary penalties

I have previously noted that, unlike the Act, the Code does not provide for administrative monetary penalties for failures to meet deadlines. The Act sets out an administrative monetary penalty regime that allows the Commissioner to impose penalties up to a maximum of \$500, largely for failures to meet the Act's reporting provisions. I believe that the penalties, and the corresponding publication of the notice of penalty on the online public registry, serve as an incentive for those subject to the regime to meet its deadlines. Contrary to my March 2010 submission to the Committee, I now recommend that the Code be amended to include a similar penalty regime for failures to meet deadlines along with the requirement that the notice of penalty be made public.

Under the Act, I have recommended in previous annual reports that consideration be given to amending the Act to include administrative monetary penalties, which would be publicly disclosed for certain, more substantive breaches such as accepting an unacceptable gift. This may be something that Members also wish to consider under the Code. This could provide a transparent alternative to conducting inquiries in cases where there is no disagreement with respect to the facts.

RECOMMENDATION 5

That the Code be amended to introduce administrative monetary penalties, up to a maximum of \$500, for failures to meet reporting deadlines, and consideration given to introducing administrative monetary penalties for substantive breaches. Notices of penalty should be made public.

Introducing new obligations under the Code

There are several areas where the Code could be strengthened by adding new compliance obligations. These are discussed below and are reflected in the next three recommendations.

In two of my inquiry reports under the Code (The Raitt Report and The Dykstra Report), I raised concerns relating to fundraising by Members. The Code does not contain a provision similar to section 16 of the Act, which prohibits the personal solicitation of funds by public office holders where doing so would place them in a conflict of interest. While it may be more likely that situations where issues of conflict of interest could arise in relation to the functions or duties of a minister or parliamentary secretary, they could also arise in relation to the functions or duties of a Member of the House of Commons. For example, a conflict could arise if a Member solicits funds from a person or entity that is a stakeholder or that may appear before a committee on which a Member sits. Consideration should be given to amending the Code to include a provision dealing with fundraising, perhaps to include a prohibition against personal solicitation of funds where to do so could raise concerns relating to furthering private interests.

RECOMMENDATION 6

That the Code be amended by adding prohibitions against personal solicitation of funds by Members where to do so could raise concerns relating to furthering private interests.

Sections 8, 9 and 10 of the Code set out prohibitions against a Member furthering the Member's private interests or those of a member of his or her family, or improperly furthering another person's or entity's private interests. The definition of family in the Code includes a Member's spouse or common-law partner, and a son or daughter of the Member or of the Member's spouse or common-law partner if under the age of 18 or dependent for financial support. There is no reference to parents, siblings or other relatives. Nor do those sections make reference to friends.

Situations may arise where a Member has the opportunity to further the private interest of a friend or a relative other than a spouse, common-law partner or dependent child. I believe that all three of these sections should therefore be broadened to prohibit Members from furthering their own private interests, as well as those of relatives or friends. The Committee may wish to consider a definition of "relative" similar to that in the Act. These amendments would bring the Code more closely in line with the Act.

RECOMMENDATION 7

That sections 8, 9 and 10 of the Code be broadened to include a prohibition against Members furthering the private interest of a relative or friend.

I have also found that the Code does not sufficiently address a Member's obligation to recuse himself or herself from participating in discussion, decision, debate or vote where he or she may be in a position to further a private interest. Sections 12 and 13 set out obligations for a Member to ensure that he or she does not participate in a debate or vote on a question in which he or she, alone, has a private interest. In my opinion, these sections do not go far enough. Section 12 could be strengthened by requiring that a Member disclose not only when he or she has a private interest in a matter before the House or a committee of which the Member is a member, but also when the Member's relative or friend has a private interest in the matter. Section 13 could also be strengthened by adding a prohibition against participating in a discussion, decision, debate or vote on a question where the Member, or a Member's relative or friend, has a private interest. Such an amendment would bring this clause into line with the spirit of the rest of the Code, as well as the language of the Act.

RECOMMENDATION 8

That the Code be amended by adding broader disclosure and recusal obligations to include an obligation to disclose a private interest of a relative or friend (section 12), and a prohibition against participating in discussion, decision, debate or vote where the Member, or his or her relative or friend, has a private interest (section 13).

Potential conflicts of interest in sponsored travel

The issue of sponsored travel has received some attention in the media, and questions have been asked about how Parliamentarians fund travel to other countries. The practice of sponsored travel, where an individual, an organization or a country funds travel by a Member to attend a particular conference, promote a regional company or interest or visit a region, is permitted under the Code and is specifically excluded from the acceptability test under the gift provisions. There is a striking paradox here, whereby an inexpensive gift from an organization seeking to influence a Member would not be acceptable, but a trip to a foreign locale sponsored by the same organization would be permitted, without question or scrutiny.

While I understand that many Members have spoken about sponsored travel as being necessary to allow Members, with limited travel budgets, to gather information and learn about issues, I believe that there are risks arising from sponsored travel if it is not subject to an acceptability test (i.e. whether the travel could reasonably be seen to have been given to influence them). Travel to other countries may provide excellent learning opportunities for Parliamentarians. That said, there could also be instances where sponsored trips, depending on who is sponsoring the trip or what the Member's committee responsibilities are, should not be accepted. Moreover, this practice could result in disparities between organisations that can afford to offer sponsored travel, and those that cannot, with the consequences that those organisations with greater resources will have greater access to Members.

Adding an acceptability test would put to rest any concerns over whether the sponsored travel could reasonably be seen to have been given to influence a Member in the course of their duties. If travel is acceptable under the new test, the current practice of making a public declaration and providing supporting documents should be continued.

RECOMMENDATION 9

That the Code be amended to introduce an acceptability test to be applied to sponsored travel, as is the case with gifts and other benefits. The current practice of publicly declaring sponsored travel should be continued.

Mandatory meeting requirements for new Members

Newly elected Members of Parliament face a number of challenges in transitioning to their new role, including setting up Hill and constituency offices, learning the ropes in the House of Commons and meeting their caucus and political obligations. Added to these challenges are new obligations under the Code.

There is currently no mandatory training requirement for Members. My Office communicates with all elected Members as soon as notice of their election is published in the *Canada Gazette*. We notify them of their obligations and provide them with the necessary disclosure forms. Usually Members contact their advisors to discuss their personal situations. We have also adopted the standard practice of offering presentations to party caucuses on an annual basis to remind Members of their obligations under the Code. While we have also held presentations for new Members organized through the Library of Parliament as part of their new Member orientation program, we find that they are not well-enough attended to reach our intended audience as these sessions are not mandatory.

Members could benefit from individual meetings to better understand how the Code applies to their personal situation. A mandatory meeting between a new Member and my Office, with a deadline to meet this obligation linked to the 120-day deadline to fulfill their initial compliance obligations, would help to ensure that Members are fully cognizant of their obligations under the Code.

We would also continue to offer such meetings to returning Members who would like a refresher on their obligations.

We will continue to offer annual presentations to party caucuses, and suggest that parties might wish to consider making attendance at these sessions mandatory. An annual review of the Member's obligations under the Code would help to reinforce their knowledge of the Code and to keep their obligations in mind.

RECOMMENDATION 10

That the Code be amended to include an obligation for every new Member to meet with the Office of the Conflict of Interest and Ethics Commissioner to review his or her obligations under the Code. The meeting must take place within the same 120-day period as is proposed in this submission as a deadline for completing their initial compliance process.

IV. GIFTS AND OTHER BENEFITS¹

The disclosure and declaration of gifts

In late 2008 and early 2009, I met with this Committee to discuss changes to the gift rules under the Code. I found that generally Members were not adhering to the Code, which at the time established an absolute prohibition against gifts that related to their position. I recommended that the rules be changed to apply a test similar to that in the *Conflict of Interest Act*, namely that a Member cannot accept a gift if it can reasonably be seen to have been given to influence him or her in the course of his or her duties. If a gift is found to be acceptable, then a Member could keep it but would have to publicly declare anything valued at \$500 or more (or gifts from one source that totalled \$500 or more in a twelve-month period). I was pleased to see that the changes I recommended were adopted by the House of Commons in June 2009.

Since the new rules were introduced, however, the misperception has persisted among some Members that a gift is automatically acceptable as long as it is valued at less than \$500. Members do not often contact my Office to determine whether the gifts under that value are acceptable. I have said on numerous occasions, in my annual reports, in caucus presentations and before this Committee, that, while Members are required to publicly declare a gift when the value is \$500 or more, the monetary value is not the determining factor as to whether or not the Member should accept the gift.

