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# ***Conflict of Interest at the Federal Level: Legislative Framework and Oversight***

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***Conflict of Interest at the Federal Level:  
Legislative Framework and Oversight  
(Background Paper)***

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# CONFLICT OF INTEREST AT THE FEDERAL LEVEL: LEGISLATIVE FRAMEWORK AND OVERSIGHT

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## 1 INTRODUCTION

Conflict of interest rules applicable to ministers, parliamentary secretaries, other public office holders and parliamentarians were once found in various federal statutes, such as the *Criminal Code* and the *Parliament of Canada Act*. Over time, beginning in 1973 with Prime Minister Pierre Trudeau's guidelines for Cabinet ministers, conflict of interest rules and guidelines have replaced or supplemented the statutory rules already in place. The federal conflict of interest regime is now mostly governed by the *Conflict of Interest Act* applicable to public office holders, such as ministers, and conflict of interest codes that both the Senate and the House of Commons have adopted for themselves to govern the conduct of their respective members. Integral to the regime are two independent conflict of interest watchdogs, namely the Conflict of Interest and Ethics Commissioner and the Senate Ethics Officer.

## 2 LEGISLATIVE FRAMEWORK

### 2.1 AMENDMENTS TO THE *PARLIAMENT OF CANADA ACT* (2004)

In 1985, the government introduced the first *Conflict of Interest and Post-Employment Code for Public Office Holders* (often referred to as the "Prime Minister's Code"). This code applied to Cabinet ministers, parliamentary secretaries and other senior public office holders. From 1994 to 2004, the code was administered by the Office of the Ethics Counsellor, an office often criticized for not being independent from the government, as it was a position within the Department of Industry. In 2004, this office was replaced through an amendment to the *Parliament of Canada Act*<sup>1</sup> establishing the Office of the Ethics Commissioner, a position held by Bernard Shapiro until 2007. The office of Commissioner benefited from secure tenure as well as statutory powers of inquiry.

The Act was also amended to create the Senate Ethics Office. Jean T. Fournier was appointed to this position in 2005.<sup>2</sup>

### 2.2 THE *FEDERAL ACCOUNTABILITY ACT* (2006)

The *Federal Accountability Act*<sup>3</sup> (FAA) received Royal Assent on 12 December 2006. It made two fundamental changes to the Canadian conflict of interest regime. First, it enacted the *Conflict of Interest Act* (CIA),<sup>4</sup> which enshrined in legislation the *Conflict of Interest and Post-Employment Code for Public Office Holders*.<sup>5</sup> Second, the FAA made amendments to the *Parliament of Canada Act*<sup>6</sup> to replace the Office of the Ethics Commissioner with the Office of the Conflict of Interest and Ethics Commissioner. By an Order in Council, the provisions of the FAA pertaining to the

Commissioner and the CIA came into force on 9 July 2007, and Mary Dawson was appointed to this position on the same date.

The CIA in essence replaced the *Conflict of Interest and Post-Employment Code for Public Office Holders* with a statutory regime of rules and obligations applying to public office holders and former public office holders. The provisions of the CIA apply to Cabinet ministers, parliamentary secretaries and other senior public office holders such as political staff of ministers and most Governor in Council appointees.

## 2.3 CONFLICT OF INTEREST AND ETHICS COMMISSIONER

The Conflict of Interest and Ethics Commissioner has a dual mandate: she or he is responsible both for public office holders under the CIA, and for members of the House of Commons under the *Conflict of Interest Code for Members of the House of Commons*,<sup>7</sup> known as the Members' Code.

The Commissioner's mandate in respect of public office holders, as set out in the CIA, includes the following:

- providing confidential advice to the prime minister, including on the request of the prime minister, with respect to the application of this Act to individual public office holders;
- providing confidential advice to individual public office holders with respect to their obligations under this Act; and
- examining and reporting on possible contraventions of the CIA by public office holders or former public office holders.

