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Opening Statement before 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*

Mary Dawson – Conflict of Interest and Ethics Commissioner
Ottawa, Ontario, March 18, 2013

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

With me this afternoon are Nancy Bélanger, General Counsel, and Annie Plouffe, Manager, Advisory and Compliance.

This is my second appearance before this Committee in the context of the review of the *Conflict of Interest Act*. In my first appearance, I outlined eight broad priority areas that are supported by many of the individual recommendations reflected in my written submission dated January 30, 2013.

I have followed with interest the testimony of other witnesses and the Committee's questioning of them. I have noted in those discussions several areas where there appears to be some confusion or divergence of opinion, and will address some of these today.

I note that in previous meetings the Act was often confused with the *Conflict of Interest Code for Members of the House of Commons*. The only Members that the Act applies to are ministers and parliamentary secretaries. Most Members are subject only to the Members' Code, which is being reviewed separately by the Standing Committee on Procedure and House Affairs. I provided a submission on the Code to that Committee and appeared as a witness before it last May. While some of the recommendations I have made for changes to the Act and the Code are similar, my remarks today focus exclusively on the Act.

Gifts and other Advantages

You have heard a broad range of opinions about the Act's treatment of gifts and other advantages.

The rule in the Act is that any gift that may reasonably be seen to have been given to influence a public office holder is not acceptable.

In addition, the Act requires reporting public office holders, including ministers and parliamentary secretaries, to disclose and report publicly any gifts with a value of $200 or more. This is simply a reporting threshold and has nothing to do with whether or not a public office holder may accept a gift, whatever its value.

As I have noted before, there is a commonly held misconception that gifts worth less than $200 are automatically acceptable. This is because many people confuse the idea of a reporting threshold with an acceptability threshold. There is no acceptability threshold and I am not proposing one.

Because of the continued confusion between the acceptability of gifts and the requirement to report them, I have recommended lowering the $200 reporting threshold to a minimal amount, such as $30. This amount seems to have become a focus of attention and has distracted from the main issue.

The main issue is this: A lower reporting threshold could enhance transparency and trigger public office holders to contact my Office, which in turn would allow us to advise as to whether a gift is acceptable. To be clear, I am not recommending any change to the acceptability rule. Public office holders would still not be able to accept a gift that could reasonably be seen to have been given to influence them, regardless of its value.

Some witnesses have commented that Canadians would not have an issue with elected officials accepting gifts worth $200 or even more. I disagree, particularly if a gift is given by someone who is a stakeholder. I expect the average Canadian would consider a $200 lunch paid for by a stakeholder to be excessive and inappropriate, and would be unlikely to believe that it was offered without an intention to influence.

Some Committee members have criticized my proposed threshold and come up with extreme examples of how it might be applied. I assure the Committee that, whatever the amount of the reporting threshold, ministers and parliamentary secretaries would still be able to accept gifts that pass the acceptability test, as well as true courtesy and protocol gifts, including many dinners and receptions.

Divestment of Controlled Assets

Another area that I want to touch on is the Act's divestment rules. Reporting public office holders are not allowed to hold controlled assets, whether or not a conflict of interest exists.

I have recommended limiting the absolute prohibition, and its related requirement to divest, to apply only to those who have a significant amount of decision-making power or access to privileged information, including ministers and parliamentary secretaries, chiefs of staff and deputy ministers. It would only apply to other reporting public office holders if holding the controlled assets would constitute a conflict of interest.

One witness suggested that the absolute prohibition should continue to apply to ministerial staff, who are frequent targets of lobbying. Given the witness's firsthand knowledge of ministers' offices, I accept his assessment and would have no problem with the absolute prohibition applying to them. I note, though, that many ministerial staff, especially those in junior positions, tend not to hold controlled assets, so divestment would rarely be required in any event.

I have found that Governor in Council appointees to certain boards and tribunals are most negatively and unnecessarily impacted by the current rule. An absolute prohibition could be retained for certain boards or tribunals, according to their functions, but these would need to be clearly identified in the Act. I believe that divestment in the case of most Governor in Council appointees should be required only if a conflict of interest exists.

Fundraising

The need to strengthen the Act's fundraising prohibition is another area that I believe requires further comment. The Act allows all public office holders, including ministers and parliamentary secretaries, to personally solicit funds if the activity does not place them in a conflict of interest.

I have noted my concern about the potential for current and future conflicts of interest when ministers and parliamentary secretaries engage in fundraising. I have recommended stronger rules in this area.

It has been suggested that an absolute prohibition might be appropriate for ministers and parliamentary secretaries. I would be comfortable with that. I would not recommend any change to section 16 for other public office holders.

Another witness suggested writing into the Act the fundraising guidelines currently annexed in *Accountable Government: A Guide for Ministers and Ministers of State*. This idea has merit, but these guidelines would have to be adjusted in order to serve as rules of conduct.

Post-employment

Post-employment is an area of the Act that most witnesses have indicated they would like to see strengthened. I would agree with this. I have recommended introducing reporting requirements for former reporting public office holders during their cooling-off period. These would include requiring them to report any firm offers of employment received during their cooling-off period, and to report on their duties and responsibilities in relation to their new employment.

It has been suggested that the cooling-off period be structured on a sliding scale according to various criteria. I do not see the need for such an amendment. There is already a one- and two-year distinction, and I also have the discretion to reduce the cooling-off period when it is in the public interest to do so.

Conflict of Interest and Lobbying Regimes

It has been suggested that the Lobbying Commissioner and I have made contradictory findings in related investigations. We have two different regimes that regulate the behaviour of two different groups of people, public office holders and lobbyists.

Our respective investigations of one particular case, the involvement of lobbyists in a political fundraising event, looked at the same set of facts but from different perspectives. My focus was on whether a minister had contravened the gift rule by accepting the volunteer services and monetary contributions provided by the lobbyists. The Lobbying Commissioner focussed on the conduct of the lobbyists and whether their actions placed the Minister in an actual, potential or apparent conflict of interest.

The Lobbying Commissioner has interpreted conflict of interest to include conflicts with private interests consisting of such things as political advantage. I have found, however, in a different case altogether, that given the wording of the *Conflict of Interest Act*, political interests are not captured by the Act's definition of private interest. In order for political interests to be covered, the Act would have to be amended.

Mr. Chair, this concludes my opening remarks.

I will now be happy to answer the Committee's questions about these or any other areas of the *Conflict of Interest Act*.