I have come to the conclusion, therefore, that to ensure Members are meeting their obligations under the Code with respect to gifts, the rules should once more be modified to require that almost all gifts be disclosed to the Office of the Conflict of Interest and Ethics Commissioner and publicly declared. This would involve setting a significantly lower threshold than the \$500 one that currently exists for public declaration. The threshold could, for example, be \$30 (or gifts from one source that totalled \$30 or more in a twelve-month period), on the working assumption that a gift worth less than \$30 would not reasonably be seen to have been given to influence the Member.

The acceptability test would remain unchanged for gifts with a value of \$30 or more (or gifts from one source that totalled \$30 or more in a twelve-month period). Members would not be able to accept such gifts if the gift could reasonably be seen to have been given to influence them. Setting a lower threshold for public reporting would be clearer, would result in better communication between Members and my Office about gifts and would increase the overall transparency of what gifts are received by Members.

¹ Where a gift is referred to in this submission, it should be read to include gift or other benefit.

RECOMMENDATION 11

That the Code be amended to require Members to disclose to the Office of the Conflict of Interest and Ethics Commissioner all gifts valued at \$30 or more (or gifts from one source that total \$30 or more in a twelve-month period), to ensure that gifts received are acceptable. All acceptable gifts above this threshold would then be publicly declared.

Invitations involving meals and receptions

I note that invitations are the most frequent form of gift that Members receive. As noted above, all gifts are subject to an acceptability test. It has come to my attention that invitations for Members to attend meetings, receptions or information sessions, particularly in Ottawa while the House of Commons is in session, sometimes on Parliament Hill, often involve meals or refreshments being served. My Office does not often hear about these invitations.

In speaking with some Members, I attempted to ascertain how often they receive such invitations. What I heard was that Members frequently accept invitations to meetings, receptions or information sessions where meals or other refreshments are provided. These are commonly considered a regular part of a Member's daily routine.

Members, individually or in groups, are often invited by organizations (including lobbying organizations) to sessions that seek to provide them with information about an issue or cause. These information sessions are often held during mealtimes, as those times are seen to be the most convenient opportunities to fit into a Member's schedule and to encourage attendance. While information gathering is an important part of a Member's duties, the meal or refreshment offered in conjunction with the event is nonetheless a gift under the Code. Members also frequently accept invitations to cocktail parties and other receptions where refreshment is offered.

Some Members I spoke to claimed that meals or refreshments offered in these circumstances should not be considered to be a gift and that it would be impossible to influence the Member just by providing a drink or a meal. Other Members shared my understanding that these are gifts and may be given to influence them. They observed, however, that the meal is often the incentive for attendance because, if a meal or refreshment wasn't provided, Members would be unlikely to attend the event. It might be the only opportunity during a busy day in which they could have something to eat.

Some Members noted their belief that meals and refreshments fall into the category of customary hospitality. I have concerns about this. I do not believe that it is the intent of this section of the Code to allow for the acceptance of meals and refreshment from those individuals or organizations seeking to influence a Member. For something to fall within the definition of hospitality, the Member must be present at the event in an official, protocol or ceremonial capacity, not merely to listen to a presentation or meet someone. Categorizing the meals and refreshments that Members are offered while attending receptions, information sessions or

meetings as customary hospitality does not adequately recognize the reason why these meals and refreshments are offered, namely, to gain access to a Member and, in so doing, seek to influence them in the course of their duties.

I found my discussions with Members on this issue frank and insightful. Based on these preliminary discussions, it is clear to me that invitations to events where meals and refreshments are served are a special category of gift, and perhaps one that is less easily regulated than other gifts. I take the point that Members are expected to meet with people, and it is often most expedient to do so at an event where a meal or refreshment may be offered.

In the final analysis a meal or refreshment will in certain circumstances reasonably be seen to have been given to influence the Member and may be unacceptable. Instances where such an offer would be inappropriate may include, for example, an invitation from a company to a Member, when the committee on which the Member sits is studying legislation that may impact that company's business. Acceptability must be determined on a case-by-case basis.

I note, as well, that this practice has the effect of creating some disparity between groups that can afford to offer meals and refreshments, and those that cannot, with the possible result that those groups with greater resources will have greater access to Members, effectively creating a two-tier system.

Members should consider whether they wish to amend the Code to expressly identify certain situations that would fall outside the prohibition against gifts. Unless Members make such an amendment to this section of the Code, I will continue to apply the gift rules in this area.

RECOMMENDATION 12

That Members consider whether they wish to make any amendment to the rules relating to invitations to occasions where meals or refreshments are offered.

Gifts from riding associations and political parties

Finally, I note that the 2009 amendments, gifts received from a riding association or political party as well as services provided by a volunteer were expressly removed from the scope of the prohibition in the Code gifts received from a riding association or political party as well as services provided by a volunteer. Gifts from riding associations and political parties had previously been expressly included. This amendment was not made in relation to any suggestion from my Office. I have no recommendation to make in this area, I simply note the change.

V. MANAGING INVESTIGATIONS

In my submissions of March and October 2010 I made several suggestions relating to the sections of the Act relating to inquiries. I summarize these and elaborate on them below. My original suggestions, which include draft language, are set out in the Appendix to this submission.

Joint reports under the Act and the Code

The Act and Code have some notable procedural differences in the area of investigations. Both regimes would benefit from amendment relating to the procedures for issuing reports where an investigation into the same matter has taken place under both regimes. To date, I have on three occasions (The Cheques Report, The Raitt Report, The Dykstra Report) had to investigate a matter under both the Act and the Code. Under the Act, I must provide a copy of the report to the Prime Minister, the person subject to the investigation and the person who brought the allegation, and then make the report public. Under the Code, the report must be tabled in the House of Commons, and once this is done I make it public. Given these procedural differences, I have had to issue separate reports and tried to ensure that delivery of the report under the Act to the Prime Minister was essentially simultaneous with the tabling of the report under the Code in the House of Commons. Only once was I able to issue a single report, because the House was not sitting and I was able to make the report public before it was tabled.

I recommend that the Code be amended to explicitly indicate that if an investigation occurs under both regimes simultaneously in relation to the same circumstances, only one report need be issued. This joint report would be made public as soon as it was received by the Speaker and the Prime Minister. The Speaker would then table the report at the next available opportunity, as is currently the case when a report is submitted during a period of adjournment or prorogation.

RECOMMENDATION 13

That the Code be amended to require that, where the Commissioner conducts an investigation into the same matter under both the Code and the Conflict of Interest Act, he or she may issue a single report and may make the report public on receipt by the Speaker, rather than on tabling in the House.

Public comment related to inquiries

Often, a Member will make a public statement when he or she submits a request for an inquiry to my Office. On several occasions, these statements have included misinformation related to the request. If I proceed to an inquiry in relation to that request my report is made public and I can use this opportunity to correct any misinformation. If I do not proceed to an inquiry, however, I am unable to comment publicly on my reasons for not investigating the matter and therefore have no opportunity to correct the public record.

My inability to comment in these circumstances can have a deleterious effect on both the reputation of the person who is the subject of the request and that of my Office. While there is an obvious need to maintain confidentiality, I believe the Commissioner should have some ability to comment on a matter when he or she considers that doing so is in the public interest. I note that this is slightly broader than my original suggestion in March 2010.

RECOMMENDATION 14

That the Code be amended to allow the Commissioner to comment publicly on his or her reasons for not pursuing a matter, where doing so is in the public interest.

A related issue is the extent to which requests for investigation should be commented on publicly by Members making the requests. I have requested that a Member who makes a request refrain from public comment until I have confirmed that I have received the request and have notified the person who is the subject of that request. I believe that this is fair and appropriate, and does not inhibit the Member from making any public comment once those steps have been followed.

RECOMMENDATION 15

That the Code be amended to require that Members requesting an inquiry refrain from commenting publicly on the request until the Commissioner has confirmed that he or she has received the request, and has notified the person who is the subject of that request.

Ability to compel witnesses and documents

In one inquiry conducted under the Code, I was unable to obtain direct access to documents stored electronically on the House of Commons server that were necessary to conduct my investigation. Instead, the documents were given to the Member to review. At least one document that I expected to receive as a result of a file search – and that I knew existed because I had received a copy from other sources – was not provided. This compromised the integrity of the inquiry process as I was not sure whether I had received all the relevant documents.

In my most recent annual report, I discussed this issue in some detail and noted that I must have direct access to documents under the control of the House of Commons in a timely manner when I determine that it is necessary to complete an inquiry. An amendment to the Code that explicitly gives me direct access to any needed documents under the control of the House of Commons would assist greatly in this regard.