The CIA permits any parliamentarian to request, in writing, that the Commissioner investigate if the parliamentarian reasonably believes that a minister of the Crown, a minister of state or a parliamentary secretary has contravened the Act. The Commissioner may also conduct such an examination on her or his own initiative. Reports on such investigations must be made public, although particular types of information obtained from the investigations must be kept confidential. The *Parliament of Canada Act* also requires the Commissioner to report to the Speaker of the House of Commons annually on her or his activities under the Members' Code, and to the speakers of both houses on her or his activities under the CIA.

The Commissioner is also responsible, as was the Ethics Commissioner, for the administration of the Members' Code. This code came into force upon the first sitting of the 38<sup>th</sup> Parliament on 4 October 2004. It includes the maintenance of the public registry of all members' public disclosure summaries; the provision of written confidential opinions to members; and the conduct of inquiries into any member's alleged non-compliance with the Code's obligations. The Commissioner reports on the inquiries conducted pursuant to the Members' Code, and makes annual reports to the House of Commons on all activities in relation to its members.

Consistent with the dual mandate, the Conflict of Interest and Ethics Commissioner reports to two parliamentary committees of the House of Commons, the Standing

Committee on Procedure and House Affairs for duties and functions under the *Conflict of Interest Code for Members of the House of Commons*; and the Standing Committee on Access to Information, Privacy and Ethics for responsibilities under the CIA, as well as for the general administration of the Office of the Conflict of Interest and Ethics Commissioner.

## 2.4 SENATE ETHICS OFFICER

In 1997, a committee of both Houses of Parliament, the Special Joint Committee on a Code of Conduct, recommended the establishment of a single commissioner to administer one code of conduct and conflict of interest regime for members of both the Senate and the House of Commons.<sup>8</sup> While these recommendations were not implemented at the time, they were tabled in 2002 for reconsideration by both chambers.

The Standing Senate Committee on Rules, Procedures and the Rights of Parliament, which was called upon to look into the matter, objected to the creation of a single commissioner. Asserting the Senate's independence from the House of Commons and the government, as well as its separate constitutional role and function, the Committee requested that the Senate have its own ethics officer.<sup>9</sup>

Echoing these demands, the legislative proposal introduced in 2003 contemplated the establishment of the Senate Ethics Officer, responsible for the administration of the conflict of interest regime for Senators, and the Ethics Commissioner, responsible for the conflict of interest regimes of members of the House of Commons and public office holders.<sup>10</sup> This Act received Royal Assent on 31 March 2004.<sup>11</sup> As mentioned earlier, Jean T. Fournier has served as Senate Ethics Officer since 1 April 2005.

## 2.5 THE *CONFLICT OF INTEREST CODE FOR MEMBERS OF THE HOUSE OF COMMONS*

Members of Parliament are bound by the *Conflict of Interest Code for Members of the House of Commons*, known as the Members' Code, which is Appendix 1 to the Standing Orders of the House of Commons. The Members' Code articulates several purposes, including that of maintaining and enhancing public confidence and trust in the integrity of members, and a number of principles that are intended to guide members in reconciling their private interests and public duties.

The Members' Code prohibits members from voting or acting in a way that would further their own or others' private interests, and requires that their private interests be disclosed whenever a decision that would affect those interests is under consideration. They and their families must report to the Commissioner any travel or gifts valued in excess of specified limits. Members, and any corporations owned by them, are prohibited from entering into federal government contracts.<sup>12</sup>

All members are required to file statements with the Commissioner disclosing the assets and liabilities belonging to themselves and their families. The Office of the Conflict of Interest and Ethics Commissioner then prepares a disclosure summary

based on each member's statement, and the summaries are available for public review on the Commissioner's website.

