



Opening Statement before the House of Commons Standing Committee on Access to Information, Privacy and Ethics on budgetary submission for 2010-11 Main Estimates

Mary Dawson – Conflict of Interest and Ethics Commissioner

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Introduction

Mr. Chair and members of the Committee, thank you for inviting me to appear before you today as you consider our budgetary submission for the 2010-11 Main Estimates.

I am accompanied at the table by Lyne Robinson-Dalpé, Assistant Commissioner for Advisory and Compliance, and Denise Benoît, Director of Corporate Management. They will assist me in answering your questions after my opening remarks.

I see that there are a number of new members on this Committee. For their benefit and to refresh the memories of the others, I will begin by providing a brief overview of the mandate and work of the Office of the Conflict of Interest and Ethics Commissioner. Then, I will outline how our renewed budget will help us continue our work as the current fiscal year unfolds.

As most of you know, my Office administers the *Conflict of Interest Code for Members of the House of Commons* and the *Conflict of Interest Act* for public office holders. These two regimes seek to ensure that public officials, whether elected or appointed, are not in a conflict of interest. I am also mandated to provide confidential advice to the Prime Minister about conflict of interest and ethics issues.

My staff and I review confidential reports of assets, liabilities and activities, maintain public registries of publicly declarable information, and investigate and report on cases of alleged non-compliance. Our primary goal is prevention—our focus is not on penalizing people for non-compliance, but on assisting them to comply with the Code and the Act. Through the hard work of my staff, we have eliminated what was once a large backlog of Members and public office holders who were not in compliance.

In addition, in recent months we have been putting a great deal of effort into working on several high profile investigations, and my intent is that my reports on these will be released in the near future.

Overview of Budget

For the last three years, my Office has been allocated annual funds of \$7.1 million. Although we lapsed a portion of funds in each of the previous two years, each year we lapse less as we move forward with the organization and staffing of my Office. We are very close now to being fully staffed, and expect to utilize most of our allocation for 2010-2011.

Mindful of the budgetary constraints facing the government, my Office has already implemented measures consistent with those required of departments and agencies. These include capping travel, conference and hospitality expenditures, as well as limiting salary increases to 1.5%. Those increases will be absorbed within our existing budgetary envelope, as we are not seeking an increase to the \$7.1 million we were allocated in each of the last two fiscal years. Salaries and benefits account for the largest single component—some \$5.3 million—of our budget.

Overview of Activities

In the year ahead, my Office will continue to focus on helping Members of the House of Commons and public office holders to comply with their obligations under the Members' Code and the *Conflict of Interest Act*.

Our advisors will continue to assist them in setting up arrangements involving trusts, which are in many cases quite unique, and advising on outside activities. These arrangements are subject to review each year. Our advisors will continue to respond to inquiries from those who are covered by the Code or the Act, and take a number of other steps, through meetings, correspondence, guidelines and information notices to help Members and public office holders to understand how the Code or the Act applies in their specific situation.

We will pursue, as we have in the past, a wide range of communications, education and outreach activities and initiatives. For example, my staff and I will continue to meet with ministerial staff, make additional presentations to party caucuses, and provide advisory opinions on issues of general application to Members and public office holders. We will also continue to make improvements to the way we provide information to our clients, in particular through our website.

We are also taking steps to strengthen our ties with organizations in other jurisdictions. My Office has a new coordination role in the Canadian Conflict of Interest Network, which includes federal, provincial and territorial commissioners. And we are continuing our involvement with the U.S.-based Council of Governmental Ethics Laws, or COGEL.

I hope to continue to work with Parliament and its committees to make improvements to the rules I am administering or to make them more widely understood. For example, last year my Office advised the Standing Committee on Procedure and House Affairs on possible amendments to the Code relating to gifts and other benefits and this resulted in significant changes to the Code. At the request of the Committee, we have recently submitted to it proposals for improvements to the Code in the areas of disclosures and inquiries.

As you can appreciate, there is an element of unpredictability associated with the operations of my Office. In recent months, we have been involved with a number of investigations, each one of which must be given due process and some of which have been quite complex. Of course, I have no way of anticipating how many investigations we will deal with from year to year, or the amount of work each one will involve.

