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Public Sector Ethics Conference – Panel Discussion:
"Personal Trading Policies, Proactive Public Financial Disclosure and Conflicts of Interest"

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Proactive public financial disclosure is a key feature of the conflict of interest regimes that I administer. These requirements are fundamental to the success of the regimes I administer.

In my remarks today, I will quickly go over the disclosure provisions of each of those regimes.

I will begin by briefly reviewing the mandate and mission of my Office. Later, I will look at the history of Canada's federal conflict of interest regimes, with a focus on the development of their financial disclosure requirements.

Mandate and Mission

As Commissioner, I have a mandate to administer two conflict of interest regimes:

- The *Conflict of Interest Code for Members of the House of Commons*, which applies to all federally elected officials;
- And, the *Conflict of Interest Act*, which applies to ministers, parliamentary secretaries and federally appointed officials.

In support of that mandate, I recently developed a new mission statement for our Office. It lays out the approach we are taking under my leadership. The mission statement reads as follows:

> Our Office provides independent, rigorous and consistent direction and advice to Members of Parliament and federal public office holders, conducts investigations and, where necessary, makes use of appropriate sanctions in order to ensure full compliance with the *Conflict of Interest Code for Members of the House of Commons* and the *Conflict of Interest Act*.

Our Office is an institution that serves an important purpose: to enhance Canadians' trust and confidence in elected Members of Parliament and appointed public office holders. This mission statement reflects our responsibility for administering two similar but distinct regimes and the various means, some preventive and others reactive, by which we will do so.

It reminds our staff that our Office's day-to-day work is governed by the very rules that we administer, and helps focus our efforts on what matters most. And it enables external audiences to quickly grasp our Office's purpose, objective and modes of action.

Conflict of Interest Regimes

The regimes I administer set out a number of obligations aimed at preventing conflicts between private and public interests. Private interests are largely pecuniary and do not generally include political interests.

The *Conflict of Interest Act* applies to ministers, parliamentary secretaries, the Chief Electoral Officer, the Parliamentary Budget Officer, ministerial staff, ministerial advisers and most other Governor-in-Council appointees. Over 2400 individuals are subject to the Act.

The *Conflict of Interest Code for Members of the House of Commons* applies to all 338 elected Members of Parliament.

Ministers and parliamentary secretaries are subject to both the Act and the Code.

The Code applies uniformly to all Members, but the Act applies differently to different groups of public office holders.

All public office holders are subject to the Act's core set of conflict of interest and post-employment rules. Some of them are subject only to those general rules. They include part-time members of federal boards, commissions and tribunals, and some part-time ministerial staff.

Others are subject not only to the Act's general rules, but also to its reporting and public disclosure requirements, and its prohibitions against engaging in outside activities and holding or acquiring controlled assets. They are called reporting public office holders. Reporting public office holders include ministers and parliamentary secretaries, ministerial staff and full-time Governor-in-Council appointees such as deputy ministers, heads of Crown corporations and members of federal boards. Ministers and parliamentary secretaries also face several additional requirements under the Act.

Disclosure Requirements

Under the Act, disclosure requirements are triggered when reporting public office holders are appointed or reappointed. Within their first 60 days in office, they must submit to our Office a Confidential Report that contains detailed financial and other information. Items under section 22 of the Act include:

- All assets and their estimated value;
- All direct and contingent liabilities, as well as their amounts;
- All income received during the 12 months before the day of appointment and all income they are entitled to receive in the following 12 months;
- All outside activities in which they were engaged in the two years preceding their appointment;
- A description of their involvement in philanthropic, charitable or non-commercial activities in the two years preceding their appointment;
- A description of all activities as trustee, executor or liquidator of a succession, or holder of a power of attorney in the two years preceding their appointment; and
- And, any other information I consider necessary in order to ensure compliance with the Act. For example, they may be asked to identify any friends or family members who deal with the federal government.

Ministers and parliamentary secretaries are also required, under subsection 22(3), to make reasonable efforts to include the same information for their immediate family members.

The *Conflict of Interest Code for Members of House of Commons* requires Members to file a statement disclosing their private interests and those of their family within 60 days after notice of their election is published in the *Canada Gazette*.

The Disclosure Statement must include:

- All revenue of $10,000 or more, excluding the Members' salary;
- All liabilities of $10,000 or more;
- Assets of $10,000 or more which are not itemized in subsection 24(3) of the Code;
- Trusts;
- Investments in private corporations and partnerships;
- And, all positions of office.

Our Office prepares a summary of the information in each Confidential Report and Disclosure Statement. For reporting public office holders, we may also prepare a public declaration of assets, outside activities, liabilities of $10,000 for ministers and parliamentary secretaries, and other appropriate measures. These documents must be signed by the reporting public office holders within 120 days after their appointment. Members have 60 days to review, sign and return their summary, although they may ask for an extension. All summaries are then placed in the public registry that we maintain.