Members of Parliament may, at any time, ask the Commissioner to offer a confidential opinion about their obligations under the Members' Code. Also, any member who is of the opinion that another member has not fulfilled her or his obligations under the Members' Code may request that the Commissioner conduct an inquiry into the matter. The Commissioner may also conduct an inquiry on her or his own initiative. In conducting such inquiries, the Commissioner must operate in private and with due dispatch, and at all appropriate stages throughout the inquiry, the Commissioner must give the member reasonable opportunity to be present and to make representations. In a report on an inquiry, the Commissioner may recommend sanctions, and must offer reasons for the conclusions and recommendations.

## **2.6 THE *CONFLICT OF INTEREST ACT***

The CIA requires that, once they are appointed, public office holders must arrange their private affairs so as to prevent conflicts of interest from arising. With limited exceptions, they must not solicit or accept money or gifts; assist individuals in their dealings with government in such a way as to compromise their own professional status; take advantage of information obtained because of their positions as insiders; and, after they leave public office, they must not act so as to take improper advantage of having held that office. Since 1994, information relating to the spouses and dependent children of ministers, secretaries of state and parliamentary secretaries has also been considered relevant.

Bound by the Act are approximately 1,250 full-time public office holders, including not only the prime minister, ministers, ministers of state, parliamentary secretaries and ministers' exempt staff, but also full-time Governor in Council appointees, including deputy and associate deputy ministers and heads of agencies, Crown corporations, boards, commissions and tribunals, and 2,200 part-time public office holders.

Although the definition of public office holders remains the same under the CIA as the definition in the Prime Minister's Code, section 2 of the CIA adds a new term – "reporting public office holder." Members of this subgroup of public office holders include ministerial staff who work on average 15 hours or more a week, part-time Governor in Council appointees who receive an annual salary and benefits, and full-time Governor in Council appointees. These reporting public office holders, by and large, are prohibited from engaging in the activities listed in the Prime Minister's Code (being employed, operating a business and so on); are subject to the rules regarding disclosure and the divestment of assets; and are also subject to all of the post-employment rules contained in the CIA.

The CIA provides that, in order to reduce the risk of conflict of interest, public office holders should use avoidance, a confidential report, a public declaration, divestment, or recusal, depending on the asset or interest in question. Divestment can include making an asset subject to a trust or management agreement. In relation to outside activities, a public office holder is not to engage in the practice of a profession,



actively manage or operate a business or commercial venture, retain or accept directorships or offices in a financial or commercial corporation, hold office in a union or professional association, or serve as a paid consultant. The CIA also deals with public office holders after they leave office. Many of the post-employment rules are the same as those in the Prime Minister's Code. One of the most important changes brought about through the FAA was contained in the *Lobbying Act*, rather than the CIA: There is a five-year ban on lobbying activities for designated public office holders (as defined under the *Lobbying Act*).<sup>13</sup> The Commissioner of Lobbying may exempt individuals from the application of the provisions, applying any criteria deemed relevant, including these: being a designated public office holder for only a short time; being employed on an acting or administrative basis only; or being employed as a student. The reasons for any exemptions must be made public.

Under the CIA, the Commissioner is to administer the Act and apply its conflict of interest compliance provisions to public office holders. Any information he or she receives is to be kept confidential until and unless a public declaration is made. Arrangements made by public office holders to reduce the risk of a conflict of interest must be approved, in the case of ministers of the Crown, ministers of state and parliamentary secretaries, by the prime minister, in consultation with the Commissioner. In the case of all other public office holders, including the prime minister, approval must be obtained from the Ethics Commissioner. Once arrangements are completed, summaries and public declarations are posted in the public registry. Section 43 sets out the requirement, previously found in section 72.07 of the *Parliament of Canada Act*, that the Commissioner provide confidential advice to the prime minister, as well as to individual public office holders, on the application of the Act.

In a significant change from the previous regime, section 44 of the CIA permits parliamentarians to request, based on a belief on reasonable grounds that there has been a contravention of the CIA, that the Commissioner examine a possible contravention by any current or former public office holder. The Commissioner may consider information from the public, brought to her or his attention by a Member of Parliament, which suggests that a public office holder has not complied.