I also note that, unlike the *Conflict of Interest Act*, the Code does not empower my Office to compel witnesses to appear or to produce documents. I suggested in my March 2010 submission that the Code be amended to provide the Commissioner with the power to compel third party witnesses to appear for interviews or to produce requested documents in relation to inquiries conducted by my Office. Having the express power to summon witnesses and compel documents, as well as making it clear that the Commissioner has the authority to have direct access to documents from the House of Commons, would greatly enhance the investigative regime under the Code and ensure my independence.

RECOMMENDATION 16

That the Code be amended to give the Commissioner explicit power to summon any witness or compel any document necessary in the course of his or her investigative role, and that the Commissioner be given direct access to any document requested from the House of Commons.

Other amendments to the inquiry provisions

My submission of March 2010 also identified a number of amendments that would help to clarify the Code's inquiry provisions. These included reordering these provisions logically by setting out in separate sections the three ways in which an inquiry may be commenced and ensuring consistency between the English and French versions of the Code.

As set out in section 27, an inquiry may be commenced at the request of a Member, by resolution from the House of Commons or on the Commissioner's own initiative. Section 27 also contains several procedural provisions, some of which apply to only one of the three mechanisms and others of which apply to all three. I have recommended that each of the three mechanisms, and the related procedures that are unique to each, be set out in separate sections.

I have also noted two provisions where there are substantive differences between the English and French versions. Subsection 27(2) requires that a request from a Member set out the alleged non-compliance. This requirement is missing from the French. There are also inconsistencies between the French and English in section 27(7), which require the Commissioner to ensure that Members have opportunities to make representations during the inquiry process.

RECOMMENDATION 17

That the Committee consider the suggestions related to section 27 set out in my March 2010 submission.

VI. HARMONIZING THE ACT AND THE CODE

I administer two separate but similar conflict of interest regimes: the Act and the Code. These two regimes have similar, but not identical provisions. This can be confusing, particularly in the case of Members who are also ministers, as they are subject to both regimes. As well, there is a requirement to produce two annual reports, and two separate investigative reports where a single matter results in both an examination under the Act and an inquiry under the Code. I have sought efficiencies in the drafting and production processes wherever possible, but harmonization would further help to address this.

In my 2010-11 annual report, I raised the possibility that the two instruments might be combined into a single act, which would set out conflict of interest rules for Members and the more stringent rules for ministers and parliamentary secretaries. Alternatively, it would be desirable, at least, to harmonize the wording of the two where possible. Distinctions could be kept where appropriate for different classes of public office holders or for Members. This model has been followed in the case of a number of provinces.

I recommend that Parliament consider ways in which the two regimes might be harmonized.

RECOMMENDATION 18

That Parliament consider harmonizing the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons to ensure consistency of language and processes.

VII. REGULATING PARTISAN BEHAVIOUR

My Office has received a number of complaints about the partisan behaviour of politicians. While I understand why citizens may wish to raise these concerns with my Office, and I find them to be legitimate concerns, I believe, and have stated on several occasions, that political conduct is largely beyond the scope of both the Act and the Code. Both regimes deal specifically with conflict of interest, with the focus on ensuring that Members and public office holders do not use their positions to further private, largely pecuniary interests. Interest in enhancing political profiles is a political interest and not a private interest as understood by the two regimes.

As I stated in my 2009-10 Annual Report, “If there is a real desire that my Office look into conflicts of interest in relation to political interests, changes to the Act and the Code would be required to establish this as part of my mandate. It would seem to me, however, that this is ultimately a matter for the electorate to judge”. I have subsequently commented that, in the absence of any clear rules governing the ethical aspects of the conduct of politicians, the House may wish to consider implementing a separate set of rules to address the political conduct of Members and their staff. These rules could rely on voluntary compliance or could be overseen by a group of former parliamentarians from various political backgrounds.

RECOMMENDATION 19

That the House of Commons consider implementing a separate code of conduct to address the political conduct of Members and their staff.

VIII. CONCLUSION

In this submission, I have sought to identify the main issues that have created challenges in my administration of the *Conflict of Interest Code for Members of the House of Commons*. In so doing, I am cognizant that there may be other issues that arise in the future. I will continue to work with the Procedure and House Affairs Committee to raise these, and will of course also continue to use my annual reports as communication tools to discuss issues I encounter in administering the Code. I hope that this submission will be useful for the Committee as it continues its study. My staff and I are, as always, pleased to meet with the Committee to discuss this or any other matter pertaining to the Code.

SUMMARY LIST OF RECOMMENDATIONS

- Recommendation 1: That the Code be amended to include a 120-day deadline to complete the initial compliance process.
- Recommendation 2: That the Code be amended to include a 30-day deadline to complete the annual review process.
- Recommendation 3: That the Committee consider the suggested amendments to sections 20 to 25 of the Code set out in the Appendix.
- Recommendation 4: That the requirement for approval of forms and guidelines by the House of Commons upon recommendation of the Procedure and House Affairs Committee set out in section 30 of the Code be removed.
- Recommendation 5: That the Code be amended to introduce administrative monetary penalties, up to a maximum of \$500, for failures to meet reporting deadlines, and consideration given to introducing administrative monetary penalties for substantive breaches. Notices of penalty should be made public.
- Recommendation 6: That the Code be amended by adding prohibitions against personal solicitation of funds by Members where to do so could raise concerns relating to furthering private interests.
- Recommendation 7: That sections 8, 9 and 10 of the Code be broadened to include a prohibition against Members furthering the private interest of a relative or friend.
- Recommendation 8: That the Code be amended by adding broader disclosure and recusal obligations to include an obligation to disclose a private interest of a relative or friend (section 12), and a prohibition against participating in discussion, decision, debate or vote where the Member, or his or her relative or friend, has a private interest (section 13).
- Recommendation 9: That the Code be amended to introduce an acceptability test to be applied to sponsored travel, as is the case with gifts and other benefits. The current practice of publicly declaring sponsored travel should be continued.
- Recommendation 10: That the Code be amended to include an obligation for every new Member to meet with the Office of the Conflict of Interest and Ethics Commissioner to review his or her obligations under the Code. The

meeting must take place within the same 120-day period as is proposed in this submission as a deadline for completing their initial compliance process.

- Recommendation 11: That the Code be amended to require Members to disclose to the Office of the Conflict of Interest and Ethics Commissioner all gifts valued at \$30 or more (or gifts from one source that total \$30 or more in a twelve-month period), to ensure that gifts received are acceptable. All acceptable gifts above this threshold would then be publicly declared.
- Recommendation 12: That Members consider whether they wish to make any amendment to the rules relating to invitations to occasions where meals or refreshments are offered.
- Recommendation 13: That the Code be amended to require that, where the Commissioner conducts an investigation into the same matter under both the Code and the *Conflict of Interest Act*, he or she may issue a single report and may make the report public on receipt by the Speaker, rather than on tabling in the House.
- Recommendation 14: That the Code be amended to allow the Commissioner to comment publicly on his or her reasons for not pursuing a matter, where doing so is in the public interest.
- Recommendation 15: That the Code be amended to require that Members requesting an inquiry refrain from commenting publicly on the request until the Commissioner has confirmed that he or she has received the request, and has notified the person who is the subject of that request.
- Recommendation 16: That the Code be amended to give the Commissioner explicit power to summon any witness or compel any document necessary in the course of his or her investigative role, and that the Commissioner be given direct access to any document requested from the House of Commons.
- Recommendation 17: That the Committee consider the suggestions related to section 27 set out in my March 2010 submission.
- Recommendation 18: That Parliament consider harmonizing the *Conflict of Interest Act* and the *Conflict of Interest Code for Members of the House of Commons* to ensure consistency of language and processes.
- Recommendation 19: That the House of Commons consider implementing a separate code of conduct to address the political conduct of Members and their staff.

APPENDIX

SUBMISSIONS MADE TO THE PROCEDURE AND HOUSE AFFAIRS COMMITTEE

**BY THE CONFLICT OF INTEREST AND ETHICS COMMISSIONER
MARCH 2010 AND OCTOBER 2010**



66, rue Slater Street
22nd Floor / 22^e étage
OTTAWA, ONTARIO
CANADA
K1A 0A6

March 1, 2010

Ms. Angela Crandall, Clerk
Standing Committee on Procedure and House Affairs
131 Queen Street, 6th Floor
House of Commons
Ottawa, ON K1A 0A6

Dear Ms. Crandall:

I am pleased to submit, for the consideration of the Standing Committee on Procedure and House Affairs, two sets of suggested amendments to the *Conflict of Interest Code for Members of the House of Commons*, as well as a proposed Form for Making a Request for an Inquiry under that Code.

