

**Opening Statement by
Mary Dawson
Conflict of Interest and Ethics Commissioner**

**To the
House of Commons Standing Committee on
Access to Information, Privacy and Ethics
In the Context of the Five-Year Review
of the
*Conflict of Interest Act***

**February 11, 2013
Ottawa, Ontario**

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Mr. Chair, I would like to thank the Committee for inviting me to appear before you today.

With me this afternoon are Lyne Robinson-Dalpé, Assistant Commissioner, Advisory and Compliance, and Nancy Bélanger, General Counsel.

I am pleased to contribute to the five-year review of the *Conflict of Interest Act*. This is an excellent opportunity to explore how well the Act is working and ways in which it might be strengthened.

As the Committee is aware, I was previously scheduled to appear before you on January 30, and had provided the Committee with a written submission recommending various changes to the Act. Although my appearance was rescheduled, the submission was made public on my Office website, with the approval of the Chair.

The Committee has already heard from some witnesses who have commented on my recommendations. I am pleased to have this opportunity to discuss them with you myself.

My written submission reflects my five years of experience in administering the Act and the *Conflict of Interest Code for Members of the House of Commons*, and is therefore comprehensive and quite detailed. It includes a large number of recommendations based on a thorough analysis of the Act and its administration.

I do not mean to suggest, however, by the number of recommendations I have made, that the regime is not, at its core, functioning relatively well.

The format of my submission mirrors the structure of the Act, but my presentation today will be more thematic. I want to talk about eight broad priority areas that are supported by many of my individual recommendations.

A first priority area involves increasing transparency around **gifts and other advantages** through increased disclosure and public declaration.

There is a fairly common misconception that a gift's value determines its acceptability under the Act. In fact, an acceptability test applies in all cases irrespective of the value: public office holders are prohibited from accepting any gifts that may reasonably be seen to have been given to influence them. According to the Act, the value of a gift is simply a threshold for public declaration by reporting public office holders: acceptable gifts worth \$200 or more must be disclosed to my Office and publicly declared.

I recommend lowering the \$200 threshold for disclosure to the Commissioner to a minimal amount, and requiring that all disclosed gifts that relate to a public office holder's position be publicly declared.

A second priority area involves strengthening the Act's **post-employment** provisions by introducing reporting obligations for public office holders during their cooling-off period after they leave public office.

I recommend requiring former public office holders to report to the Commissioner any firm offers of employment received during their cooling-off period, including offers of service contracts, appointments to boards of directors and partnerships, and to report on their duties and responsibilities in relation to their new employment.

Third and fourth priority areas involve narrowing the Act's overly broad prohibitions against **engaging in outside activities** and **holding controlled assets**.

With limited exceptions, the Act prohibits reporting public office holders from engaging in a range of outside activities. I have seen cases where restricting some of these activities goes beyond the purposes of the Act. I propose that the Commissioner have the discretion to grant an exception from the general prohibition in such cases if the activities in question are not incompatible with a reporting public office holder's official duties.

With respect to controlled assets, I recommend that the broad prohibition against holding these assets be restricted to those who have a significant amount of decision-making power or access to privileged information, such as ministers, ministers of state, parliamentary secretaries, chiefs of staff and deputy ministers. The prohibition, and its related requirement to divest, would only apply to other reporting public office holders if holding the controlled assets would constitute a risk of conflict of interest.

A fifth priority area involves establishing some **disclosure and public reporting requirements for non-reporting public office holders** in relation to outside activities, recusals, and gifts and other advantages. I would not, however, go so far as to recommend that we require them to make the initial disclosure of their assets and liabilities. I believe that introducing some limited reporting obligations would help to ensure compliance with the Act.

A sixth priority area involves **addressing misinformation put into the public domain in relation to investigative work**.

I generally refrain from making public comments about an ongoing examination, choosing instead to correct any misinformation once the examination is completed and a report is issued. However, if I do not conduct an examination or if I discontinue an examination without issuing a report, I do not necessarily have an opportunity to correct the public record. I therefore recommend that the Commissioner be given express authority to comment, where appropriate, especially in order to correct misinformation.

A seventh priority area involves extending the **administrative monetary penalties** provisions to cover obvious breaches of the Act's substantive provisions. At present, penalties may only be imposed for failures to meet certain reporting deadlines.

I note that, of all my recommendations, penalties have received the most attention to date. I would like to clarify that I am proposing the extension of the administrative monetary penalty regime as a means of dealing with some substantive contraventions under the same expedited process that exists for procedural contraventions where an examination under the Act is not warranted, generally because the facts are clear and undisputed.

I am also suggesting that, for cases where the Commissioner undertakes an examination and finds that a contravention of the Act has occurred, consideration be given to whether penalties should be imposed as a result of that finding. I recognize that there are differences of opinion on whether it is necessary or desirable to impose penalties in such cases. My view is that issuing a public report in which a contravention is found is itself a significant adverse result, and that the imposition of monetary penalties is not necessary.

An eighth and final priority area involves **harmonizing the Act and the Members' Code** to ensure consistency of language and processes where appropriate. Although the two regimes have similar provisions, there are substantive and procedural differences between them. Those differences have led to a lack of clarity for individuals who are subject to both regimes, namely Members who are also ministers or parliamentary secretaries.

I also recommend harmonizing the processes for launching an investigation. Unlike the Code, which provides for a preliminary review stage before an inquiry is launched, the Act requires me to launch an examination immediately upon receiving a written request for investigation from a Senator or Member. I propose that the Act also provide for a preliminary review of examination requests so the Commissioner can determine whether an examination is warranted before proceeding.

As the Members' Code is also under review by the Standing Committee on Procedure and House Affairs, it would appear to be timely to examine both instruments for opportunities to harmonize the two regimes.

Mr. Chair, these and the other recommendations that I have presented for the Committee's consideration seek to increase the Act's effectiveness in preventing conflicts between public and private interests. I believe that my recommendations would help to clarify the rules, ensure transparency and fairness and, above all, strengthen the means by which the Act's objectives might be achieved. I hope that the Committee will see fit to recommend that Parliament adopt some or all of them.

I will now be happy to answer the Committee's questions.