



**Opening Statement before the House of Commons Standing Committee on Access to Information, Privacy and Ethics on 2008-2009 Annual Report in respect of the *Conflict of Interest Act***

**Mary Dawson – Conflict of Interest and Ethics Commissioner**

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Mr. Chair and members of the Committee, thank you for inviting me to appear before you today. I am pleased to have this opportunity to speak about my 2008-09 Annual Report relating to the *Conflict of Interest Act*, and the work of the Office of the Conflict of Interest and Ethics Commissioner.

In my annual report, I referred to the past year as one of “consolidating and strengthening the foundation”. Emphasis was placed on applying the Act fairly and consistently, and on communicating its requirements to public office holders. My Annual Report addressed, as well, a number of areas of the Act that present challenges.

I will briefly outline some of the initiatives undertaken by my Office in relation to these areas, but before doing so I want to summarize our regular day-to-day accomplishments over the past year.

The bulk of the work of my Office involves helping reporting public office holders comply with the Act on appointment and remain in compliance throughout their time in office. Some 950 individuals assumed new responsibilities as public office holders in the last fiscal year, including about 500 reporting public office holders.

New reporting public office holders go through an initial compliance process that involves submitting a detailed confidential report to my Office. These reports are reviewed by staff, who discuss potential conflict of interest risks with them and outline the steps they must take to comply with the Act. Often, advisors assist reporting public office holders with complex arrangements, such as those involving trusts and outside activities.

In addition to the initial compliance process, the Act requires a formal review of compliance arrangements on an annual basis. Over the past year, my Office contacted over 900 reporting public office holders to review and, where necessary, update the arrangements they had made previously to comply with the Act.

Reporting public office holders are also required to make confidential disclosures and public declarations as needed throughout the term of their appointments. These are required in connection with the receipt of certain gifts, recusals, employment offers, and material changes to matters that need to be reported under the Act.

In addition, my Office regularly receives phone calls, emails and letters from current, former and potential public office holders with questions on the application of the Act to specific situations. Responding to these requests for advice is among the most complex aspects of advisors' work, as most of the questions raised with my Office involve situations in which the application of the Act is not immediately apparent and for which there are no precedents.

I'm particularly proud of the advisory work done by advisors in my Office, and I believe it accounts in large measure for the infrequent need to conduct investigations.

Between April 1, 2008 and March 31, 2009, I reported findings on three examinations relating to reporting public office holders. There were four other instances where Members of the House of Commons raised concerns with me about possible contraventions of the Act by a public office holder. In each of these cases, I clarified for the Members the specific requirements of the Act in relation to the questions they raised, and they did not proceed with a formal request.

As I noted earlier, one of my priorities over the past year has been to communicate to public office holders the requirements of the Act.

My Office developed a guideline and several information notices that have been posted on our website. We also held information sessions for ministerial staff and other public office holders. We redesigned the website to make it more user-friendly, and improved the public registry, which contains the summary statements and public declarations of reporting public office holders.

We have implemented administrative procedures to assist reporting public office holders who regularly receive gifts. In particular, my Office has made formal arrangements for regular reporting of gifts every few weeks with a number of offices, notably ministers' offices, where protocol gifts are frequently received.

In my annual report, I identified a number of areas of the Act that presented challenges. These included sections related to monetary penalties, divestment, post-employment and self-initiated examinations.

### ***Administrative Monetary Penalties***

The Act allows me to impose penalties of up to \$500 for failures to meet a number of reporting requirements. After developing appropriate processes, including a system of reminder notices, my Office implemented the regime in November 2008.

Our approach reflects the intent of encouraging compliance with the Act's reporting requirements rather than seeking to punish.

In summer 2008, I issued one notice of violation, but I did not ultimately impose a monetary penalty in that case. Earlier this month, I imposed an administrative monetary penalty for a failure to report the holding of an office in a corporation. I note that there is no penalty in the Act for violations other than those involving a failure to report.

### ***Divestment***

A second issue addressed in my Annual Report involves the Act's divestment requirements.

I noted my ongoing concern about what appears to me to be an over-breadth of the provisions that prohibit reporting public office holders from holding controlled assets. The prohibition applies to all controlled assets held by any reporting public office holder, whether he or she is a minister, a ministerial staffer, a senior public servant or a full-time member of a federal board or tribunal, and whether the controlled assets are held personally, in a joint account with a family member, as a trustee for a beneficiary, or as an executor of an estate.

My main concern with this prohibition is that it applies regardless of whether or not the controlled assets in question could place the reporting public office holder in a conflict of interest. It would appear that it goes beyond what would be needed to meet the Act's stated purpose of minimizing the risk of conflict of interest. The breadth of the prohibition results in a significant number of difficult situations, such as trusts, executorships and joint accounts.

### ***Post-employment***

The third issue I raise in my report involves the Act's post-employment provisions.

In particular, I note that it is difficult to assess whether reporting public office holders are meeting their post-employment obligations and, more generally, how effective those provisions are, given a lack of reporting requirements.

### ***Self-Initiated Examinations***

A fourth issue I discussed in my Annual Report relates to my power to self-initiate examinations under the Act. This would usually result from information coming to my attention through media reports or sometimes from private individuals.

In cases where I consider launching an examination, but ultimately decide not to, I cannot make known my reasons for not proceeding. This serves to protect the privacy of public office holders. However, in cases involving well-publicized and controversial allegations, I find it unfortunate that I am limited in my ability to make public my reasons for not pursuing a matter.

One last note, though, on that before we begin. There are a number of complaints brewing. I can only confirm whether I have commenced an investigation under the Act and can discuss no details of an investigation while it's ongoing. The report at the end is made public.

Finally, although this is not related to the *Conflict of Interest Act*, Members may wish to know that this Friday, October 23, I will offer an information session on the recent changes to the Members' Code approved last June. It will be part of the Library of Parliament seminar series.

Mr. Chair, I appreciate the Committee taking the time to review my report and examine these issues. I am happy to answer any questions you may have.