My staff and I prepared the enclosed package in response to the Committee's request, during my appearance on October 6, 2009. The Committee asked that I provide it with some specific recommendations. Some of our suggestions relate to compliance deadlines as the Committee requested; we also said that we might provide a rewrite of the Code's inquiry provisions.

Our two sets of suggested changes, which are supported by detailed explanatory notes, focus on disclosures (sections 20 to 25 of the Code) and inquiries (sections 27 and 28). To aid the Committee's study, we have also highlighted the differences between the relevant current and proposed provisions. I believe these suggested amendments would primarily clarify some of the Code's provisions, and, in some instances, would strengthen the Code.

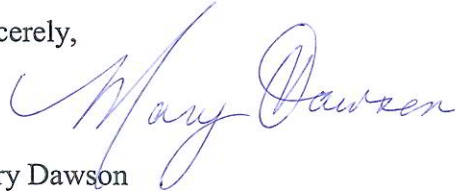
I am also seeking the Committee's approval, pursuant to section 30 of the Code, of a new form that I hope will help streamline and expedite the inquiry process. It is important to note, in this regard, that the form assumes acceptance of our suggested amendments to the inquiry provisions of the Code. The form may have to be adjusted if some of our suggestions are not accepted.

.../2

- 2 -

I thank the Committee in advance for its consideration of these amendments, and would be happy to provide any additional information that the Committee may require. My staff and I look forward to continuing to work with the Committee during the upcoming parliamentary session.

Sincerely,

A handwritten signature in blue ink that reads "Mary Dawson". The signature is written in a cursive, flowing style.

Mary Dawson
Conflict of Interest and Ethics Commissioner

Enclosures (5)

SUGGESTED AMENDMENTS TO THE DISCLOSURE PROVISIONS (Section 20 to 25) OF THE MP CODE

SUGGESTED AMENDMENTS	CURRENT PROVISIONS
<p>Disclosure statement.</p> <p>20.(1) <u>Subject to this section</u>, a Member shall, within 60 days after the notice of his or her election to the House of Commons is published in the Canada Gazette, file with the Commissioner a full statement disclosing the Member's private interests and the private interests of the members of the Member's family.</p>	<p>Disclosure statement.</p> <p>20.(1) A Member shall, within 60 days after the notice of his or her election to the House of Commons is published in the Canada Gazette, and <u>annually on or before a date established by the Commissioner</u>, file with the Commissioner a full statement disclosing the Member's private interests and the private interests of the members of the Member's family.</p>
<p>Reasonable efforts.</p> <p>(2) Information relating to the private interests of the members of the Member's family shall be to the best of the Member's knowledge, information and belief. The Member shall make reasonable efforts to determine such information.</p>	<p>Reasonable efforts.</p> <p>(2) Information relating to the private interests of the members of the Member's family shall be to the best of the Member's knowledge, information and belief. The Member shall make reasonable efforts to determine such information.</p>
<p>Confidentiality.</p> <p>(3) The Commissioner shall keep the statement confidential.</p>	<p>Confidentiality.</p> <p>(3) The Commissioner shall keep the statement confidential.</p>
<p><u>Annual review</u></p> <p>(4) <u>The Commissioner shall review annually with each Member the information included in the disclosure statement filed by the Member pursuant to subsection (1) and make any necessary amendments.</u></p>	
<p>Procedure on re-election</p> <p>(5) <u>Where a Member is re-elected, if the Commissioner deems it appropriate, the Member may, instead of filing a full disclosure statement under subsection (1), review and amend as necessary the information contained in the disclosure statement previously filed under subsection (1), but must do so within the same 60 day period as is required under subsection (1).</u></p>	
<p><u>Extension</u></p> <p>(6) <u>The Commissioner may extend the 60 day deadline referred to in subsection (1) or (5) if he or she is of the view that the extension is warranted in the circumstances.</u></p>	

SUGGESTED AMENDMENTS

Content of disclosure statement.

21.(1) The statement required under subsection 20 (1) shall

(a) identify and state the value of each asset or liability of the Member and the members of the Member's family that;

(i) in the case of a credit card balance, is \$10,000 or more and has been outstanding for more than six months;

(ii) in all other cases, is \$10,000 or more;

(b) state the amount and indicate the source of any income greater than \$1,000 that the Member and the members of the Member's family have received during the preceding 12 months and are entitled to receive during the next 12 months;

(b.1) identify every trust known to the Member from which he or she could, currently or in the future, either directly or indirectly, derive a benefit or income;

(c) list any partnership in which he or she or a member of his or her family is a partner, as well as the names and addresses of all partners, and include any information about the partnership's activities;

(d) list the name of any private corporation in which he or she or a member of his or her family has an interest, and

(i) include any information about the corporation's activities and sources of income that the Member is able to obtain by making reasonable inquiries,

CURRENT PROVISIONS

Content of disclosure statement.

21.(1) The statement shall

(a) identify and state the value of each asset or liability of the Member and the members of the Member's family that;

(i) in the case of a credit card balance, exceeds \$10,000 and has been outstanding for more than six months;

(ii) in all other cases, exceeds \$10,000;

(b) state the amount and indicate the source of any income greater than \$1,000 that the Member and the members of the Member's family have received during the preceding 12 months and are entitled to receive during the next 12 months;

(b.1) Notwithstanding paragraph (b), every Member shall disclose to the Commissioner every trust known to the Member from which he or she could, currently or in the future, either directly or indirectly, derive a benefit or income;

(c) state all benefits that the Member and the members of the Member's family, and any private corporation in which the Member or a member of the Member's family has an interest, have received during the preceding 12 months, and those that the Member and the members of the Member's family or corporation are entitled to receive during the next 12 months, as a result of being a party, directly or through a subcontract, to a contract with the Government of Canada, and describe the subject-matter and nature of each such contract or subcontract;

(c.1) For the purpose of paragraph (1)(c), benefits include compensation resulting from expropriation by the Government of Canada;)

(d) if the statement mentions a private corporation,

(i) include any information about the corporation's activities and sources of income that the Member is able to obtain by making reasonable inquiries,

SUGGESTED AMENDMENTS

- (ii) state the names of any other corporations with which that corporation is affiliated,
- (iii) list the names and addresses of all persons who have an interest in the corporation, and
- (iv) list the real property or immovables owned by the private corporation.

(e) state all benefits that the Member and the members of the Member's family, and any partnership or private corporation in which the Member or a member of the Member's family has an interest, have received during the preceding 12 months, and those that the Member and the members of the Member's family, partnership or corporation are entitled to receive during the next 12 months, as a result of being a party, directly or through a subcontract, to a contract with the Government of Canada, and describe the subject-matter and nature of each such contract or subcontract;

(f) list the directorships or offices in a corporation, trade or professional association or trade union, or in an organization of a philanthropic, charitable or non-commercial character held by the Member or a member of the Member's family; and

(g) include any other information that the Commissioner may require.

Source of income.

(2) For the purposes of paragraph (1)(b), a source of income is

- (a) in the case of income from employment, the employer;
- (b) in the case of income from a contract, the party with whom the contract is made; and
- (c) in the case of income arising from a business or profession, that business or profession.

Compensation from expropriation

(2.1) For the purposes of paragraph (1)(e), benefits include compensation resulting from expropriation by the Government of Canada.

Material change.

(3) The Member shall inform the Commissioner in writing of any material change to the information required under subsection (1) to the Commissioner within 60 days after the change.

CURRENT PROVISIONS

- (ii) state the names of any other corporations with which that corporation is affiliated, and
- (iii) list the names and addresses of all persons who have an interest in the corporation;
- (iv) list the real property or immovables owned by the private corporation.

(e) list the directorships or offices in a corporation, trade or professional association or trade union held by the Member or a member of the Member's family and list all partnerships in which he or she or a member of his or her family is a partner; and

(f) include any other information that the Commissioner may require.

Source of income.

(2) For the purposes of paragraph (1)(b), a source of income is

- (a) in the case of income from employment, the employer;
- (b) in the case of income from a contract, the party with whom the contract is made; and
- (c) in the case of income arising from a business or profession, that business or profession.

Statement: material change.

(3) The Member shall file a statement reporting any material change to the information required under subsection (1) to the Commissioner within 60 days after the change.

SUGGESTED AMENDMENTS

Meeting with the Commissioner.

22. After reviewing a Member's statement filed under section 20 or the information provided under subsection 21(3), the Commissioner may require that the Member meet with the Commissioner, and may request the attendance of any of the members of the Member's family, if available, to ensure that adequate disclosure has been made and to discuss the Member's obligations under this Code.

Disclosure summary.

