



Opening Statement before the House of Commons Standing Committee on Official Languages

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Mr. Chair and honourable members of the Committee, I am pleased to appear before you today on behalf of Mary Dawson, the Conflict of Interest and Ethics Commissioner, who regrets that she is unable to be here herself. I am joined by my colleague Peggy Koulaib, Chief of Procedures.

You have invited our Office to discuss administrative monetary penalties under the *Conflict of Interest Act*, in order to aid the Committee's examination of proposals made by the former Commissioner of Official Languages, Graham Fraser, in his *Special Report to Parliament on Air Canada*.

Procedural fairness is important in the effective administration of any administrative monetary penalty regime. The administrative monetary penalty regime established in the *Conflict of Interest Act* was implemented by Commissioner Dawson in November 2008, more than a year after the Act took effect. She took the time necessary to develop appropriate processes to support the new regime and to review penalty schemes used by other bodies, in order to ensure procedural fairness.

The Commissioner may impose administrative monetary penalties of up to \$500 on reporting public office holders for failures to report certain matters within established deadlines. Violations include not filing a Confidential Report within 60 days after appointment, not publicly declaring certain assets within 120 days after appointment, not disclosing a material change to the Confidential Report within 30 days after the change occurs, and not publicly declaring a gift with a value of \$200 or more within 30 days after receiving it. The provisions of the Act covered by the administrative monetary penalty scheme are set out in section 52 of the Act.

When the Commissioner becomes aware of a possible violation, she reviews the circumstances that surround it. If the Commissioner believes on reasonable grounds that a reporting public office holder has committed a violation, she may issue a notice of violation to the public office holder, along with a proposed penalty of up to \$500. The notice is not made public.

The Act gives the Commissioner a degree of discretion to determine the amount of a penalty, taking certain considerations into account: the fact that penalties are intended to encourage compliance rather than to punish, the reporting public office holder's history of prior violations during the previous five years, and any other relevant matters. The Commissioner has interpreted such relevant matters to include particular circumstances, for example, a delay in our Office being notified of a reporting

public office holder's appointment by his or her employer in the case of missed reporting deadlines during the initial compliance process. She also considers whether our Office has been informed of a possible violation by the reporting public office holder involved, or whether the information was brought to our attention by a third party. And, she is more likely to impose a penalty for a failure to report a material change that involved an activity prohibited by the Act, such as purchasing controlled assets, than for a failure to report a material change that did not involve a breach of the Act's substantive provisions.

After the notice of violation is issued, the reporting public office holder has 30 days in which to pay the penalty or to make written representations to the Commissioner.

After receiving representations, the Commissioner determines whether the reporting public office holder did or did not commit the violation, and whether there were mitigating circumstances. As a result, she may impose the proposed penalty, reduce it or eliminate it altogether. If the reporting public office holder does not make any representations, he or she is deemed to have committed the violation and must pay the penalty.

Imposed penalties are disclosed in the public registry maintained by our Office on its website.

As I have noted, the overall objective of the administrative monetary penalty regime established in the *Conflict of Interest Act* is to encourage compliance with the Act rather than to punish non-compliance. This is reflected in the relatively low \$500-dollar cap on penalties, in the discretion that the Commissioner has in deciding the amount of the penalty, and in the incentive to comply that comes from making penalties public.

As the Commissioner has noted in a number of contexts regarding her administration of the *Conflict of Interest Act* and the *Conflict of Interest Code for Members of the House of Commons*, transparency is an important focus of conflict of interest regimes, which seek to enhance or maintain public confidence and trust in our public officials. Under the Act, transparency is supported by the public disclosure of certain personal information, as well as by the disclosure of administrative monetary penalties, and the public release of the Commissioner's examination reports.

Mr. Chair, this concludes my formal presentation. We will now be pleased to answer any questions the Committee may have.