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GRECO High-Level Conference
Strengthening transparency and accountability to ensure integrity: United against corruption
"National bodies or authorities in charge of preventing and/or fighting corruption: the next steps of their co-operation at an international level"

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I am very pleased to be among you today. This is the first time that a representative from the Office of the Conflict of Interest and Ethics Commissioner of Canada has attended a High-Level GRECO meeting and we are honoured to share our practices when it comes to ethics and to learn from the important work that is being done in the countries that are represented here today.

When it comes to public sector ethics, proactive financial disclosure is a pivotal feature of a well-functioning conflict of interest regime.

As Director of Advisory and Compliance at the Office of the Conflict of Interest and Ethics Commissioner in Canada, I oversee a team that is responsible for ensuring that all public official subject to our regimes meet their disclosure obligations during their time in office. In doing so, I work closely with the Conflict of Interest and Ethics Commissioner, Mario Dion.

I will begin by providing a brief history and context about Canada's federal conflict of interest regimes. I will then review the mandate and mission of the Office, followed by an overview of the disclosure requirements that must be followed by elected and appointed public officials.

Canada's conflict of interest regimes

It is fair to say that while Canada has had some high-level cases of violation of conflict of interest rules, corruption has not been prevalent. Canada was ranked 8th in Transparency International's Corruption Perception Index for 2017. That is the highest ranking among all other countries in the Americas.

A strategic and sustainable response to corruption is public integrity. Integrity is one of the key pillars of political, economic and social structures and thus essential to the economic and social well-being and prosperity of individuals and societies as a whole. Canada's long-standing preventative practices support public integrity and have certainly contributed to its international status.

This is not to say that there isn't room for improvement. Although the federal level, as well as the provinces and territories all have an independent office overseeing conflict of interest rules, many municipalities are just now starting to implement such regimes.

History of the Office

I will now speak briefly about the History of the Office.

As with all rules, conflict of interest rules usually stem from scandals. The Act and the Code administered by our Office 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 Members' 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 reflects the principle of avoidance. The principle of disclosure is manifested 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. Justice 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 a 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.

Mandate and Mission

The mandate of our Office is to administer two conflict of interest regimes:

- The *Conflict of Interest Code for Members of the House of Commons*, which applies to all 338 federally elected officials; and
- The *Conflict of Interest Act*, which applies to ministers, parliamentary secretaries and about 2,300 federally appointed officials.

In Canada, ministers and parliamentary secretaries are also elected members of Parliament. As a result, they are subject to both the Act and the Code.

I will read out the mission statement for our Office as it lays out the approach we are taking under Commissioner Dion's 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.

Conflict of Interest Regimes

The regimes 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 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, direct and contingent liabilities, income received, outside activities (including philanthropic and volunteer activities as well as trustee executor or liquidator of a succession and any other information that could potentially place them in conflict of interest while performing their duties. 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 to make reasonable efforts to include the same information for their immediate family members.

Under the Code, members of Parliament also have 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 more or less the same type of information required for appointed public office holders.

The purpose of collecting this information in a confidential manner is to allow our Office, and more specifically, my team, to apply any compliance measures that are required by the Act or the Code. This information also allows the advisors to determine any areas where a potential conflict of interest could arise and to tailor their advice accordingly.

Another important reason for collecting this information is to make it available to the public.

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 public office holder or member of Parliament.

On our Office's website, there is a searchable public registry of publicly declarable information. All the information that can be made public is made available there. In this way, the power of scrutiny by the public and the media is being harnessed to further prevent conflicts of interests and corruption among public office holders.

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. Commissioner Dion has some specific recommendations to make to the parliamentary committee that is reviewing the Act, when it resumes that review.

Many of these recommendations arose from observing how ethics regimes are governed in other jurisdictions. Our Office is part of the Canadian Conflict of Interest and Network that encompasses all oversight organizations within all levels of Government across Canada. Our Office is also a founding member of the new parliamentary ethics network that was created in the context of the Assemblée parlementaire de la Francophonie. This network will foster the sharing of best practices among commissioners and other ethics and conflict of interest bodies with a view to enhancing expertise and accompanying parliaments of Francophonie member countries in the adoption of ethics principles and conflict of interest rules.

Finally, I would like to end by saying that our Office has often been solicited by emerging ethics organizations who were seeking to learn from our structure. In fact, we have welcomed more than a dozen delegations from Mali, Kenya, Australia and even the United States.

Thank you for your time and attention and I look forward to our discussion.