23.(1) The Commissioner shall prepare a disclosure summary based on each Member's statement filed under section 20(1), or a revised disclosure summary where an amendment is necessary as a result of information received pursuant to subsection 20(4) or (5) or subsection 21(3). and submit the disclosure summary or revised disclosure summary to the Member for review.

Public inspection.

(2) Each summary is to be placed on file at the office of the Commissioner and made available for public inspection during normal business hours, and posted on the website of the Commissioner. Each summary shall also be available to the public, on request, by fax or mail

Content of disclosure summary.

24.(1) The summary shall

(a) subject to subsection (3), set out the source and nature, but not the value, of the income, assets and liabilities referred to in the Member's statement filed under section 20;

(b) identify any contracts or subcontracts referred to in paragraph 21(1)(e) and describe their subject-matter and nature;

(c) list the names of partnerships disclosed under paragraph 21(1)(c) or any corporations disclosed under paragraph 21(1)(d);

(d) include a copy of any statements of disclosure filed by the Member under subsection 14(3) or 15(1) ;

(e) list the positions and corporations, trade or professional associations, trade unions and organizations of a philanthropic, charitable or non-commercial character disclosed under paragraph 21(1)(f); and

(f) list any trusts disclosed under paragraph 21(1)(b.1).

CURRENT PROVISIONS

Meeting with the Commissioner.

22. After reviewing a Member's statement filed under section 20 or subsection 21(3), the Commissioner may require that the Member meet with the Commissioner, and may request the attendance of any of the members of the Member's family, if available, to ensure that adequate disclosure has been made and to discuss the Member's obligations under this Code.

Disclosure summary.

23(1) The Commissioner shall prepare a disclosure summary based on each Member's statement filed under section 21 and submit it to the Member for review

Public inspection.

(2) Each summary is to be placed on file at the office of the Commissioner and made available for public inspection during normal business hours, and posted on the website of the Commissioner. Each summary shall also be available to the public, on request, by fax or mail

Content of disclosure summary.

24.(1) The summary shall

(a) subject to subsection (3), set out the source and nature, but not the value, of the income, assets and liabilities referred to in the Member's statement filed under section 20;

(b) identify any contracts or subcontracts referred to in paragraph 21(1)(c) and describe their subject-matter and nature;

(c) list the names of any affiliated corporations referred to in that statement;

(d) include a copy of any statements of disclosure filed by the Member under subsections 14(3), 15(1) and 21(3);

(e) list the positions and corporations, trade or professional associations and trade unions disclosed under paragraph 21(1)(e); and

(f) list any trusts disclosed under paragraph 21(1)(b.1).

SUGGESTED AMENDMENTS

Categorization of interests.

(2) An interest in a partnership or corporation may be qualified in the summary by the word “nominal”, “significant” or “controlling” if, in the opinion of the Commissioner, it is in the public interest to do so.

Items not to be disclosed.

(3) The following shall not be set out in the summary:

(a) an asset or liability with a value of less than \$10,000;

(b) a source of income of less than \$10,000 during the 12 months before the relevant date;

(c) real property or immovables that the Member uses as a principal residence or uses principally for recreational purposes;

(d) personal property or movable property that the Member uses primarily for transportation, household, educational, recreational, social or aesthetic purposes;

(e) cash on hand or on deposit with a financial institution that is entitled to accept deposits;

(f) fixed-value securities issued or guaranteed by a government or by a government agency;

(g) a registered retirement savings plan that is not self-administered or self-directed;

(h) investments in a registered retirement savings plan that is self-administered or self-directed that would not be publicly disclosed under this section if held outside the plan;

(i) an interest in a pension plan, employee benefit plan, annuity or life insurance policy;

(j) an investment in an open-ended mutual fund;

(k) a guaranteed investment certificate or similar financial instrument;

(k.1) any information relating to the place or manner of employment of a son or daughter of the Member, or a son or daughter of the Member’s spouse or common-law partner; and

CURRENT PROVISIONS

Categorization of interests.

(2) An interest in a partnership or corporation may be qualified in the summary by the word “nominal”, “significant” or “controlling” if, in the opinion of the Commissioner, it is in the public interest to do so.

Items not to be disclosed.

(3) The following shall not be set out in the summary:

(a) an asset or liability with a value of less than \$10,000;

(b) a source of income of less than \$10,000 during the 12 months before the relevant date;

(c) real property or immovables that the Member uses as a principal residence or uses principally for recreational purposes;

(d) personal property or movable property that the Member uses primarily for transportation, household, educational, recreational, social or aesthetic purposes;

(e) cash on hand or on deposit with a financial institution that is entitled to accept deposits;

(f) fixed-value securities issued or guaranteed by a government or by a government agency;

(g) a registered retirement savings plan that is not self-administered or self-directed;

(h) investments in a registered retirement savings plan that is self-administered or self-directed that would not be publicly disclosed under this section if held outside the plan;

(i) an interest in a pension plan, employee benefit plan, annuity or life insurance policy;

(j) an investment in an open-ended mutual fund;

(k) a guaranteed investment certificate or similar financial instrument;

(k.1) any information relating to the place or manner of employment of a son or daughter of the Member, or a son or daughter of the Member’s spouse or common-law partner; and

SUGGESTED AMENDMENTS

(l) any other asset, liability or source of income that the Commissioner determines should not be disclosed because

(i) the information is not relevant to the purposes of this Code, or

(ii) a departure from the general principle of public disclosure is justified in the circumstances.

Deadline for disclosure summary

24.1(1) A Member shall, within 150 days after the notice of his or her election to the House of Commons is published in the *Canada Gazette* sign the disclosure summary or revised disclosure summary prepared under subsection 23(1) and return it to the Commissioner.

Extension

(2) The Commissioner may extend a deadline set out in subsection (1) if he or she is of the view that the extension is warranted in the circumstances.

Failure to comply

24.2(1) The Commissioner shall notify any Member who fails to comply with subsection 20(1) or (5) or section 24.1 that a notice of failure to comply will be made public under subsection (2) unless those provisions are complied with within 10 days after the notice is received by the Member.

Public Inspection

(2) Each notice of failure to comply prepared pursuant to this section shall make public the nature of the failure to comply and the name of the Member who failed to comply and shall be placed on file at the office of the Commissioner and made available for public inspection during normal business hours, and posted on the website of the Commissioner.

Evasion.

25. A Member shall not take any action that has as its purpose the circumvention of the Member's obligations under this Code.

CURRENT PROVISIONS

(l) any other asset, liability or source of income that the Commissioner determines should not be disclosed because

(i) the information is not relevant to the purposes of this Code, or

(ii) a departure from the general principle of public disclosure is justified in the circumstances.

Evasion.

25. A Member shall not take any action that has as its purpose the circumvention of the Member's obligations under this Code.

SUGGESTED AMENDMENTS TO THE DISCLOSURE PROVISIONS (Sections 20 to 25) OF THE MP CODE

EXPLANATORY NOTES

The attached chart sets out a number of suggested amendments to sections 20 to 25 of the *Conflict of Interest Code for Members of the House of Commons*. These sections relate to the disclosure and public reporting requirements of the Code.

The suggested amendments are set out in the left hand column with the corresponding current provisions set out opposite in the right hand column. Both sets of provisions are underlined to identify the changes.

Section 20

The suggested amendments would establish distinct disclosure processes for annual reviews, deadlines and re-election of Members.

Subsection 20(1)

The reference to the annual review has been removed from subsection 20(1) and new subsections (4) and (5) are being added to deal with annual reviews and re-election of Members.

Subsections 20(2) and (3)

No change is suggested

Subsection 20(4)

For annual review purposes, the practice of my Office is to send to each Member every year a document we call the *Summary of Confidential Disclosure* with a request that the Member confirm whether or not there have been any changes to that information and if so, to let my Office know of any changes. If necessary, a revised public declaration (the *Disclosure Summary* referred to in section 24) is forwarded to the Member for signature. This mirrors the practice established under the *Conflict of Interest Act*.

The suggested amendment to subsection 20(4) would parallel a similar provision in the *Conflict of Interest Act*. It would make it clear that the obligation to initiate the annual review process would rest with the Commissioner and that it would not normally be necessary to complete a full disclosure statement every year.

Subsection 20(5)

Technically, Members are currently required to complete and file a full disclosure statement with my Office following every election, whether or not they are elected for the first time or re-elected. This applies even though they may have just completed an annual review and updated the information contained in their previously completed disclosure statement.

It is suggested that following an election, Members who have been re-elected need not necessarily file a full disclosure statement again if the Commissioner deems it appropriate. Instead, re-elected Members would be given the option of reviewing the information previously filed, in a similar fashion to the annual review process. This amendment would reflect the practice that has been followed by my Office.