Section 45 permits the Commissioner to examine a matter on her or his own initiative when he or she has reason to believe that a current or former public office holder has contravened the CIA. The Commissioner must provide the affected public office holder with a reasonable opportunity to present his or her views before reporting on an examination.

The Commissioner has powers similar to those that were available to the Ethics Commissioner under the previous regime that permit her or him to summon witnesses and compel them to give evidence or to produce documents.

## **2.7 CONFLICT OF INTEREST CODE FOR SENATORS**

Under the 2004 amendments to the *Parliament of Canada Act*, the Senate was called upon to establish a conflict of interest code that applies to Senators. The Standing Committee on Rules, Procedures and the Rights of Parliament was once

again called upon, and its report recommending the *Conflict of Interest Code for Senators* was adopted by the Senate on 18 May 2005.<sup>14</sup>

The Senate Code and the House Code are identical in some regards, and similar in many others. One distinctive feature of the Senate Code is the role played by the Standing Committee on Conflict of Interest for Senators, to which the Senate Ethics Officer confidentially reports after an inquiry and which may be called upon to conduct its own investigation on a matter. Since its adoption, the Senate Code has been amended once, when the Standing Committee on Conflict of Interest for Senators completed its comprehensive review of its provisions in 2008.<sup>15</sup>

In 2006 and 2009, the Government introduced bills aimed at abolishing the position of the Senate Ethics Officer and implementing a single conflict of interest regime for members of both houses of Parliament. In 2006, the FAA, as originally introduced, would have abolished the position of Senate Ethics Officer and transferred the duties to the yet-to-be-created position of Conflict of Interest and Ethics Commissioner. This portion of the bill was, however, amended by the Senate and the FAA, as enacted, made no change to the Office of the Senate Ethics Officer. In 2009, the Government introduced Bill C-30, the Senate Ethics Act<sup>16</sup> with the same purpose. That bill died on the *Order Paper* with the 30 December 2009 prorogation.

### 3 OVERSIGHT FUNCTION

#### 3.1 CONFLICT OF INTEREST AND ETHICS COMMISSIONER

Since the beginning of her mandate, Commissioner Mary Dawson has often appeared before House of Commons committees on matters relating to the CIA and the Members' Code. Under the Members' Code, she has also conducted eight inquiries involving public office holders' conduct, and five regarding the conduct of a Member of Parliament. Three of her inquiries under the CIA related to events that took place before the coming into force of that Act and were therefore subject to the *Conflict of Interest and Post-Employment Code for Public Office Holders*. Following are summaries of the main findings from recent inquiries.

##### 3.1.1 PARTISAN ADVERTISING OF GOVERNMENT INITIATIVES DISCONTINUANCE REPORT

On 13 January 2010, the Commissioner discontinued her examination of allegations of partisan advertising of government initiatives by the Prime Minister, certain ministers and their respective parliamentary secretaries. It was alleged that these officials had developed an advertising and communications strategy to promote governmental programs in a way that could benefit the electoral prospect of the Conservative Party of Canada. The CIA prohibits a public office holder from improperly furthering another person's private interest. The Commissioner's decision to discontinue her examination was based on the finding that the Conservative Party of Canada was not a "person" under the CIA but rather an "unincorporated association."<sup>17</sup>

### 3.1.2 THE CHEQUES REPORT

In this report, the Commissioner dealt with the numerous complaints she received under both the Code and the Act concerning the use by government members of partisan identifiers on ceremonial cheques for Government of Canada public funding announcements. It was alleged that the use of these cheques would offer the governing political party a partisan advantage or improve its electoral prospects. The Commissioner concluded that the individuals named in the complaints received by her office did not contravene the Code or the Act. In her opinion, as was the case with the report summarized above, “these activities do not further ‘private interests’ within the meaning of the Code or the Act.”<sup>18</sup> Specifically, she found that “the interest in enhancing political profiles is a partisan political interest and not a private interest.”<sup>19</sup>

