Speaking Notes for
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Conflict of Interest and Ethics Commissioner

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Introduction

Good morning. Bonjour.

I am pleased to participate in this discussion of Ethics in Democratic Development. Ethical considerations are clearly critical to building and maintaining the public trust that is at the heart of the democratic process. This is a continuing challenge even in countries like Canada, which has a long democratic tradition, and extensive regulatory and ethical frameworks.

Canada's ethical framework was enlarged and strengthened in the wake of a series of public controversies that culminated in the so-called sponsorship scandal. In 2006, the *Federal Accountability Act* was introduced to address the resulting decline in public trust. It established a Director of Public Prosecutions, amended the *Access to Information Act*, provided for the appointment of a Commissioner of Lobbying, and gave whistleblowers added protection. It also created, for the first time, a legislative regime governing the ethical conduct of public office holders, and established the Office of the Conflict of Interest and Ethics Commissioner. Until then, there had only been guidelines or codes of conduct.

The first formal conflict of interest guidelines for cabinet ministers were issued in 1973. Similar guidelines were introduced for various groups of public servants and government appointees.

A *Conflict of Interest and Post-Employment Code for Public Office Holders* was established in 1985. It consolidated the rules for ministers, parliamentary secretaries, ministerial staff and government appointees. It also covered all public servants – a Conflict of Interest and Post-Employment Code for the Public Service was appended to the document.

As I mentioned earlier, the Public Office Holders' Code was replaced by the *Conflict of Interest Act*, which was part of the *Federal Accountability Act* and came into effect in July 2007.

The *Conflict of Interest Code for Members of the House of Commons*, which is not an Act of Parliament but is appended to the Standing Orders of the House of Commons, only came into effect in 2004.

Independence

Predecessors of my Office were part of the government until 2004. At that time, the former Office of the Ethics Commissioner was made a separate parliamentary entity to help ensure its independence.

Independence is critical to the Commissioner's ability to do his or her job. This is because the Commissioner oversees the conduct of government ministers, including the Prime Minister, as well as other public office holders and Members of the House of Commons.

Those subject to the regimes we administer must be assured that they will receive fair and equal treatment regardless of their political affiliation.

And, the public will trust the legitimacy of my conclusions only if I am truly independent of the government of the day and am perceived to be so.

Mandate

The mandate of my Office can be summed up quite simply. We help ensure that public officials, whether elected or appointed, do not use their offices to further private interests, whether their own or those of others.

We do that by administering the *Conflict of Interest Act* and the *Conflict of Interest Code for Members of the House of Commons*. I am also mandated to provide confidential advice on conflict of interest and ethics issues to the Prime Minister.

Both regimes prohibit various activities that involve conflicts between private and public interests, or have the potential to do so. For example, those subject to the Act and the Code are not allowed to accept gifts or benefits that could have been given to influence them in exercising their official duties. They cannot participate in discussions, decisions, debates or votes on any matter in respect of which they would be in a conflict of interest. And they must not take improper advantage of their former position after leaving office.

The Act applies to people appointed to full- and part-time positions by the Government of Canada, numbering about 2800. All of them are subject to its general rules on avoiding conflicts of interest.

Full-time appointees, who include cabinet ministers and their staff, deputy ministers, and heads and often other members of boards and agencies, and who number about 1100, are also subject to additional, more stringent requirements.

The Act requires them to file detailed, confidential declarations of their assets and liabilities with my Office, and to divest themselves of certain controlled assets such as publicly traded securities. It also restricts their outside activities and requires a number of public declarations.

The Members' Code applies to Canada's 308 elected Members of Parliament. It includes rules on conflict of interest for Members similar to those in the Act. However, unlike the Act, it

does not require Members to divest controlled assets, and does not restrict their outside activities.

Cabinet ministers and parliamentary secretaries are subject to both the Code and the Act. My position is unusual in that I administer two distinct and separate regimes: many of my provincial counterparts administer just one regime that applies to MLAs and public office holders. While they are based on many of the same underlying principles, they have different rules, resulting in the need to conduct distinct analyses under the Act and the Code when we provide advice, and in cases where both apply to persons under investigation.