Under this alternative procedure, re-elected Members would continue to be subject to a 60 day deadline to file the required information.

Subsection 20(6)

There are no provisions in the current Code for an extension of the 60 day deadline.

As previously discussed with Committee members, it is suggested that the Code be amended to give the Commissioner discretion to extend the deadline. There may be circumstances beyond a Member's control where it may be difficult or impossible for a Member to provide the required information within the 60 day deadline.

Section 21

The amendments suggested to this section are very technical. The order of paragraphs has been changed slightly so as to list them in what appears to be a more logical order.

Subsection 21(1)

The additional words suggested in the opening words of subsection 21(1) reflect the change suggested for the annual review process under subsection 20(4) as well as that suggested for re-elected Members under subsection 20(5).

Paragraph 21(1)(a)

The change to "\$10,000 or more" instead of "exceeds \$10,000" would make this provision consistent with the approach taken in paragraph 24(3)(a) and (b) and would follow the same approach as in taken for similar provisions in the *Conflict of Interest Act*.

Paragraph 21(b)

No change is suggested.

Paragraph 21.(1)(b.1)

This change is purely technical and would merely make the format of this paragraph consistent with the other paragraphs in the subsection.

Paragraph 21(1)(c)

This is a new paragraph that would deal with partnerships which are now covered in the current paragraph (e) along with directorships or offices in a corporation.

In the case of an ownership interest in a corporation, the Code also requires disclosure of the names and addresses of other shareholders as well as information about the corporation's activities. There are currently no such explicit requirements for partnership interests. However, subsection 24(2) refers to "an interest in a partnership or corporation" in connection with the public *Disclosure Summary*. This appears to indicate an inadvertent omission.

For consistency, it is suggested that the Code be amended so that the disclosure requirements relating to partnerships will parallel those relating to corporations.

Paragraph 21(1)(d)

This is a new paragraph.

The Code currently requires disclosure of all partnership interests irrespective of value, as well as disclosure of all directorships in corporations, irrespective of ownership interests (current paragraph 21(1)(e)). On the other hand, an ownership interest in a private corporation is only required if the value of the asset exceeds \$10,000 (paragraph 21(1)(a)) or if the private corporation derives a benefit from a contract with the Government of Canada (current paragraph 21(1)(c)).

It is suggested that the disclosure requirements with respect to an ownership interest in all corporation and partnerships be similar.

The current disclosure form, already approved by the Committee, provides for the disclosure of business assets, whether held as a sole proprietorship, partnership or private corporation, irrespective of value.

Paragraph 21(1)(e)

This replaces the current paragraph 21(1)(c).

It is suggested that partnerships be added to this paragraph. A benefit may be received by a partnership as well as by a corporation, and there would appear to be no reason to exclude partnerships from this provision.

Paragraph 21(1)(f)

This replaces the current paragraph 21(1)(e).

It is suggested that organizations of a philanthropic, charitable or non-commercial character be added to the list, whether incorporated or not. This would reflect the disclosure form, already approved by the Committee.

Paragraph 21(1)(g)

This is the current paragraph 21(1)(f). No change is suggested.

Subsection 21(2)

No change is suggested.

Subsection 21(2.1)

This subsection would replace the current paragraph 21(1)(c.1) which would more appropriately fit as a subsection. The reference to paragraph 21(1)(e) instead of paragraph 21(1)(c) results from the change of the order of paragraphs in subsection (1).

Subsection 21(3)

It is suggested that Members not be obliged to use the notice of material change statement form to report material changes.

Members notify my Office of changes to the information contained in their disclosure statement in writing, by letter, by e-mail or through a notice of material change statement. Currently, a Member who notifies us of a material change otherwise than through a material change statement must now be sent a notice of material change statement to sign. The original notification would be sufficient.

This suggested amendment would not only simplify, but also streamline, the process for both Members and my staff.

Section 22

This technical amendment is consequential on the amendment suggested to subsection 21(3).

Section 23

Subsection 23(1)

This technical amendment is consequential on the amendments suggested to sections 20 and 21.

Subsection 23(2)

No change is suggested.

Section 24

The only changes suggested are to paragraphs 24(1)(c) to (e).

Paragraph 24(1)(c)

This technical amendment is consequential on the amendments suggested in the new paragraphs 21(1)(c) and (d).

Paragraph 24(1)(d)

This amendment is consequential on the amendment suggested to subsection 21(3) (material change).

The statement of material change referred to in the current subsection 21(3) often relates to information that is not subject to public disclosure and therefore should not be included in the public registry. The current wording of the Code would appear to make it mandatory to include any statement of material change in the *Disclosure Summary* deposited in the public registry, irrespective of whether or not it relates to information subject to public disclosure.

Paragraph 24(1)(e)

This amendment is consequential on the amendment suggested to the new paragraph 21(1)(f) (current paragraph 21(1)(e)).

Section 24.1

This is a new section.

There is currently no deadline in the Code for Members to sign the *Disclosure Summary* that is made available in the public registry. There is, however, a 60 day deadline under section 20 to submit the initial disclosure statement.

As requested by Committee members in previous discussions, I am suggesting a deadline to submit the *Disclosure Summary*. Under the suggested amendments, a Member would have 60 days from the date of notice of his or her election in the Canada Gazette to file the disclosure statement (or, if re-elected, to review his or her previous disclosure statement). The Member would then have an additional 90 days within which to sign the *Disclosure Summary* prepared by my Office for the public registry. The suggested deadline would provide a reasonable amount of time for all Members to complete the disclosure process following a general election. It is noted that the deadline provided for under the *Conflict of Interest Act* within which a reporting public office holder must complete his or her compliance arrangements is 120 days from the date of appointment.

It is also suggested that the Commissioner be given the discretion under subsection 24(2) to extend the 150 day deadline in appropriate circumstances.

Section 24.2

This is a new section.

There are currently no measures under the Code, other than a formal inquiry under section 27 and a subsequent report to the Speaker under section 28, that deal with a failure to meet any of the deadlines related to disclosure. Information as to which Members have signed a *Disclosure Summary* is available through the public registry maintained on our website. However, there is no direct reporting on whether or not the various deadlines were met.

While we do not suggest that a penalty be imposed under the Code for failure to meet any of the deadlines related to disclosure, the Committee could consider whether they feel it would be appropriate to make public a failure to meet any of those deadlines.

Subsection 24.2(2) suggests a possible approach. It would provide for a notice of failure to comply to be made public if a Member fails to file the disclosure statement or fails to sign the *Disclosure Summary* within the prescribed deadlines unless the failure is remedied within 10 days after the notice is received by the Member.

Section 25

No change is suggested.

SUGGESTED AMENDMENTS TO THE INQUIRY PROVISIONS (Sections 27 and 28) OF THE MP CODE

SUGGESTED AMENDMENTS	CURRENT PROVISIONS
Request for an inquiry.	Request for an inquiry.
27.(1) A Member who has reasonable grounds to believe that another Member has not complied with his or her obligations under this Code may request that the Commissioner conduct an inquiry into the matter.	27.(1) A member who has reasonable grounds to believe that another Member has not complied with his or her obligations under this Code may request that the Commissioner conduct an inquiry into the matter.
Form of request.	Form of request.
(2) The request shall be in writing, signed, and shall identify the alleged non-compliance and set out the reasonable grounds for that belief.	(2) The request shall be in writing, signed, and shall identify the alleged non-compliance and set out the reasonable grounds for that belief.
	Direction by the House.
	(3) The House may, by way of resolution, direct the Commissioner to conduct an inquiry to determine whether a Member has complied with his or her obligations under this Code.
Notice. (current 27(3.1))	Notice.
(3) The Commissioner shall forward without delay <u>a copy of the request for an inquiry to the Member who is the subject of the request and afford the Member 30 days to respond, and shall notify the Member who has made the request when a copy has been received by the Member who is the subject of the request.</u>	(3.1) The Commissioner shall forward without delay the request for an inquiry to the Member who is the subject of the request and afford the Member 30 days to respond.
<u>Public statements limited (New)</u>	
(4) <u>A Member shall make no public statement relating to a request he or she has made or intends to make under subsection (1) until the Member has been notified by the Commissioner that the Member who is the subject of the request has received a copy of the complaint pursuant to subsection (3).</u>	
Preliminary review. (current 27(3.2))	Preliminary review.
(5) The Commissioner shall	(3.2) The Commissioner shall
(a) conduct a preliminary review of the request and the response to determine if an inquiry is warranted; and	(a) conduct a preliminary review of the request and the response to determine if an inquiry is warranted; and
(b) notify in writing both Members of the Commissioner's decision within 15 working days of receiving the response.	(b) notify in writing both Members of the Commissioner's decision within 15 working days of receiving the response.

