PRESENTATIONS & SPEECHES
CHECK AGAINST DELIVERY

Opening Statement before the House of Commons Standing Committee on Access to Information, Privacy and Ethics on 2009-10 Annual Report in respect of the *Conflict of Interest Act*

Mary Dawson – Conflict of Interest and Ethics Commissioner
Ottawa, Ontario, October 26, 2010

Introduction

Mr. Chair, I would like to thank the Committee for inviting me to appear before you to talk about my 2009-2010 Annual Report under the *Conflict of Interest Act*. I am accompanied by Lyne Robinson-Dalpé, Assistant Commissioner, Advisory and Compliance, and Nancy Bélanger, General Counsel.

I am pleased to welcome your new members, and look forward to working with all of you. I also appreciate the productive relationship that I have enjoyed with the Committee during the past three years as I have settled into my mandate.

In my remarks today, I will highlight some of the activities covered in my annual report. They touch mainly on the areas of outreach and communications, investigations and some of the challenges I identified in the report. I will also identify some areas where my Office has encountered challenges in applying the Act.

Background

By way of background, the *Conflict of Interest Act* applies to the approximately 2800 full- and part-time appointees of the Government of Canada. All are considered public office holders under the Act and are subject to its general rules on avoiding conflict of interest.

Full-time appointees, numbering about 1100, are also subject to the Act's requirements relating to the disclosure and divestment of controlled assets. These reporting public office holders include ministers, parliamentary secretaries, ministerial staff and senior government appointees.

All reporting public office holders are required to make a full confidential disclosure of their assets within 60 days after taking office and to update it every year.

Within 120 days after their appointment, reporting public office holders are required to sell any controlled assets they hold or put them into a blind trust. They must also make public declarations of certain other assets and any directorships or positions of office with outside organizations that are permitted under the Act.

In some cases, public declarations are also made to reflect special compliance measures such as conflict of interest screens. I will say a little more about these later.

As well, there are ongoing disclosure requirements, within relatively short delays, relating to material changes, gifts and other advantages, the receipt and acceptance of firm offers of outside employment, and recusals.

The Act allows me to impose administrative monetary penalties of up to $500 for failures to comply with the reporting deadlines. In the last fiscal year, I imposed penalties in five cases. I noted in my annual report, however, that the Act does not provide for penalties for contraventions of substantive provisions of the Act.

Outreach and Communications

Outreach and communications are important tools to assist us in helping public office holders to comply with the *Conflict of Interest Act*.

In the past year, we have continued to meet regularly with individual public office holders to explain their obligations under the Act and address their questions and concerns.

We have improved our compliance processes, resulting in significantly fewer missed deadlines.

We upgraded our electronic case management system to assist our advisors in giving public office holders more timely advice and guidance.

There was an increase in the number of gift disclosures made by reporting public office holders in the past year, probably because of more proactive communications by my Office. We explained to them their obligations relating to gifts, and introduced new forms and administrative procedures to help those who regularly receive gifts.

Other outreach activities included presentations to groups of reporting public office holders.

Communications with Part-Time Public Office Holders

As I noted in my annual report, my Office has historically had little contact with non-reporting public office holders, most of whom are part-time members of federal boards, commissions and tribunals, and some of whom are part-time ministerial staff. This is because they are not subject to the Act's reporting requirements, its divestment requirements or its prohibition against engaging in outside activities. As well, while they are subject to the gift rules, they do not have to disclose them.

In the past, our practice has been to simply advise these mostly part-time public office holders of their obligations under the Act when they assume their duties and at the end of their term of office, but not to initiate any other communication with them during their term.

I undertook in my annual report to change this situation. As an initial step, I am in the process of sending the first in a series of annual letters to all non-reporting public office holders reminding them of their obligations under the Act and inviting them to contact my Office with any specific concerns.

Investigations

The last year has been particularly busy on the investigations front. I reported on four examinations under the *Conflict of Interest Act*. Three of these had parallel inquiries under the *Conflict of Interest Code for Members of the House of Commons*.

I also discontinued an examination of allegations of partisan advertising of government initiatives by the Prime Minister, certain ministers and their parliamentary secretaries.

Watson Report

In June 2009, I reported on my examination in relation to allegations that Mr. Colin Watson, a member of the Toronto Port Authority's Board of Directors, had furthered the private interests of a friend by participating in certain Board decisions.

I found that Mr. Watson was not a friend of the individual in question within the meaning of the Act, and concluded that he was not in a conflict of interest and did not contravene the Act.

In my three most recent examination reports, I commented on issues reflecting ethical considerations that were not addressed by the Act:

Cheques Report

In April 2010, I reported on my examination of complaints that 25 ministers and parliamentary secretaries had used partisan or personal identifiers on ceremonial cheques or other props in connection with federal funding announcements.

I found that enhancing political profiles is a partisan political interest and not a private interest within the meaning of the Act. I concluded, however, that using partisan or personal identifiers in announcing government initiatives was inappropriate and that steps should be taken to address this practice.

Raitt and Dykstra Reports

The focus of my other two examination reports related to fundraising and lobbying.

In May 2010, I reported on my examination of the activities of the Honourable Lisa Raitt, when she was Minister of Natural Resources, in connection with a political fundraising event organized by her riding association.

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.