### 3.1.3 THE RAITT REPORT

In this report, the Commissioner examined the conduct of former Natural Resources Minister Lisa Raitt in connection with a political fundraising event organized by the Conservative Association in her riding with the help of a registered lobbyist.<sup>20</sup> The Commissioner’s investigation was conducted under both the CIA and the Members’ Code. The Commissioner concluded that Ms. Raitt did not contravene section 11<sup>21</sup> of the CIA because “the political contributions, volunteer time and resources provided by the lobbyists in connection with this fundraiser were given to the organizer of the event, the Halton Conservative Association”<sup>22</sup> and not to Ms. Raitt. The Commissioner also concluded that section 16<sup>23</sup> of the Act did not apply in this case “since there was no evidence that Ms. Raitt solicited funds, either directly or indirectly, in relation to that fundraising event.”<sup>24</sup>

Similarly, with respect to the applicable rules under the Code, the Commissioner found that Ms. Raitt did not contravene section 14 of the Code, which prohibits members from accepting gifts or other benefits that might reasonably be seen to have been given to influence them in the exercise of a duty or function of their office.

### 3.1.4 THE DYKSTRA REPORT

In this report, the Commissioner examined the conduct of Mr. Rick Dykstra, Parliamentary Secretary to the Minister of Citizenship and Immigration and Member of Parliament for St. Catharines, in connection with a political fundraising event held in the Owner’s Suite at the Rogers Centre and organized for the benefit of the St. Catharines Electoral District Association.<sup>25</sup> The Commissioner’s investigation was conducted under both the CIA and the Members’ Code. The Commissioner concluded that Mr. Dykstra did not contravene section 11 of the CIA or section 14 of the Code, since the Owner’s Suite was rented at full market value and therefore, access to it did not constitute a gift or other advantage or benefit. The Commissioner further added that the proceeds from this fundraising event, as well as the volunteer time provided by friends and family benefited the riding association and not Mr. Dykstra.

The Commissioner's investigation also looked at section 16 of the Act, which prohibits the solicitation of funds that would place public office holders in a conflict of interest. She concluded that Mr. Dykstra did personally solicit funds for the event, but that he had no official dealings as parliamentary secretary with those from whom he had solicited funds, and therefore he was not in a conflict of interest under the Act.

### 3.2 SENATE ETHICS OFFICER

Since the adoption of the Senate Code, there has been no inquiry into the conduct of Senators by the Senate Ethics Officer.

## 4 CONCLUSION

The Canadian conflict of interest regime has greatly evolved since the promulgation of the first prime ministerial guidelines on conflict of interest in 1973. Conflict of interest rules are now embodied in part in legislation, the *Conflict of Interest Act*, and in formal orders of both houses of Parliament, namely the *Conflict of Interest Code for Senators* and the *Conflict of Interest Code for Members of the House of Commons*. Moreover, while rules were once interpreted and administered by the Ethics Counsellor, who had no independent status and reported directly to the prime minister, two independent officers, the Conflict of Interest and Ethics Commissioner and the Senate Ethics Officer, are now entrusted with the administration of conflict of interest rules and are required to report to Parliament. The Canadian conflict of interest regime has evolved and has the capacity to adjust and adapt itself to contemporary circumstances. Both the House of Commons, in 2007, and the Senate, in 2008, through their competent committees, have undertaken a comprehensive review of the conflict of interest code applicable to their respective members. These reviews led to numerous amendments to both codes. On that matter, the House of Commons and the Senate espouse the principle that the conflict of interest regime is always a “work in progress” and that adjustments, improvements, and refinements are required over time.<sup>26</sup> This continuous search for “best practices” will go on, because the *Conflict of Interest Act* and both parliamentary codes include provisions for their periodic review.