SUGGESTED AMENDMENTS

Non-meritorious requests.

(6) If the Commissioner is of the opinion that a request for an inquiry was frivolous or vexatious or was not made in good faith, the Commissioner shall so state in dismissing the request in a report under section 28(6) and may recommend that further action be considered against the Member who made the request

Direction by the House. (current 27(3))

27.1(1) The House may, by way of resolution, direct the Commissioner to conduct an inquiry to determine whether a Member has complied with his or her obligations under this Code.

Notice (New)

(2) The Commissioner shall forward without delay a copy of the resolution to the Member who is the subject of the resolution and shall afford the Member 30 days to respond.

Initiative of Commissioner. (current 27(4))

27.2(1) If the Commissioner has reason to believe that a Member has not complied with his or her obligations under this Code, the Commissioner may, on his or her own initiative, conduct an inquiry to determine whether the Member has complied with his or her obligations under this Code.

CURRENT PROVISIONS

Initiative of Commissioner.

(4) If, after giving the Member concerned written notice and 30 days to respond to the Commissioner's concerns, the Commissioner has reasonable grounds to believe that a Member has not complied with his or her obligations under this Code, the Commissioner may, on his or her own initiative conduct an inquiry to determine whether the Member has complied with his or her obligations under this Code.

Public comments.

(5.1) Other than to confirm that a request for an inquiry has been received, or that a preliminary review or inquiry has commenced, or been completed, the Commissioner shall make no public comments relating to any preliminary review or inquiry.

Non-meritorious requests.

(6) If the Commissioner is of the opinion that a request for an inquiry was frivolous or vexatious or was not made in good faith, the Commissioner shall so state in dismissing the request in a report under section 28(6) and may recommend that further action be considered against the Member who made the request.

SUGGESTED AMENDMENTS

Notice (New)

(2) Before conducting an inquiry, the Commissioner shall notify the Member in writing of the reasons for the Commissioner's belief that the Member has not complied with his or her obligations under this Code, and shall give the Member 30 days to respond.

Preliminary review (New)

(3) After reviewing the Member's response, the Commissioner shall determine if an inquiry is still warranted and shall notify the Member in writing of the decision of the Commissioner within 15 working days of receiving the response.

Public comments. (Current 27(5.1))

27.3 (1) Subject to subsection (2), other than to confirm that a request or direction for an inquiry has been received, or that a preliminary review or inquiry has commenced, or been completed, the Commissioner shall make no public comments relating to any preliminary review or inquiry.

Where inquiry not warranted (New)

(2) Where the Commissioner determines that an inquiry is not warranted, the Commissioner may make public his or her reasons for not proceeding where the matter to which the request relates has already been made public.

Inquiry to be private. Current 27(7))

(3) The Commissioner shall conduct an inquiry in private and with due dispatch, provided that at all appropriate stages throughout the inquiry the Commissioner shall give the Member reasonable opportunity to be present and to make representations to the Commissioner in writing or in person by counsel or by any other representative.

Cooperation. (Current 27(8))

(4) Members shall cooperate with the Commissioner with respect to any inquiry.

CURRENT PROVISIONS

Inquiry to be private.

(7) The Commissioner shall conduct an inquiry in private and with due dispatch, provided that at all appropriate stages throughout the inquiry the Commissioner shall give the Member reasonable opportunity to be present and to make representations to the Commissioner in writing or in person by counsel or by any other representative.

Cooperation.

(8) Members shall cooperate with the Commissioner with respect to any inquiry.

SUGGESTED AMENDMENTS

Powers of the Commissioner (New)

27.4 Except where the House otherwise orders, the Commissioner has the power to summon witnesses and require them

(a) to give evidence – orally or in writing – on oath if they are persons entitled to affirm in civil matters, or on affirmation; and

(b) to produce any persons, papers or records that the Commissioner considers necessary.

Report to the House

28.(1) Forthwith following an inquiry or a dismissal under subsection 27(6), the Commissioner shall report to the Speaker, who shall present the report to the House when it next sits.

(no other suggested amendments to section 28)

CURRENT PROVISIONS

Report to the House.

28.(1) Forthwith following an inquiry, Commissioner shall report to the Speaker, who shall present the report to the House when it next sits

Report to be public.

(2) The report of the Commissioner shall be made available to the public upon tabling in the House, or, during a period of adjournment or prorogation, upon its receipt by the Speaker.

Report after dissolution.

(3) During the period following a dissolution of Parliament, the Commissioner shall make the report public.

No contravention.

(4) If the Commissioner concludes that there was no contravention of this Code, the Commissioner shall so state in the report.

Mitigated contravention.

(5) If the Commissioner concludes that a Member has not complied with an obligation under this Code but that the Member took all reasonable measures to prevent the non-compliance, or that the non-compliance was trivial or occurred through inadvertence or an error in judgment made in good faith, the Commissioner shall so state in the report and may recommend that no sanction be imposed.

SUGGESTED AMENDMENTS

CURRENT PROVISIONS

Sanctions.

(6) If the Commissioner concludes that a Member has not complied with an obligation under this Code, and that none of the circumstances in subsection (5) apply, or is of the opinion that a request for an inquiry was frivolous or vexatious or was not made in good faith, the Commissioner shall so state in the report and may recommend appropriate sanctions.

Reasons.

(7) The Commissioner shall include in the report reasons for any conclusions and recommendations.

General recommendations.

(8) The Commissioner may include in his or her report any recommendations arising from the matter that concern the general interpretation of this Code and any recommendations for revision of this Code that the Commissioner considers relevant to its purpose and spirit.

Right to speak.

(9) Within 10 sitting days after the tabling of the report of the Commissioner in the House of Commons, the Member who is the subject of the report shall have a right to make a statement in the House immediately following Question Period, provided that he or she shall not speak for more than 20 minutes.

Deemed concurrence.

(10) A motion to concur in a report referred to in subsection (4) or (5) may be moved during Routine Proceedings. If no such motion has been moved and disposed of within 30 sitting days after the day on which the report was tabled, a motion to concur in the report shall be deemed to have been moved and adopted at the expiry of that time.

Report to be considered.

(11) A motion respecting a report referred to in subsection (6) may be moved during Routine Proceedings, when it shall be considered for no more than two hours, after which the Speaker shall interrupt any proceedings then before the House and put forthwith and successively, without further debate or amendment, every question necessary to dispose of the motion. During debate on the motion, no Member shall speak more than once or longer than ten minutes.

SUGGESTED AMENDMENTS

CURRENT PROVISIONS

Vote.

(12) If no motion pursuant to subsection (11) has been previously moved and disposed of, a motion to concur in the report shall be deemed to have been moved on the 30th sitting day after the day on which the report was tabled, and the Speaker shall immediately put every question necessary to dispose of the motion.

Referral back.

(13) At any point before the House has dealt with the report, whether by deemed disposition or otherwise, the House may refer it back to the Commissioner for further consideration, with instruction.

SUGGESTED AMENDMENTS TO THE INQUIRY PROVISIONS (Sections 27 and 28) OF THE MP CODE

EXPLANATORY NOTES

The attached chart sets out a number of suggested amendments to sections 27 and 28 of the *Conflict of Interest Code for Members of the House of Commons*. These sections relate to the inquiry process under the Code.

The suggested amendments are set out in the left-hand column with the corresponding current provisions set out opposite in the right-hand column. Both sets of provisions are underlined to identify the changes.

Currently, section 27 of the Code sets out three mechanisms by which an inquiry may be commenced, namely:

- a request from a Member of the House of Commons;
- a resolution from the House of Commons; and
- a decision by the Conflict of Interest and Ethics Commissioner to self-initiate an inquiry.

The amendments would create three sections (27, 27.1 and 27.2) to provide separately for each of the three mechanisms by which an inquiry may be commenced.

Section 27.3 would include in one section the provisions that apply generally to all inquiries.

Section 27.4 would set out the powers of the Commissioner to summon witnesses and to compel evidence in conducting inquiries.

Section 27- Requests by Members

Section 27 includes the provisions specific to requests made by Members of the House of Commons.

Subsections 27(1) and (2)

No substantive change is suggested.

The French version of subsection 27(2) has been adjusted to include the element “the alleged non-compliance”, which is found in the English version but missing from the current French version.

Subsection 27(3)

This subsection corresponds to the current subsection 27(3.1), which sets out the notice to be provided to the Member who is subject of a request for an inquiry.

The additional words are consequential on the suggested amendment in subsection 27(4) relating to public comments.