My staff and I advise public office holders and Members about their obligations under the two regimes, receive their confidential declarations, maintain a public registry of publicly declarable information, and investigate alleged contraventions. My role is primarily to advise, inform, and try to prevent contraventions. Public disclosure is the most potent sanction for a failure to comply.

In enforcing the Act, I can impose administrative monetary penalties of up to $500 for failures to report within prescribed deadlines. I can issue compliance orders. I can also conduct examinations that result in reports that are made public and can contain recommendations as well as findings. In enforcing the Members' Code, I cannot impose monetary penalties for contraventions, but I am empowered to conduct inquiries under the Code.

My reports on examinations under the Act and inquiries under the Code are made public. It is up to the Prime Minister, in the case of the Act, and to Parliament, in the case of the Code, to decide if any measures should be taken for failure to comply. Ultimately, for Members of Parliament, voters will have their say at election time.

Limitations of Mandate

My powers relate to conflict of interest matters covered specifically by the *Conflict of Interest Act* and the Members' Code. Their rules deal mainly with possible conflicts between the official duties of public officials and private interests, and not with all ethical issues that may also be of concern to Canadians. For example, neither the Act nor the Code specifically addresses the ethical merits of matters that relate to personal morals, like lying, or that are criminal in nature, such as fraud.

Although many Canadians are concerned about the conduct of public officials in the political sphere, that, too, is generally beyond the scope of my mandate. For example, there are no rules in the Act or the Code to deal with politicians exaggerating or misrepresenting issues in debate. Thus, I would not intervene in policy disputes or other political matters unless they also involve a deliberate and focussed attempt by a Member of the House of Commons to further a private interest. It is sometimes difficult to determine exactly where to draw the line between a

private interest and a “political” or “partisan” interest, and it will always depend on the circumstances of the case.

In recent investigation reports, I have drawn some lines to indicate what I consider to be strictly political. For example, in investigating the use of partisan identifiers on ceremonial cheques for federal funding announcements, I determined that such activities do not further private interests within the meaning of the Act or the Code. I am, however, of the view that the practice of using partisan identifiers in announcing government initiatives goes too far.

Conclusion

My Office has primarily a preventive role. Its strength lies not in penalizing or even exposing cases of non-compliance, but in encouraging widespread adherence to conflict of interest rules and principles. Our advisory role is somewhat unusual in that we provide advice on compliance issues to the same people we could end up investigating. For that reason, advisors and investigators work in separate divisions within my Office.

I have an investigative role, with the same powers to compel witnesses and records under the *Conflict of Interest Act* as a court of record. My Office spends a significant amount of time investigating cases of alleged non-compliance with the Act or the Members’ Code. This involves determining the facts of a case and also involves, in most cases, a careful interpretation of the provisions of the Act or the Code, often creating new precedents.

My final role is one of administrative decision-making. I render administrative decisions after investigating matters raised in individual cases, with the power to recommend sanctions.

The conflict of interest regimes that my Office administers are important dimensions of democratic governance and the democratic process in terms of accountability, transparency and ethics. However, they are just one part of Canada’s ethical framework, which includes a range of other offices and instruments at the federal level, and separate conflict of interest regimes administered by the provinces and territories.

I note, for example, that while some of the people in government departments – mainly senior officials – are subject to the *Conflict of Interest Act*, the rest are covered by the September 2003 *Values and Ethics Code for the Public Service*. There are some similarities between the Act and the Code of Values and Ethics, particularly in areas like post-employment, and they reflect common goals, but they are two separate instruments that are administered in different ways.

As you can appreciate, there is no single window into the regulation of ethical behaviour in Canada. Indeed, I believe it is impossible to regulate all behaviour of public officials through explicit rules or codes.

In a democracy, where governments are accountable to the people, transparency through public access to information is perhaps the most powerful inducement to ethical behaviour. The ultimate judge of those in positions of power is the general population – the people.

Canadians deserve and expect the highest standards from their elected and non-elected government officials. Canada has demonstrated that it is committed to meeting those expectations, by putting in place over the years a number of initiatives and structures, like my Office, that are designed to build and maintain Canadians' trust in government.

I look forward to hearing from the other panellists and to our upcoming discussion.