During their terms of office, reporting public office holders and Members are required to disclose, within established deadlines, any material change to any matter that they were required to disclose. Material changes could include new assets, liabilities or activities, or a change in marital status. The information in each Confidential Report and Disclosure Statement is also reviewed every year with each MP or public office holder.

History

It is fair to say that the Act and the Code had their roots in a Green Paper called *Members of Parliament and Conflict of Interest*. It was issued in 1973 by the Honourable Allan MacEachen, who was President of the Privy Council at the time.

The Green Paper set out an analysis of a gap between evolving public standards and formal rules governing MPs' conduct. It also included a set of proposals to encourage public and parliamentary debate on conflict of interest.

In the Green Paper, Mr. MacEachen noted, and I quote:

> The phrase conflict of interest is normally used to describe a situation in which the fiduciary relationship is violated—when a Member's private interests are given precedence over public interests.

Accordingly, for the purposes of his analysis and proposals, he defined conflict of interest as follows:

> A conflict of interest denotes a situation in which a Member of Parliament has a personal or private pecuniary interest sufficient to influence, or appear to influence, the exercise of his public duties and responsibilities.

The Green Paper discussed two different approaches that could be taken to address conflicts of interest: “the principle of avoidance” and the “principle of disclosure”.

The principle of avoidance is aimed at preventing conflicts of interest from arising in the first place. This approach requires MPs to avoid those interests which could conflict with their public duties, by divesting potentially problematic holdings or through other means. Mr. MacEachen noted that this approach emphasizes avoiding even the appearance of conflict of interest, but warned of a possible shortcoming. He wrote, and I quote, “There may be a tendency to expect too many divestments or disqualifications in areas remote from actual conflict situations.” End quote.

In contrast, the principle of disclosure is based on public awareness—transparency through the public disclosure of interests. This approach focusses more on actual rather than apparent conflicts of interest, to the point where, Mr. MacEachen noted, and I again I quote, “conflicts may even appear to be condoned as long as they are disclosed.”

Mr. MacEachen asserted that neither approach was appropriate in all cases. He noted that one or the other, or a combination of both, might be more suitable depending on the situation. He also acknowledged that conflict of interest rules for cabinet ministers need not be the same as those for backbench MPs.

Indeed, both the principle of avoidance and the principle of disclosure are evident in Canada’s federal conflict of interest regimes today.

For example, the *Conflict of Interest Act*’s divestment requirement and its prohibition against holding controlled assets reflect the principle of avoidance. The principle of disclosure is manifest in the disclosure provisions of both the Act and the *Conflict of Interest Code for Members of the House of Commons*.

Mr. MacEachen issued his Green Paper in June 1973. The first federal conflict of interest guidelines were issued in December of that same year. A registry of cabinet ministers’ financial holdings was also opened for public inspection.

In 1974, Canada’s first federal conflict of interest administrator, an Assistant Deputy Registrar General, was appointed.

In 1986, the *Conflict of Interest and Post-Employment Code for Public Office Holders* was issued. It consolidated in one document the rules for ministers, parliamentary secretaries, ministerial staff and Governor-in-Council appointees.

In 1987, the Parker Commission, created to inquire into conflict of interest allegations about the Honourable Sinclair Stevens, recommended requiring public disclosure of assets, interests and activities. Judge Parker also favoured divestment by ministers of their private assets where these could lead to obvious conflict of interest, and recusal in situations where, despite preventive measures, a conflict arose.

In 1997, the Special Joint Committee on a Code of Conduct of the Senate and the House of Commons reported. It recommended requiring all parliamentarians to confidentially disclose their financial assets, liabilities, sources of income and positions and making summary of this information public.

The committee's report, known as the *Milliken-Oliver Report*, formed the basis for the *Conflict of Interest Code for Members of the House of Commons*, which was adopted in 2004.

The *Conflict of Interest Act* was passed in 2006 as part of the *Federal Accountability Act*, and came into effect in 2007.

Conclusion

As you can appreciate from this brief overview, Canada's federal conflict of interest regimes have long histories and solid foundations.

They appear to be working well and are generally quite effective. Indeed, the vast majority of Members and public office holders achieve compliance with the relevant regime and remain in compliance throughout their terms of office.

That isn't to say, though, that there is no room for improvement. I will have some specific recommendations to make to the parliamentary committee that is reviewing the Act, when it resumes that review, likely in the fall.

For example, I would like to see the Act's reporting obligations extended to public office holders who do not currently have such obligations. They are mostly part-time Governor-in-Council appointees, but their assets and liabilities could still give rise to conflicts of interests. I also believe the Act should be amended to ensure that all controlled assets held indirectly by a reporting public office holder are subject to the same divestment rules as if they were held directly.