Subsection 27(4)

This new provision is intended to regulate the circumstances in which a Member may make public comments with respect to a request for an inquiry. The Member who makes a request for an inquiry would be precluded from making any public commentary in relation to the request for inquiry until he or she is notified by the Commissioner, pursuant to subsection 27(3), that the Member who is the subject of the request has received a copy of it.

My Office regularly learns of impending inquiry requests through the media. In some circumstances, no request is ever forwarded to my Office; in others, there are extensive delays before such requests are received. The proposed amendment to subsection 27(4) would not only reduce potential confusion, but would also assist in ensuring fairness by requiring that all interested parties as well as my Office be informed of the substance of a request before any public commentary is permissible.

Subsection 27(5)

No change is suggested. This subsection corresponds to the current subsection 27(3.2).

Subsection 27(6)

No change is suggested.

Section 27.1 – Direction by the House

Section 27.1 would include the provisions specific to inquiries directed by resolution of the House of Commons.

Subsection 27.1(1)

No change is suggested. This subsection corresponds to the current subsection 27(3).

Subsection 27.1(2)

This subsection, which corresponds to the current subsection 27(3.1), is parallel to subsection 27(3) proposed above.

Section 27.2 – Initiative of Commissioner

Section 27.2 would include the provisions specific to inquiries initiated by the Commissioner.

Subsections 27.2(1) and (2)

These subsections are based on the current subsection 27(4). Two changes are suggested:

- the 30-day delay, afforded to the Member who is the subject of the inquiry to respond to the allegations made in the inquiry request, has been moved to a new subsection (2); and
- the words “reasonable grounds to believe” have been changed to “reason to believe”, which is the standard used in section 45 of the *Conflict of Interest Act* for self-initiated examinations. There is little, if any, distinction to be made between these two phrases.

Subsection 27.2(3)

This new subsection would parallel the preliminary review process for Member-initiated inquiries set out in subsection 27(5) above. After receiving the Member’s response, the Commissioner would determine if an inquiry is warranted and notify the Member of the decision.

Section 27.3 – Public Comments and the Private Nature of Inquiries

Section 27.3 addresses both the Commissioner’s authority to make public comments and the private nature of inquiries. It relates to all inquiries, however initiated.

Subsection 27.3(1)

This subsection is similar to the current subsection 27(5.1). The amendment would authorize the Commissioner to confirm that a direction as well as a request has been received. It would continue to provide that, as a general rule, the Commissioner is limited in her public comments and can only confirm that a direction or a request for an inquiry has been received and that a preliminary review or inquiry has been commenced or completed.

The amendment proposes an additional exception to this general rule, set out in a new subsection 27.3(2).

Subsection 27.3(2)

This is a new subsection. It proposes that, where a the matter to which a request for an inquiry has already been made public, the Commissioner be allowed to make public her reasons for determining that an inquiry is not warranted in the circumstances.

As currently drafted, the Code requires the Commissioner to issue a public report when she determines that an inquiry is warranted as well as when she dismisses an inquiry request. At the present time, however, the Commissioner is prevented from publicly commenting on her reasons for determining, after conducting a preliminary review, that an inquiry is not warranted. In these circumstances, although the Commissioner informs both the Member who made the request and the Member who is the subject of the request of the reasons for which an inquiry is not warranted, this rationale is not made public. The basis for such decisions could be of general interest to other Members and could serve to both prevent misconceptions and clarify the Commissioner's approach to interpreting a given section of the Code.

The proposed amendments would provide the Commissioner with the discretion to make public her reasons for deciding not to proceed to an inquiry where the request for an inquiry has been made public.

Subsection 27.3(3)

This subsection corresponds to the current subsection 27(7).

No substantive change is suggested.

The French version has been modified to reflect the English version which includes the concept of "appropriate" in the phrase "at all appropriate stages" and the word "reasonable" before the word "opportunity".

Subsection 27.3(4)

No change is suggested. This subsection corresponds to the current subsection 27(8).

Section 27.4 - Powers of the Commissioner

This is a new section. It would specifically provide the Commissioner with the power to compel documents and witnesses during an inquiry under the Code. Although Members of the House of Commons are required to cooperate with the Commissioner, there is no obligation on the part of other witnesses to participate in the process. If the Commissioner considered it necessary to issue a summons or to require the production of documents, the source of the Commissioner's powers to compel evidence is unclear, as are the processes that would have to be followed. More particularly, it is unclear not only whether the Commissioner exercises such powers directly or through the Speaker of the House of Commons, but also what procedures should be followed in these circumstances.

The suggested amendment largely mirrors the powers conferred upon the Commissioner by subsection 48(1) of the *Conflict of Interest Act*. It also recognizes that these powers would be exercised in a parliamentary context. In particular, paragraph (b) reflects the wording in paragraph 108(1)(a) of the *Standing Orders of the House of Commons* as it relates to the powers of standing committees to compel evidence.

Section 28

This section governs the process by which reports are issued and then acted upon by the House of Commons. There is only one technical amendment proposed to subsection 28(1).

Subsection 28(1)

This technical amendment reflects the fact that a report may be tabled not only after an inquiry has been completed, but also after a dismissal under subsection 27(6).



Commissariat aux conflits d'intérêts et à l'éthique
Office of the Conflict of Interest and Ethics Commissioner

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October 18, 2010

Ms. Angela Crandall, Clerk
Standing Committee on Procedure and House Affairs
131 Queen Street, 6th Floor
House of Commons
Ottawa, ON K1A 0A6

Dear Ms. Crandall:

In my recent appearance before the Standing Committee on Procedure and House Affairs on October 5, 2010, I referenced an additional proposed amendment to the inquiry provisions of the *Conflict of Interest Code for Members of the House of Commons* (sections 27 and 28).

I am enclosing the proposed text of the amendment (section 28.1), which would establish a new procedure for releasing reports in the context of parallel investigations conducted by my Office under both the *Conflict of Interest Act* and the Code as well as an explanatory note setting out the rationale for this proposed amendment. The proposed amendment and the explanatory notes are intended as an addendum to the package sent to you on March 1, 2010. It would fit at the end of that package, immediately following section 28.

I thank the Standing Committee in advance for its consideration of this recommendation and would be happy to provide any additional information that it may require.

Sincerely,

Mary Dawson
Conflict of Interest and Ethics Commissioner

Enclosures (2)

**ADDITIONAL SUGGESTED AMENDMENT TO THE INQUIRY
PROVISIONS (Sections 27 and 28) OF THE MP CODE**

SUGGESTED AMENDMENT

Joint Reports

28.1 Where the Commissioner conducts an examination under the *Conflict of Interest Act* and an inquiry under the Code into the same or substantially the same matter, the Commissioner may, if the Commissioner deems it appropriate, prepare a joint report which shall be provided to the Prime Minister under subsection 44(7) or 45(3) of the Act at the same time as it is made public under section 28 of the Code.

CURRENT PROVISION

No equivalent currently included in the *MP Code*.

ADDITIONAL SUGGESTED AMENDMENT TO THE INQUIRY PROVISIONS (Sections 27 and 28) OF THE MP CODE

EXPLANTORY NOTE

The attached chart sets out an additional suggested amendment to the Inquiry provisions of the *Conflict of Interest Code for Members of the House of Commons*.

The suggested amendment would establish a new procedure for releasing reports in those circumstances in which the Office of the Conflict of Interest and Ethics Commissioner conducts parallel investigations under both the *Conflict of Interest Act* (Act) and the Code. It would stand alone and appear after section 28 as section 28.1.

Section 28.1

On three occasions in the last year, the Conflict of Interest and Ethics Commissioner has been called upon to conduct investigations under both the Act and the Code in relation to the same matter. This situation can arise when allegations of conflict of interest relate to Members of Parliament who are also ministers or parliamentary secretaries.

There are different procedural requirements for releasing reports under the Act and the Code. Examination reports under the Act must be provided to the Prime Minister and, at the same time, made available to the public. Inquiry reports under the Code must be provided to the Speaker, who presents the report to the House of Commons when it next sits. Inquiry reports are made available to the public upon tabling in the House or, during a period of adjournment or prorogation, upon receipt by the Speaker.

With the exception of the Dykstra Report, the practice of the Office of the Conflict of Interest and Ethics Commissioner has been to produce two separate reports when the subject matter of an investigation request relates to the conduct of a Member who is also a minister or parliamentary secretary. The Dykstra Report was issued as a single report while the House was adjourned last summer because it was clear that the requirements of the Act and the Code could both be met in that way during a period of adjournment.

The proposed amendment is intended to make it clear that the Conflict of Interest and Ethics Commissioner can issue one joint report in appropriate circumstances whether or not the House is sitting.