Conclusion

Mr. Chair, I would like to conclude my opening remarks by restating my belief that our proposed budget for 2010-2011 will be sufficient for our needs as they currently stand. Within it, we will be able to sustain our efforts to ensure that Members and public office holders meet their respective obligations under Canada's conflict of interest regimes.

Thank you once again for inviting me to come before the committee to discuss the Main Estimates. I will now be happy to answer any questions you may have.

In September 2010, I issued a report on my examination of the involvement of Mr. Rick Dkystra, Parliamentary Secretary to the Minister of Citizenship and Immigration, in a political fundraising event organized for the benefit of his riding association.

In both reports, I noted that more stringent provisions relating to fundraising should be considered for ministers and parliamentary secretaries. In this connection, I noted that the Act's predecessor, the *Conflict of Interest and Post-Employment Code for Public Office Holders*, prohibited ministers, parliamentary secretaries and other full-time public office holders from personally soliciting funds, regardless of whether or not doing so would place them in a conflict of interest.

I also made reference to the Prime Minister's guidance document setting out best practices to be followed by ministers and parliamentary secretaries in respect of fundraising activities. I understand from a recent media report that the document will soon be made public.

Challenges in Applying the Act

I will conclude by drawing to your attention several areas where my Office has encountered challenges in applying the Act that were discussed in my annual report.

Material Changes

One area involves the notion of material change.

Reporting public office holders are required to inform my Office of a material change to any of the information disclosed in their confidential report. They are supposed to do so within 30 days of a change occurring, but often we do not learn about them until the next annual review. A material change could affect an individual's obligations under the Act, which is why it is important that these changes be reported without delay. As I have already mentioned, a failure to meet the reporting deadlines could result in an administrative monetary penalty.

Material change is not defined in the Act. In an effort to improve the reporting rate, I recently updated our website to add an information notice under the Act describing my interpretation of what constitutes a material change.

Conflict of Interest Screens

Under the Act, public office holders must recuse themselves from discussion, decision, debate or voting on a matter where they would be in a conflict of interest. Recusals take place in relation to specific conflict situations that usually come up at relatively short notice.

It makes sense to identify situations where recusals may become necessary as soon as a public office holder takes office and at that time set up a process to prevent conflict of interest situations from occurring. The Act gives me the discretion to determine appropriate compliance measures, and under this authority I have followed the practice of setting up conflict of interest screens which anticipate possible conflicts, thereby avoiding the need for recusals in most cases. Conflict of interest

screens are often referred to colloquially as “Chinese walls” and are a common practice in legal and business environments.

Once a conflict of interest screen is in place, related matters such as the handling of files, meetings and phone calls are redirected by the screen administrator and these matters do not come to the attention of the public office holder.

The Act requires that all recusals by reporting public office holders be made public, but there is no similar requirement for conflict of interest screens. I do, however, have the authority to make any other documents public when I consider it appropriate to do so. For reasons of transparency, since late last year I have been making these conflict of interest screens public as a matter of course.

I note that our public registry has contained no recusal declarations since the Act came into force. This is primarily because we have been using the conflict of interest screens effectively. There may have been other recusals, but only one has been reported, and that one could not be made public because it contained a confidence of the Queen’s Privy Council for Canada.

Confidentiality of Examinations

The final area I want to mention involves the confidentiality of examinations.

When I receive a request for examination that has been made public, but that does not meet the basic requirements for acceptance, I am not permitted to give any public explanation of the reasons for not investigating. This leaves me open to accusations that I do not take the request for examination seriously, or that I am favouring an individual or a party, allegations that could unjustly damage the reputation, and hence the effectiveness, of my Office. The allegations can also unfairly damage the reputations of those complained against.

Conclusion

Mr. Chair, this concludes my opening statement.

I am grateful to the Committee for taking the time to review my 2009-2010 Annual Report in respect of the *Conflict of Interest Act*, and to examine the issues that I raised in it.

I am happy to answer any questions you may have.