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## NOTES

1. [An Act to amend the Parliament of Canada Act \(Ethics Commissioner and Senate Ethics Officer\) and other Acts in consequence](#) [*An Act to amend the Parliament of Canada Act*], S.C. 2004, c. 7.
2. Order in Council, SI/2005–0274.
3. [Federal Accountability Act](#), S.C. 2006, c. 9.
4. [Conflict of Interest Act](#), S.C. 2006, c. 9, s. 2.
5. Government of Canada, [Conflict of Interest and Post-Employment Code for Public Office Holders](#), 2006.
6. [Parliament of Canada Act](#), R.S.C. 1985, c. P–1.

7. House of Commons, Appendix, "[Conflict of Interest Code for Members of the House of Commons](#)" in *Standing Orders of the House of Commons*, 2010.
8. Parliament of Canada, Special Joint Committee on the Code of Conduct. *Final Report – Code of Conduct*, 2<sup>nd</sup> Session, 35<sup>th</sup> Parliament, March 1997.
9. Senate, Standing Committee on Rules, Procedures and the Rights of Parliament, [Eighth Report](#), 2<sup>nd</sup> Session, 37<sup>th</sup> Parliament, April 2003.
10. This proposal was initially introduced in the 2<sup>nd</sup> Session of the 37<sup>th</sup> Parliament as Bill C-34, An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence, but it died on the *Order Paper* with prorogation. It was reintroduced as Bill C-4 in the subsequent session.
11. *An Act to amend the Parliament of Canada Act*.
12. Section 16 prevents members from receiving benefits under contracts with the federal government, and section 18 of the Code provides that a member may not have an interest in a partnership or in a private corporation that is a party to a contract with the Government of Canada, "unless the Ethics Commissioner is of the opinion" that it is "unlikely to affect the member's obligations under this Code."
13. "Designated public office holders" includes ministers of the Crown, their staff and senior public servants (i.e., deputy or assistant deputy ministers), and specifically excludes staffs of commissions of inquiry and parliamentary institutions.
14. Senate, Standing Committee on Rules, Procedures and the Rights of Parliament, [Third Report](#), 1<sup>st</sup> Session, 38<sup>th</sup> Parliament, May 2005.
15. Senate, Standing Committee on Conflict of Interest for Senators, [Fourth Report](#), 2<sup>nd</sup> Session, 39<sup>th</sup> Parliament, May 2008. The *Fourth Report* was adopted on 29 May 2008.
16. [Bill C-30, An Act to amend the Parliament of Canada Act and to make consequential amendments to other Acts](#), 2<sup>nd</sup> Session, 40<sup>th</sup> Parliament.
17. Office of the Conflict of Interest and Ethics Commissioner [CIEC], [Discontinuance Report relating to an examination of allegations of partisan advertising of government initiatives by the Prime Minister, certain ministers and their respective parliamentary secretaries](#), 13 January 2010.
18. CIEC, [The Cheques Report: The use of partisan or personal identifiers on ceremonial cheques or other props for federal funding announcements](#), 29 April 2010, p. 2.
19. Ibid.
20. CIEC, [The Raitt Report made under the Conflict of Interest Code for Members of the House of Commons](#) [The Raitt Report], 13 May 2010.
21. This section prohibits any public office holder from accepting any gift or other advantage that might be seen to have been given to influence the public office holder in the exercise of an official power, duty or function.
22. CIEC, [The Raitt Report](#) (2010), p. 24.
23. This section provides that no public office holder shall personally solicit funds from any person or organization if it would place the public office holder in a conflict of interest.
24. CIEC, [The Raitt Report](#) (2010), p. 36.
25. CIEC, [The Dykstra Report made under the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons](#), 7 September 2010.

26. House of Commons, Standing Committee on Procedure and House Affairs, [\*Seventh Report\*](#), 1<sup>st</sup> Session, 39<sup>th</sup> Parliament, May 2006; Senate, Standing Committee on Conflict of Interest for Senators, [\*Fourth Report\*](#), 2<sup>nd</sup> Session, 39<sup>th</sup> Parliament, May 2008.